Neutral Citation: [2025] UKFTT 00702 (TC)

Case Number: TC09550

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House
88 Rosebery Avenue
London
EC1R 4QU

Appeal reference: TC/2023/09435

INCOME TAX – Discovery assessment – overclaimed expenses – submission of tax return by agent – was agent authorised to make claim?- was agent acting on behalf of the Appellant?

Heard on: 12 May 2025
Judgment date: 12 June 2025

Before

TRIBUNAL JUDGE MARILYN MCKEEVER
MR LESLIE HOWARD

Between

DENNIS LUCAS

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: The Appellant represented himself

For the Respondents: Miss Maddie Di Benedetto, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This is Mr Lucas's appeal against Discovery Assessments for the tax years 2016/17 to 2020/21 inclusive in the amounts respectively of: £689.20, £829.20, £809.00, £738.20 and £511.00, a total of £3,576.60. All the assessments were made on 21 February 2023. The assessments for 2016/17 and 2017/18 were therefore made outside the normal four-year time limit in section 34 Taxes Management Act 1970 (TMA) and HMRC must satisfy the provisions of section 36 TMA in relation to those years by showing the Appellant or his agent acted carelessly or deliberately.

2. The assessments were made to recover a loss of tax arising from excessive claims for expenses made in the relevant years.

3. We have considered the authorities referred to by the parties but, in the interests of keeping this decision as concise as possible we have not found it necessary to refer to them specifically.

4. References to sections and subsections are to section 29 TMA unless otherwise specified.

THE FACTS

5. Mr Lucas is, and was in the period to which the assessments relate, a driver for the couriers UPS. A few years ago, several of his colleagues were approached by a company called Apostle Accounting Ltd (Apostle) which offered to obtain "tax rebates" relating to the cleaning of uniforms and subsistence expenses. Apostle told the drivers that they were entitled to the latter as they worked on the road and did not have access to a canteen. The colleagues successfully received payments of around £3,000 each.

6. Hearing about this, Mr Lucas felt he was missing out and contacted Apostle (by email as they did not answer the phone) and asked them to look into his allowances and see if he was due any reimbursement of tax. He said Apostle sent him an "application form" and said their fees would be 20% of any rebate (24% in total including VAT).

7. Apostle sent Mr Lucas a tax rebate claim form. He provided his address, National Insurance Number and telephone number. They did not ask for, nor did Mr Lucas provide any details of income or expenses or receipts, although they did subsequently ask for a copy of Mr Lucas' most recent P60, which would have indicated his salary, and a copy of his passport for ID purposes.

8. Apostle then sent Mr Lucas a form 64-8 which authorised HMRC to communicate with Apostle as his agent. Apostle also sent him Form SA1 to register for self-assessment and obtain a tax return. Mr Lucas had, before this, been taxed only by way of PAYE and had not needed to submit a tax return. Apostle had filled in the reason why a tax return was needed which was "employment expenses over £2,500". Mr Lucas had filled in his details and signed both forms.

9. On 18 August 2020 Mr Lucas sent an email to Apostle saying that he had received a letter from HMRC asking him to go online and fill in some information and asking if he should do so or leave it to them. On 21 August 2020 he sent a further email to Apostle saying "I have now received an application to fill in, is this on behalf of you or are they now sending forms to me fill in because you have contacted them". Miss Bachleda-Baca, the HMRC officer who made the discovery, thought that the "forms" were likely to be blank self-assessment tax returns. Apostle responded on 25 August stating "I am assuming that the forms that they have sent you are to complete self-assessments? If this if the case you do not have to do anything with those as we will complete all self-assessments for you as part of the tax rebate claim process."

10. At the hearing, Mr Lucas said, and we accept, that he had not understood what was meant by "self-assessments".

11. There was then some delay with Apostle being authorised as Mr Lucas' agent. Mr Lucas sent the authorisation code to Apostle on 4 November 2020. It was acknowledged on 9 November and Apostle said "Once HMRC have updated the authorisation we will progress your claim. We will email you when we have completed your calculations".

12. Mr Lucas chased Apostle about the claim on 18 November 2020.

13. Apostle subsequently sent the "calculations" to Mr Lucas for approval. This was not in the Hearing Bundle, but we accept Mr Lucas' evidence that Apostle sent him an email which contained a sum which Apostle told him was due to him. There was no breakdown of the amount. He was asked to approve the amount, which he did.

