**Neutral Citation Number: [2024] UKUT 00436 (TCC)**

**UPPER TRIBUNAL**
**TAX AND CHANCERY CHAMBER**

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| **Applicant: Steven Hague** | Tribunal Ref: **UT-2024-000102** |
| **Respondents: The Commissioners for His Majesty's Revenue and Customs** | |

**APPLICATION FOR PERMISSION TO APPEAL**

**DECISION NOTICE**

**JUDGE RUPERT JONES**

## Introduction

1. The Applicant, Mr Steven Hague, applies to the Upper Tribunal (Tax and Chancery) ("UT") for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) ("the FTT"), released on 19 February 2024 ("the Decision"). The appeal was decided by the FTT following a hearing conducted on 12 May 2023.

2. The FTT dismissed the Applicant's appeal against the following decisions of HMRC:

   a) nine assessments ('Discovery Assessments') issued by the respondents ('HMRC') pursuant to s 29 of the Taxes Management Act 1970 ('TMA') for the nine consecutive tax years from 2007-08 to 2015-16 in respect of unpaid income tax and capital gains tax. For the purposes of the appeal, the total of the nine discovery assessments stood at £67,177.01.
   b) nine penalty assessments (the 'Penalties') for failure to notify the relevant tax liabilities for the said years. The penalties were raised pursuant to section 7 of TMA (for the years 2007-08 and 2008-09), and Schedule 41 to the Finance Act 2008 ('Sch 41') (for the years 2009-10 to 2015-16). The overall quantum of penalties for the nine years was £43,665.06.

3. The FTT found that the discovery assessments were validly raised by HMRC, within the statutory time limits and based upon 'best judgment' so it upheld them.

4. The FTT rejected the Applicant's explanation that all the assessed income, sums of money he was recorded as having received ('the residual unexplained credits'), emanated from family gifts, inheritance and gambling / poker playing such that it was not liable to income tax. It found that the Applicant had failed to prove that the assessed untaxed income was not

undeclared earnings from his work at a pub owned by his family (the New Tyke inn) during the relevant years, 2007-2016.

5. References in square brackets [] are to paragraphs in the Decision.

6. The FTT concluded at [74]-[79]:

> '74. To make his case, the appellant has produced various statements from third parties: employees at licensed bookmakers, his father, his uncle, and a plumber. Insofar as these statements pertain to gambling wins which are not to be treated as taxable, Officer Tailor has already made those adjustments in her revised calculations. These third-party statements do not assist the appellant in quantifying any further amounts that can be reduced than what Officer Tailor has already done in revising the quantum of the discovery assessments.
> …
> 76. Furthermore, there is the issue of reliability of the appellant as a witness. On the whole, the inconsistencies in Mr Hague's evidence given to this Tribunal upon corroboration with his evidence given in other contexts severely undermine the reliability of Mr Hague's evidence on the whole. The inconsistences in his evidence include:
>
> (1) The appellant stated to PC Picken during interview under caution that he had no bank accounts in 2009, which was plainly false.
> (2) The appellant also stated to PC Picken that he was not married, had no children, but in his witness statement to this Tribunal in relation to Heathcroft Crescent, he stated that his 'wife and kids' lived with him at Heathcroft for some of the time.
> (3) In the December 2009 interview, the appellant stated that he had worked in a pub for his brother for 12-13 years prior. His evidence in this appeal was to say that he had only worked for the period of 2008 to mid-2011 for his father (and not for his brother).
> (4) The appellant stated to HMRC in his initial meeting that he did not live in Heathcroft Crescent. His witness statement lodged for this appeal said that he had lived in the property after the flood, and sometimes with his wife and children.
> (5) The appellant maintained that he believed any earnings from the pub would have tax deducted, but there was no evidence, such as regular payslips and annual P60s to support this belief.
>
> 77. To the extent that the appellant has asserted that the majority of the unexplained credits were gambling wins, due allowance has already been given to remove significant amounts of credits as non-taxable. Insofar as HMRC have treated the residual unexplained credits evidenced from bank and credit card statements as taxable income, the appellant has not proved the contrary that the residual unexplained credits were not taxable income, especially in the light of his own admission that he was due wages for the work he did at the Pub.
>
> 78. In any event, apart from the £39,682 that was expressly paid by the £60,000 cheque from his father, the appellant had variously stated that he received his wages in cash. It is not an unreasonable inference to draw that the appellant might not have paid all his wages received in cash into his bank accounts to be part of the unexplained credits from Officer Tailor's analysis of his bank and card statements. In other words, it is plausible that some of the cash receipts for wages have not left any documentary trail for HMRC to identify as 'unexplained credits' to be included as part of the discovery assessments.
>
> 79. Given the foregoing, it is clear that HMRC have made 'best judgment' assessments based on the information made available by the appellant or gathered from other sources, while the appellant has not provided any alternative basis to reduce the assessments further or to nil. I conclude therefore that the revised quantum of discovery assessments should stand good.'

