TC04023

Appeal number: TC/2013/06921

Income tax – dividend income from company of which appellant was director and shareholder – appellant wrongly believed his wife owned half of the shareholding but it was registered in his name alone – appellant therefore liable for tax on income from the entire shareholding

FIRST-TIER TRIBUNAL
TAX CHAMBER

MR PETER ROWE **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE WDF COVERDALE
MRS A CHRISTIAN

Sitting in public at Leeds on 26.06.2014

The Appellant in person.

Miss JN Bartup, Officer of HMRC, for the Respondents.

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DECISION

1. CBF Capital Limited (CBF) is a company whose Memorandum and Articles of Association are dated 30.09.2006 and 30.09.2005 respectively. Those documents recite that the subscribers were Gary David Taylor, Helen Rachel Taylor and Peter Kevin Rowe. CBF's Annual Returns to Companies House for the years ended 03.12.2008 and 03.12.2009 disclose that those three subscribers were also the three directors during those years. Helen Rachel Taylor was the Company Secretary.

2. It is also evident from those Annual returns that the allocation of shares during those periods, which are relevant to this appeal, was as follows:

Mr Taylor 25 shares
Mrs Taylor 25 shares
Mr Rowe 50 shares

3. Mr Rowe was, therefore, entitled to receive 50% of the dividends paid by CBF. The dividend entitlement in respect of the 50 shares registered in the name of Mr Rowe was:

Tax year 2007-2008 £62,500
Tax year 2008-2009 £65,000

4. The dividend income declared by Mr Rowe in his tax returns for those two years was:

Tax year 2007-2008 £32,500
Tax year 2008-2009 £32,500

5. This discrepancy came to the attention of the Respondents who issued assessments under Section 29 of the Taxes Management Act 1970:

Tax year	Date of issue	Additional tax
2007-2008	19.03.2012	£7,518.27
2008-2009	27.03.2013	£8.212.27

6. Mr Rowe has appealed those assessments. His grounds of appeal are that he was not the beneficial owner of the whole 50% of the shareholding in CBF: he and his wife were the beneficial owners of 25% each. Accordingly he should only be liable for tax on 25% of the total dividends paid by CBF.

7. It can be observed at this point that the dividend income declared by Mr Rowe in his 2007-2008 tax return was £32,500 whereas 25% of the dividends paid by CBF would have been £31,250. The Tribunal will accept that this was an innocent error

made by Mr Rowe: he intended to declare 25% of the total dividends but inadvertently declared a little too much; his intention was to declare £31,250.

8. Mr Rowe has attended the Tribunal hearing and has given evidence. He says that the distribution of dividends was undertaken by his colleague Mr Taylor whose wife Mrs Taylor, the Company Secretary, kept the statutory accounts. The dividends were paid direct into the joint bank account of himself and his wife and it never previously occurred to him that the payments purported to be for him alone. He denies receiving dividend vouchers for the years in question.

9. The Tribunal is prepared to accept that Mr Rowe may not have received the dividend vouchers by post. He has given evidence about post going astray because of a similar postal address a few miles away. Post may even have been delivered to his former address. It therefore follows that he may not have received contemporary information about the dividend payments being earmarked for him alone. However, that cannot alter the fact that the payments were indeed earmarked for him alone. The Tribunal looks for any other evidence of an express or implied trust in favour of his wife in respect of those 25 shares which were legally registered in Mr Rowe's name and for any evidence that he was aware of the actual shareholdings.

10. The dividend vouchers in question were in respect of dividends paid on 01.10.2007, 01.04.2008, 01.10.2008 and 03.04.2009. On the face of these documents they were sent to Mr Rowe at "C/o CBF Ltd" in Threshfield (Mr Taylor's home address), rather than to his home address in Ilkley. There remains some uncertainty about whether he would have received them even if they had been despatched "internally" within CBF although Mr Rowe himself admits that "possibly they were sent to me at work".

11. There are no dividend vouchers in respect of any years prior to the 2007-2008 tax year before the Tribunal so there is no knowledge as to the declarations by Mr Rowe in earlier tax returns.

