



[2020] UKFTT 0093 (TC)

TC07587

*Income Tax –allowable expenses per 2013 decision of FTT- whether relief given – Yes -
appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2014/03269

BETWEEN

JAMES DUBIDZI EDOH

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE GETHING

Sitting in public at Taylor House, London on 24 January 2020 at 11am until 12.00

The Appellant did not attend.

Mr Darren Bradley, an Officer of HMRC for the Respondents

DECISION

INTRODUCTION

1. This appeal was brought by Mr Edoh whose main aim was to set aside an order in bankruptcy. To do that he wanted to reopen the subject matter of an appeal by him concerning a business conducted by him in 2004/5 which resulted in a hearing in the Tribunal and a decision in December 2012. As a result of that hearing the Tribunal made a decision allowing certain expenses in respect of wages in the sum of £19,400. That was the only item under appeal in 2012. Mr Edoh wished to re-open the appeal in respect of certain other expenses in 2004/5.

2. I indicated at a hearing in March 2019 that the Tribunal had no jurisdiction to set aside an order in bankruptcy, nor could the Tribunal consider other expenses which had been disallowed by HMRC in respect of 2004/05 in respect of which no appeal had been made. All the Tribunal could do now was to review whether the decision of the Tribunal in 2012 had been given effect to, i.e. whether the profit for 2004/5 been reduced by the allowable expense and if a loss was created for 2004/5 whether it could be carried back to 2003/4 to reduce profits for that year.

3. I heard the parties on this issue on two occasions in 2019. I had concluded during the course of the those hearings that the Appellant was entitled to claim relief for the expenses allowed by the Tribunal, HMRC advised that instead of amending the self-assessment and reducing the income tax assessment, HMRC had given Mr Edoh the benefit of a credit against his liabilities to HMRC. Those liabilities included unpaid instalments of income tax, unpaid interest and unpaid penalties. With the agreement of the parties I issued a consent order requiring

- (1) HMRC to provide copies of the tax returns for 2003/04 and 2004/05
- (2) HMRC provide evidence of the adjustments that were made
- (3) Mr Edoh to provide an indication of why he considered the adjustments proposed by HMRC were inappropriate and what adjustments ought to have been made.

4. HMRC provided comprehensive information to the Tribunal on 4 April and 30 April 2019. Mr Edoh provided a witness statement dated 15 April 2019. This hearing was convened to allow HMRC to explain the position again and for Mr Edoh to ask questions and be able to put forward his own views.

5. The hearing was convened for 10.30 today. At 10.30 the clerk informed me that Mr Edoh had not arrived. We identified a telephone number which HMRC had used to contact Mr Edoh since 2018 although we recognised he may have another number now. The clerk informed me that her call was going straight to voicemail. I reviewed the correspondence between the parties and satisfied myself that Mr Edoh had received notification of the hearing. As I had comprehensive information about the accounting profits of the business carried on by Mr Edoh for 2003/4, 2004/5 and 2005/6 when the business ceased, the accounting records of HMRC, and Mr Edoh's witness statement, I concluded that I would be able to properly assess whether Mr Edoh was entitled to further relief for the expenses in 2004/5 and decided to proceed in his absence. I became aware after the date of the hearing that Mr Edoh had died. Mr Edoh's illness must have prevented him attending the hearing.

THE FACTS

6. I went through the accounts and records provided by HMRC in their letters to the Tribunal of the 4 and 30 April 2019 with the assistance of Mr Bradley. In particular the letter of the 4 April and the Appendices attached to that letter numbered 1 to 18. I also went through the witness statement made by Mr Edoh dated 15 April 2019.

7. HMRC no longer have the self-assessment returns filed by Mr Edoh because of Data Protection Regulations but they have the data included in the returns. I found the following facts:

- (1) Mr Edoh prepared annual accounts for his business the period ending 30 November each year.
- (2) The business ceased on 31 March 2005.
- (3) HMRC accepted that Mr Edoh was entitled to relief in computing profits chargeable to income tax for the expenses of wages in the year 2004/5 in the sum of £19,400.
- (4) HMRC also accepted that Mr Edoh was entitled to relief for expenses for wages for the period 1 December 2004 to 31 March 2005.

03/04

(5) The accounts of the business for the period ended 30 November 2003 and data provided in the self-assessment return for 03/04 showed the profit of the business for the period ended 30 November was £24,658.96 (see Appendix 4). Mr Edoh agreed with this figure.

