



Appeal numbers: TC/2013/00307
TC/2013/00309
TC/2013/01019

INCOME TAX – 2006-07 partnership return amended following enquiry - whether profits for that tax year understated – whether partnership statements for the following four tax years should be amended in accordance with the principle of continuity – whether penalties charged should be upheld – held that profits not understated – all appeals allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appellants

- and -

THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS

TRIBUNAL: JUDGE

Sitting in public at 45 Bedford Square, London WC1 on 27 and 28 November 2013

Mr Martyn Arthur of Forensic Accountants Limited for the Appellants

, Officer of HM Revenue & Customs, for the Respondents

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82. As a result, we find that the partnership's reported profits do not require amendment, whether because of the cashflow statements, or because of the failure to retain the till rolls, or because of the relatively low gross profit ratio.

██████████ *gambling*

5 83. In essence, HMRC's case by the end of the hearing rested on the "unidentified deposits" made into ██████████ bank account, and ██████████ refusal to accept that ██████████'s gambling was the source of these receipts. It was evident from the ██████████ information that Mr ██████████ was a serious gambler, and that he bet significant sums often on a daily basis. HMRC accepted this, and also accepted that 10 over £50,000 of the deposits did come from gambling. They refused to accept the balance on the basis that they had "no evidence".

84. As stated earlier in this decision notice, Mr ██████████ had given very clear oral evidence that he gambled, not only with ██████████, but also with other bookmakers and on the track. We accepted his evidence, and we also accepted his 15 evidence that some of the gambling was carried out on behalf of a friend.

85. HMRC did not seek to argue that Mr ██████████ had any other source of income, such as an undisclosed trade or business, which would have given rise to these deposits, and there was no evidence of any other such sources. Having refused to accept that the deposits came from gambling, and in the absence of any alternative 20 source, HMRC had proceeded on the basis that the money had come from ██████████ ██████████

86. For the reasons we have already given, this submission was not supported by the very clear factual evidence about the nature and size of that business. Some of the deposits were third party cheques, yet ██████████ does not accept cheques; 25 neither does it do outside catering. The cash deposits mostly ranged between £1,000 and £4,000: we have already found that these sums did not arise from the sale of small value meals and snacks. It is, however, entirely reasonable that both cash and cheques came from ██████████ gambling, given the scale and frequency with which it was undertaken, and the fact that he shared his friend's profits when he had placed a 30 successful bet on his behalf.

87. ██████████ drew our attention to *Brimelow v Price*. In that case Mr Brimelow had no records whatsoever to substantiate his alleged betting; Mr ██████████ has a record of over 1,500 transactions in a single year with one of a number of book-makers. He gave cogent oral evidence, which we accepted, that he had been gambling for over 35 twenty years, and that he was not only placing bets on his own behalf, but also for and with a friend, who rewarded his efforts with a share of profits. All cases of this nature have to be decided on the facts, and the facts in this case are very different from those in *Brimelow*.

Decision

40 88. ██████████ correctly stated that the burden of proof in relation to 2006-07 rests with the partners, to show that the revised assessment was wrong. We find that they

have satisfied that burden. We restore the partnership statement to its original figures, and we allow the appeal in relation to 2006-07.

89. HMRC's amendments to the partnership statements for the later years relied on the principle of continuity. As we have found there is no amendment to the 2006-07 partnership return, the later statements do not require amendment under that principle, and the appeals in relation to those years are also allowed.

90. Since the partners have not been negligent or careless, the appeals against the penalties for each year are also allowed.

Application for permission to appeal

91. 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.


TRIBUNAL JUDGE
RELEASE DATE:

13 December 2013