7. The FTT also found that there was a taxable gain on the profit from the sale of a property that the Applicant did not reside in and he was liable to capital gains tax as assessed.

8. The FTT further found that the Applicant had deliberately failed to notify HMRC of chargeability to tax of his income and gain (by failing to declare any taxable income or gains and failing to file any tax returns) thus upholding the imposition of the penalties.

*The application for permission to appeal to the UT*

9. By a decision dated 12 July 2024 ("the PTA Decision"), the FTT refused permission to appeal the FTT's Decision to the UT on the grounds of appeal pursued by the Applicant. The Applicant renewed his application to the UT for permission to appeal in-time on 10 August 2024.

10. I refused permission to appeal to the UT on the papers on 8 October 2024. The Applicant requested that permission be reconsidered at an oral hearing. I held a remote video hearing on 16 December 2024 at which the Applicant appeared assisted, as he was in the FTT, by his former accountant Mr Lorriman, acting as a McKenzie friend rather than as a representative.

11. At my request during the hearing, the Applicant provided the nine page written speaking note, most of which he read out to me. During the hearing he also emailed the three further witness statements to which he referred to in the speaking note which he sought to admit as fresh evidence on the appeal to the UT (the statements not having been produced to the FTT). I permitted the Applicant to address at me length during the hearing (which lasted over two hours), repeating many of the points that were set out in writing in that speaking note.

12. Subsequent to the hearing – on 16 December 2024 he emailed me further documents which I permitted him to present to me in support of his application.

**UT's jurisdiction in relation to appeals from the FTT**

13. An appeal to the Upper Tribunal from a decision of the FTT can only be made on a point of law (section 11 of the Tribunals, Courts and Enforcement Act 2007). The Upper Tribunal has a discretion whether to give permission to appeal. It will be exercised to grant permission if there is a realistic (as opposed to fanciful) prospect of an appeal succeeding, or if there is, exceptionally, some other good reason to do so: Lord Woolf MR in *Smith v Cosworth Casting Processes Ltd* [1997] 1 WLR 1538.

14. It is therefore the practice of this Chamber of the Upper Tribunal to grant permission to appeal where the grounds of appeal disclose an arguable error of law in the FTT's decision which is material to the outcome of the case or if there is some other compelling reason to do so.

15. Many of the grounds of appeal included in the Applicant's submissions are that HMRC's investigation and the case against him were incorrect because the assessed credits and income was from gambling (or repayment of debt or inheritance) and not from work at the New Tyke Inn. In other words these grounds challenge findings of fact made by the FTT. The grounds engage the test in *Edwards v Bairstow* [1956] AC 14 (HL) for when an error of law may be established in relation to a finding of fact. A finding may only be made in error of law if: ***"no person acting judicially and properly instructed as to the relevant law could have come***

***to the determination under appeal"*** - not simply that there was insufficient evidence to support the FTT's factual findings but there was no evidence at all or that the findings were perverse or unreasonable.