04/05

(6) HMRC accept that they lost the first return submitted by Mr Edoh on 19 October 2005 and also accept that the resubmitted return was processed using identical data as shown in the 03/04 return. HMRC accept that was incorrect but also accept that the accounts filed by Mr Edoh on 16 December 2008 indicate a net surplus of £1,426 (see Appendix 13). HMRC consider these accounts are an accurate reflection of the profit or loss in the business in the period. As they are based on contemporary records supplied by Mr Edoh I accept that to be the case.

(7) Mr Edoh's representative submitted a return for the period 1 December 2004 to 31 March 2005 which showed losses in the final period of £10,361 which after overlap relief of £4,732 gave rise to a loss in 04/05 of £13,667.00 (see Appendix 16)

(8) HMRC opened an enquiry into the return for 04/05 at the conclusion of which they issued a closure notice on 11 January 2010 reflecting the disallowed items, including:

Wages	£19,400
Business Development fees	£ 4,600
Other professional fees	£ 3,900
Depreciation	£ 6,239
Webstore	£ 3,125

(9) Those disallowed items resulted in a taxable profit of £43,244 and tax of £11,209.64 (see Appendix 16).

(10) Mr Edoh indicated in his witness statement that the figure for professional fees ought to be £3,000 (allowable) and not £300. This is a reference to an adjustment made by HMRC in the closure notice reducing the sum claimed of £4,200 to £300. Mr Edoh makes a similar comment about the expenditure on rent, insurance, heat, business development, motor and travel and professional fees. I am unable to accept Mr Edoh's figure for professional fees or his comments on the other categories of expenditure because these items of expenditure were not dealt with in the appeal heard in 2012.

(11) The Tribunal decision in December 2012 confirms that the only item in dispute was the £19,400 referable to wages. Following the decision of the tribunal HMRC modified its decision to give effect to the allowance for wages in the period 04/05 and the stub period 1 December 04 to 31 March 05. This resulted in a taxable profit of £22,884 in 04/05 and a reduction in tax from £11,209.64 to £4,874.00. Mr Edoh was entitled to a repayment/credit against his liabilities of £6,335.64.

(12) As the taxable period 04/05 produced a net profit there was no net loss to carry back to 03/04.

(13) HMRC did not amend the assessment to reduce the amount of tax shown instead they gave Mr Edoh the relief he was entitled to, by crediting the £6,335.64 against his liabilities to tax and penalties.

(14) HMRC produced a document attached to this decision which shows what they did and what they ought to have done. The result was that apart for a 46 pence discrepancy, the result is the same. Mr Bradley showed me the SA Statement of Mr Edoh dated 26 February 2013 which had a number of lines highlighted. These lines show the actual credits given to Mr Edoh and I confirm they amount to £6,335.18.

Decision

Having reviewed the documents produced by HMRC I confirm that with the exception of 46 pence, HMRC has given effect to the decision of the Tribunal in December 2012. The appeal is dismissed.

Appendix

Tax Due pre hearing	£11,209.64
Tax Due post hearing	<u>£4,874.00</u>
Free Standing Credit	£6,335.64

Actioned by Freestanding Credit		
Payment on account 1	£2,888.85	
Payment on account 2	£2,888.85	
Enquiry Amendment	<u>£5,431.94</u>	
		£11,209.64
2003/04 Balancing Payment	£353.28	
2003/04 Late Filing Penalty	£100.00	
2003/04 late payment surcharge	£53.74	
2003/04 late payment surcharge	<u>£50.46</u>	
		<u>£557.48</u>
		£11,767.12
less Free Standing Credit ¹	<u>£6,335.18</u>	
Additional Tax Due		£5,431.94

Actioned by SA Amendment		
Reduced payment on account 1	£2,437.00	
Reduced payment on account 2	£2,437.00	
Enquiry Amendment	<u>£0.00</u>	
		£4,874.00
2003/04 Balancing Payment	£353.28	
2003/04 Late Filing Penalty	£100.00	
2003/04 late payment surcharge	£53.74	
2003/04 late payment surcharge	£50.46	
		<u>£557.48</u>
		£5,431.48
less Free Standing Credit	<u>£0.00</u>	
Additional Tax Due		£5,431.48

Amount shown as due on SA Statement: £5,431.94

¹ £6,335.18 credited instead of £6,335.64 in error (46p difference)

RIGHT TO APPLY FOR PERMISSION TO APPEAL

8. 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.

**JUDGE GETHING
TRIBUNAL JUDGE**

RELEASE DATE: 17 FEBRUARY 2020