14. Apostle did not send any other documents to Mr Lucas for him to approve.

15. On 20 November 2020 HMRC received four tax returns for Mr Lucas for the tax years ended 5 April 2017, 2018, 2019 and 2020. They were submitted digitally by Apostle without any signature. The only items in the returns were Mr Lucas' salary, a claim for "business travel and subsistence expenses" and a claim for £60 in respect of a "fixed deduction for expenses". The travel and subsistence expenses varied each year and ranged between approximately £3,500 and £4,200. The fixed deduction was an allowance for laundering uniforms which is given without any need for receipts or proof of expenditure.

16. On 26 November 2020, Mr Lucas emailed Apostle stating, "I approved the amounts a week ago and have not had a reply?" Apostle replied on 26 November 2020: "We have submitted your file to HMRC who will process the information and then send you a notification in the post". Mr Lucas emailed on 30 November 2020 to say he had received "the letter" from HMRC, presumably the "notification", and asked if he needed to do anything else.

17. Apostle emailed Mr Lucas on 1 December 2020 to say they had received the repayment and would transfer the funds to him. Mr Lucas asked for a full breakdown of the money received from HMRC and their deductions.

18. Apostle replied stating:

> "The claim amount was £3,086.24,
>
> Our fee was £740.70 (20% plus VAT)
>
> Total transferred to you was £2,345.54"

19. This was the only breakdown or explanation sent.

20. One week before the 26 November 2020 email was 19 November, one day before HMRC received the tax returns. We find, on the balance of probability, that Apostle submitted the returns immediately after Mr Lucas approved the "calculations" they had sent him.

21. Mr Lucas did not recall Apostle having told him that they were sending or had sent tax returns. We accept that Apostle had not sent the tax returns to Mr Lucas for approval. He had received and approved only the figures which Apostle had sent him. He did not know what they were for nor how they were calculated, only that Apostle had told him he was entitled to those amounts. Apostle had not, at least in the correspondence we saw, referred to tax returns. As noted above, they referred to "self-assesments" and said they would deal with them, but Mr Lucas did not understand that these were tax returns. The subject of the email correspondence referred throughout to "tax rebate claim". Apostle did not, in the correspondence we saw, say they were submitting tax returns. The email for 26 November 2020 said only "we have submitted your file to HMRC…".

22. We find that Mr Lucas did not approve any tax returns and that he did not know Apostle were submitting tax returns for him.

23. On 7 December 2021 HMRC received a tax return for the 2020/21 tax year, submitted by Apostle and claiming Travel and Subsistence Expenses of £2,615.

24. HMRC sent a letter to Mr Lucas on 8 February 2023 checking his tax position for the 2020/21 tax year. This was outside the normal one year "enquiry window". The letter indicated that HMRC believed that Mr Lucas' 2020/21 return was wrong because he had claimed job related expenses which he may not be entitled to. In response to this, Mr Lucas telephoned Miss Bachleda-Baca. Miss Bachleda-Baca asked what expenses Mr Lucas incurred at work and he said that the only expenses were for washing his uniform and for meals. Miss Bachleda-Baca explained that only £60 was allowable for laundering his uniform (a standard flat rate allowance) without proof of the actual expenses incurred and that the cost of meals was not an allowable expense. Mr Lucas did not really know what had been claimed or how much, but (in a later phone call) he accepted that he was not entitled to the deductions claimed. He considered that he was not responsible for the excessive claims, but Apostle should be responsible as they had made the claims and told him he was entitled to the rebate. Miss Bachleda-Baca also asked if the agent had requested any evidence of expenses or receipts. Apostle had not asked for any information other than that set out above.

25. Miss Bachleda-Baca concluded that the Agent had claimed the expenses based on, at best, a guesstimate. The expenses were, in any event, not allowable (with the exception of the flat rate uniform allowance). On this basis, she calculated the amount of tax which had wrongly been repaid for the years up to 5 April 2020 and the underpayment of tax for the year to 5 April 2021.

26. She accordingly concluded there was an insufficiency of tax for each of the relevant tax years and issued discovery assessments for each of the five years on 21 February 2023.

27. Mr Lucas sent Miss Bachleda-Baca a copy of an email chain showing correspondence between himself and Apostle which is referred to above. It also included emails following the issue of the discovery assessments. He told Apostle he expected them to deal with HMRC "as I had no idea what you were claiming for and you told me it was all things I was entitled to". He continued "if this matter is not resolved immediately, I will pass this information over to the police and watchdog". Apostle's response was:

> "Hi Dennis,
>
> I will forward your comments to my solicitor and to HMRC. Please see correspondence from HMRC showing that I need to report anyone who makes allegations of fraud or insinuating this is our error and liability [the attached correspondence did not say this]. All of our claims are signed off and agreed by clients before we submit them and therefore full responsibility is taken for them.
>
> Therefore we cannot possibly be accused of fraud, and HMRC would state that as you agreed to the claim and fraud allegation would be directed to you and not us acting on your behalf under your instruction.
>
> The police have been informed of your threats and harassment and so has our solicitor.
>
> So I strongly suggest that no further allegations are made."