16. In *Volpi v Volpi* [2022] EWCA Civ 464 ("Volpi"), Lewison LJ set out a more recent summary of the legal position in appeals on points of law challenging findings of fact. There is a stringent threshold before the appellate courts will interfere with first instance fact finding.

17. If a finding of fact is to be challenged as made in error of law, the onus is on the Applicant to identify all the evidence which was relevant to each finding and show that it was one the tribunal was not entitled to make– see *Georgiou v Customs and Excise Commissioners* [1996] STC 463, at 476:

> "… for a question of law to arise in the circumstances, the appellant must first identify the finding which is challenged;
> secondly, show that it is significant in relation to the conclusion;
> thirdly, identify the evidence, if any, which was relevant to that finding; and
> fourthly, show that that finding, on the basis of that evidence, was one which the tribunal was not entitled to make.
> What is not permitted, in my view, is a roving selection of evidence coupled with a general assertion that the tribunal's conclusion was against the weight of the evidence and was therefore wrong. A failure to appreciate what is the correct approach accounts for much of the time and expense that was occasioned by this appeal to the High Court."

**The grounds of appeal**

**18.** The Applicant filed grounds of appeal submitting that the FTT erred in law in making the Decision. I addressed those and refused permission to appeal for the reasons set out in my decision dated 8 October 2024.

**19.** His revised grounds of appeal were contained in his speaking note for the hearing from which I extract the following summaries as relevant:

> '**The summary of my reasons for appealing are:**
>
> That the Tribunal had no evidence, or not enough evidence, to support its decision for the following reasons:
>
> (a) The police transcript following my arrest in 2009 **[HB14/44]** was taken out of context and was incomplete and inaccurate. The Tribunal did not have before it a recording of the said interview and I was unable to challenge its accuracy.
>
> (b) Further too great a reliance was placed on the said transcript in coming to the conclusion that my evidence was unreliable when:
>
> (i) I was unable to challenge the same because of the lack of a recording; and
>
> (ii) The purported earnings only went to income prior to 2009 and did not prove any income after 2009.

(c) Yet further, the transcript had to be inaccurate because it stated I had been employed by his brother for "12 – 13 years" which predated the family's ownership of the pub.

(d) Insufficient and/or no weight was attached to my explanation that my winnings came from gambling

(e) No or insufficient weight was placed on the evidence of Brian Hague **[HB732-733]** that I had ceased to work at the New Tyke after 2011.

(f) No or insufficient weight was placed on the fact that after 2011 there was no evidence that I worked for the New Tyke or for any other employer.

(g) The assumption that I worked for the New Tyke after 2011 is based on no or insufficient evidence

(h) No or insufficient weight was placed on the witness statements of Jessica Gilfoyle **[HB/204]** and Darren Troy **[HB/205]** that on the balance of probabilities all the cash receipts in my bank account came from winnings from gambling.

(i) As to the notes of the meeting dated 15 March 2017 **[HB/31-39]** the following inconsistencies in the note, upon which I did not have the opportunity to challenge renders the Tribunal's findings, insofar as there was any reliance on the same, unreliable.

I rely on the following points:

a. As to paragraph 9 it is not accepted that I was told I could have a copy. I received no copy and had I done so, would have amended it.

b. As to paragraph 10, I was not told to put any comments or amendments on a separate sheet.

c. As to paragraph 12 to 19 the contents are disputed and the same highlights the unreliability of the document.

(j) As to the notes of the meeting dated 9 August 2018 **[HB/141-143]** the following inconsistencies in the said note, upon which I did not have an opportunity to challenge, renders the Tribunal's findings, insofar as there was any reliance on the same, unreliable.

I rely on the following points:

a. As to paragraph 9 it is incorrect that I agreed the earlier minutes.

b. As to paragraph 12 I stated that whilst he had no evidence, I further stated that the bookmakers would have evidence.