12. The Statutory Financial Statements of CBF for the year ended 31.03.2007 recite that Mr Rowe held 50 shares. He has signed those Statements. It is reasonable to assume that he was aware of their contents and that they make no reference to his wife holding any shares. He also signed the Statements for the year ended 31.03.2008: they are silent as to shareholdings but they do recite that the directors own 100% of the share capital of CBF; Mrs Rowe has never been a director of CBF.

13. Mr Rowe describes his signing of these Statements as a careless mistake but the Tribunal has concluded that he must accept responsibility for putting his name to documents that are of considerable legal importance and are not to be dismissed as a mere formality.

14. While it may have been the intention of Mr Rowe that his wife should be the owner of half of his shareholding nevertheless he did not take steps to effect this until 15.07.2009; at that time he rectified what he perceived to have been a genuine mistake

and transferred half his shareholding to his wife. Because this happened after the two tax years in issue in this appeal, it cannot assist Mr Rowe.

15. The Tribunal accepts that all "administration and compliance" and the operational side of the business was carried out by Mr and Mrs Taylor; Mr Rowe's role was in business development. This did not, however absolve, Mr Rowe from his responsibilities as a signatory of legal documents and from his duty to give correct information to the Respondents in his tax returns. Mrs Rowe did a little work for CBF but not as much as Mrs Taylor and Mr Rowe's evidence is that his wife's work was more by way of personal assistance to himself.

16. Section 29 of the Taxes Management Act 1970 provides that:

> **29. Assessment of tax**
> (1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a [year of assessment] -
> (a) that any [income which ought to have been assessed to income tax, or to chargeable gains which ought to have been assessed to capital gains tax,] have not been assessed, or
> (b) that an assessment to tax is or has become insufficient, or
> (c) that any relief which has been given is or has become excessive,
> the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.
>
> (2) ...
>
> (3) Where the taxpayer has made and delivered a return under [section 8 or 8A] of this Act in respect of the relevant [year of assessment], he shall not be assessed under subsection (1) above –
> (a) in respect of the [year of assessment] mentioned in that subsection; and
> (b) ... in the same capacity as that in which he made and delivered the return,
> unless one of the two conditions mentioned below is fulfilled.
>
> (4) ...
>
> (5) The second condition is that at the time when an officer of the Board –
> (a) ceased to be entitled to give notice of his intention to enquire into the taxpayer's return under [section 8 or 8A] of this Act in respect of the relevant [year of assessment]; or

(b) informed the taxpayer that he had completed his enquiries into that return,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(6) For the purposes of subsection (5) above, information is made available to an officer of the Board if –

(a) it is contained in the taxpayer's return under[section 8 or 8A] of this Act in respect of the relevant [year of assessment] (the return), or in any accounts, statements or documents accompanying the return;

(b) it is contained in any claim made as regards the relevant [year of assessment] by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;

(c) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer ...

17. The Tribunal is satisfied that the Notices of Assessment dated 19.03.2012 and 27.03.2013 were properly issued by the Respondents pursuant to Section 29 of the Taxes Management Act 1970 and in particular that the second condition, in Subsection 5, is satisfied.

18. The Respondents have conceded that they do not regard Mr Rowe's actions to have been careless and they have imposed no penalty upon him in respect of the incorrect disclosure of income. Mr Rowe argues to the Tribunal that the absence of carelessness and the absence of liability for any penalty should be translated into an absence of liability for payment of the additional amount of tax that is now due from him. That is neither a valid nor a logical argument.

19. The rationale behind this appeal is no doubt that any tax liability in respect of dividends from CBF would be less if it was Mrs Rowe's liability than Mr Rowe's liability. However tax does have to be paid and in the absence of evidence of any express or implied trust the Tribunal has to conclude that the true beneficial ownership of all 50 shares lay with Mr Rowe alone during the periods in question i.e.2007-2008 and 2008-2009. Accordingly he is responsible for the tax payable on the dividends on all 50 shares and this appeal is dismissed.

20. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to

"Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

WDF COVERDALE
TRIBUNAL JUDGE

RELEASE DATE: 23 September 2014