28. Mr Lucas was obviously very upset at this.

29. He appealed to HMRC on 3 March 2023.

30. Following a review, the review conclusion letter, which upheld the original decision, was sent on 29 June 2023.

31. Mr Lucas appealed to the Tribunal on 10 August 2023.

THE LAW

32. HMRC raised discovery assessments under section 29 TMA. Section 29 provides, so far as material:

> "[**29 Assessment where loss of tax discovered**
>
> (1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a [year of assessment2]
>
> (a) that any [income which ought to have been assessed to income tax, or 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, or the further 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]2 of this Act in respect of the relevant [year of assessment]2, 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) The first condition is that the situation mentioned in subsection (1) above [was brought about carelessly or deliberately by] the taxpayer or a person acting on his behalf.
>
> (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]2 of this Act in respect of the relevant [year of assessment]; or
>
> [(b) …
>
> 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]2 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) …

(7) In subsection (6) above

(a) …

(b) any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf."

33. Section 34 TMA provides that HMRC may make an assessment at any time within four years of the end of the tax year in question.

34. Section 36 TMA extends the time limits for assessment to six years where the loss of tax has been brought about carelessly, that is, where the taxpayer has failed to take reasonable care and to twenty years in the case of deliberate behaviour.

35. Section 36(1B) provides that a reference to a loss of tax brought about by the taxpayer includes a loss brought about by another person acting on behalf of the taxpayer.

ISSUES AND BURDEN OF PROOF

36. To the extent that Mr Lucas appealed to the Tribunal out of time, HMRC has not objected, and we grant permission to make a late appeal.

37. The issues are:

(1) Whether the discovery assessments are validly made and in time;

(2) Whether Apostle were acting on behalf of Mr Lucas; and

(3) Whether Mr Lucas behaved carelessly and/or he had an agent who behaved carelessly or deliberately in bringing about the loss of tax.

38. The burden of proof is on HMRC to establish, on the balance of probabilities, the criteria for making a discovery assessment and to establish the behaviour of the taxpayer and/or his agent.

DISCUSSION

39. HMRC's suspicions were set out in their 8 February 2023 letter. The subsequent telephone conversations, discussed at [24] provided Miss Bachleda-Baca with sufficient information for her reasonably to conclude that excessive relief had been given for the first four years under consideration and that there was an insufficiency of tax for 2020/21. Accordingly, she had made a "discovery" of a loss of tax.

40. By virtue of section 29(3) a discovery assessment may only be made, assuming a valid tax return had been submitted, if one of the conditions in section 29(4) or (5) is satisfied.

41. At the time when the enquiry window closed for each of the returns, the only "information made available" to HMRC for the purposes of section 29(5) were the tax returns themselves. HMRC may have had other information from other sources which gave rise to the 8 February 2023 letter, but under section 29(6) only information provided by the taxpayer or a person acting on his behalf counts in relation to HMRC's ability to raise a discovery assessment.

42. Mr Lucas himself did not submit the returns and, as we have found, he was unaware that returns had been submitted. HMRC raised the assessments based on the returns submitted by Apostle. We therefore consider whether Apostle was "acting on behalf of" Mr Lucas.

43. The Tribunal drew the attention of the parties to the case of *Robson v Revenue and Customs Commissioners* [2023] UKFTT 266 (TC) (*Robson*). In that case, Mr Robson engaged a firm called CACL to discuss with HMRC whether he was entitled to a tax rebate. He did not authorise them to submit a tax return. CACL did submit a tax return and in it claimed EIS relief, the tax repayment being paid to its nominee company. Mr Robson knew nothing about the EIS claim. The EIS relief claim did not satisfy the statutory requirements and HMRC made a discovery assessment to recover the tax. The Tribunal said, at [79]-[81]:

> "79. The box on the declaration was clearly completed by CACL or the return would not have been received by HMRC. However, I am satisfied that Mr Robson had not seen the return, he had not confirmed the accuracy of its contents and he had not given authority for its submission. ….
>
> 80. The facts of Mr Robson's appeal are unusual and specific and as I have concluded that CACL were not authorised to act on behalf of Mr Robson, …
>
> 81. I concluded that CACL was the not authorised agent of Mr Robson. That being so, the return cannot be deemed to have been submitted on behalf of Mr Robson. As s29 TMA requires the filing of a return the statutory requirements are not satisfied."

44. The Tribunal in *Robson* found that CACL was not Mr Robson's authorised agent, despite him having obtained an authorisation code from HMRC and forwarding it to CACL (an alternative procedure to completing a form 64-8). We understand the reasoning to be that CACL had not only submitted a tax return without Mr Robson's knowledge or authority but they had claimed relief in respect of investments he had not made and knew nothing about. The Tribunal concluded that the return submitted by CACL could not therefore be regarded as Mr Robson's return and so the discovery assessments fell away.

45. We considered whether the principles of *Robson* could apply in Mr Lucas' case. As in *Robson*, Mr Lucas did not see the returns and so could not have confirmed the accuracy of their contents, and he did not give authority for their submission. In our view, the question is not simply whether the returns were submitted with Mr Lucas' authority. The real question is whether Apostle was "acting on his behalf" in making the returns. In contrast to *Robson*, Mr Lucas had instructed Apostle to claim the "rebate" which Apostle had advised him was due. Although he had not approved the tax return itself, he had approved the amount of the claim, even though he did not understand how the figure was arrived at and had accepted Apostle's assurances that it was all correct. In other words, although Mr Lucas had not specifically authorized Apostle to submit tax returns, he had specifically authorized it to claim a tax rebate on his behalf and had approved the amount of that claim. The submission of the tax returns was the mechanism or process by which the claim was made; Apostle had done exactly what Mr Lucas had authorized it to do, that is, claim the tax rebate in relation to work expenses.

46. We therefore conclude that Apostle ***was*** acting on behalf of Mr Lucas in submitting the tax returns.

47. As noted, at the time when the enquiry windows closed, the only information made available to HMRC in accordance with sub-sections 29(5) and (6) were the tax returns and there was nothing in them to alert an officer to an insufficiency of tax. Accordingly, section 29(5) is satisfied, and the discovery assessment is valid.

48. It is not necessary to consider the behavioural issues for these purposes, although we now turn to that question in relation to the applicable time limits.

49. HMRC can raise assessments for the years ending 5 April 2019 to 2021 inclusive in any event (section 34). To raise assessments for the years ending 5 April 2017 and 2018, they must prove, on the balance of probabilities, that the loss of tax was "brought about" carelessly or

deliberately by Mr Lucas, or Apostle as a person acting on his behalf (section 36(1), (1A) and (1B)).

50. HMRC do not contend that Mr Lucas acted deliberately but that he acted carelessly in that he had not queried the amounts of the expenses and had authorized the amounts claimed in the tax returns.

51. We recognise that Mr Lucas approved the ***amounts*** of the claim, but we do not consider that Mr Lucas "brought about" the loss of tax. The loss of tax arose as a result of the submission of tax returns claiming relief for expenses. As Mr Lucas did not know that tax returns were being submitted and accordingly could not have authorized them, he himself did not make the claim and did not bring about the loss of tax.

52. However, we have found that Apostle was "another person acting on behalf of [Mr Lucas]" within section 36(1B) TMA and so we must consider its behaviour.

53. We have little doubt that Apostle acted deliberately in submitting tax returns containing the excessive and unallowable expense claims. Any competent tax agent would know that one cannot claim expenses in relation to meals. Apostle did not provide any rationale for the amounts claimed, nor did they appear to have any. The amounts varied randomly from year to year. We do not consider that this could have been a careless error in making the claim for Mr Lucas. Apostle's response to Mr Lucas' email following HMRC's enquiry letter was factually inaccurate and threatening. This was not the response of a legitimate business which had made a mistake. Mr Lucas was not an isolated case. As mentioned, he only approached Apostle because many of his colleagues had been contacted by the company and offered help to claim "rebates", for a very substantial fee amounting to 24% of the money received. Apostle was, in fact, conducting an industrial scale exercise. We understand that more than 800 people are affected and are having to repay the full amounts of the tax reclaimed by Apostle even though they only received 75% of it.

54. To the extent that it may be relevant, our finding that Apostle acted deliberately would also mean that the condition for making a discovery assessment in section 29(4) is satisfied.

55. As a person acting on behalf of Mr Lucas brought about the loss of tax deliberately, HMRC are entitled to issue discovery assessments for the tax years ended 5 April 2017 and 2018 in accordance with section 36.

DECISION

56. We have a great deal of sympathy for Mr Lucas who was misled by Apostle into authorizing claims which he believed to be legitimate, but which Apostle knew were not. However, we must apply the law as it stands.

57. We have found that HMRC made a valid discovery of an insufficiency of tax. The extended time limits for assessment apply because Apostle, which was acting on behalf of Mr Lucas, deliberately brought about the loss of tax. Accordingly, all the discovery assessments are valid.

58. We dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

59. 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.

Release date: 12th JUNE 2025