(k) In all the circumstances there was insufficient information for Raakhee Tailor ("RT") to believe that the information available pointed in the direction that there was an insufficiency of tax and

(l) If all the above factors had been taken into account, the Tribunal could not have found that a would have formed the view that there had been a loss of tax based on the information to RT.

<u>Capital gains tax</u>

The Tribunal failed to give sufficient or any weight to the fact that SH did not make any profit on Heathcroft Crescent because of all the substantial renovations and repair to the property.

The Tribunal gave no or insufficient weight to the witness evidence of Gavin Brady **[HB/734-735]** which gave details of substantial renovation and repair work.

In all the circumstances there was insufficient information for RT to believe that the information available pointed in the direction that there was an insufficiency of tax and

If all the above factors had been taken into account, the Tribunal could not have found that a would have formed the view that there had been a loss of tax based on the information to RT.

…

**Conclusion**

There are essentially five points in summary for my appeal:

1. The form FTC1 which I submitted to bring me here today on point 8.1 states one example of mistakes of law is the tribunal had no evidence or not enough evidence to support its decision. The evidence was not there because the focus instigated by HMRC was on my gambling wins and not on whether or not I worked for the pub.

2. There was no evidence of my earnings from the pub only assumptions.

3. I have new evidence that is relevant and key for the tribunal to support its decision. Statements from independent witnesses, written in a no template like manner all confirming I left the pub in 2011, some say why, and all saying they haven't seen me back at the pub since.

4. The new evidence was not available to me at the time because the focus was on my gambling, and I had proved that I was earning from gambling.

5. And finally, as a litigant in person I was at an unfair advantage and not on an equal footing because of the difficulty in trying to match specific page numbers in reference to letters and statements, the fact the judges' bundle was different to mine and the fact I could not make the points I make in this application for oral permission to appeal because of the administrative mix up.

A combination of all of the above rendered the hearing unfair.'

## Discussion, Analysis and Decision

20. I refuse permission to appeal on the Applicant's revised grounds of appeal as made orally to me and as set out in the speaking note.

21. They do not raise any arguable errors of law in the FTT's Decision. I am satisfied they hold no realistic prospects of success.

22. I am not satisfied that there were any arguable errors of law in the FTT's findings of fact. The Applicant has failed to rebut any of the reasons that the FTT relied upon its PTA Decision for rejecting similar grounds of appeal. This ground has demonstrated no arguable error of law in the FTT's Decision but sought to reargue matters of evidence. The submissions amount to a disagreement with the FTT's factual findings. It does not matter if I would have come to the same evaluative judgments or made the same findings of fact as the FTT – I am

satisfied that the FTT did not arguable err in law in arriving at its evaluative judgments and making its findings of fact.

23. I address the grounds in the order they appear in the speaking note.

*Ground (a)-(c)*

24. The Applicant argued before me that he disagreed with two parts of the summary of his police interview in 2009 that was relied upon by the FTT. His disagreements with the summary were: i) that he had not said during interview that he had been paid £400 in cash from the pub but that he had said he had £400 in cash to pay over to other staff for their wages; ii) that he had not said he had been working for the pub for 12-13 years as that would be impossible as his family had owned the New Tyke Inn since 2002 so he could have not been working there since 1997. He had in fact only been working there between 2008-2011. The Applicant accepted his disagreement with the summary / record was based on his memory of what had taken place in that interview which had taken place many years before. He submitted that the FTT took account of mistaken / irrelevant evidence.

25. Ultimately, the earliest dates on which the Applicant had worked in the pub, whether for 12 or 13 years prior to the interview in 2009, were barely material as, on his own account the Applicant had worked there since 2008. HMRC were only looking to assess his income from 2007-2008 rather than back to any earlier time such as 1997 or 2002. However, to the extent that any inconsistency between his interview account in 2009 and his later evidence to HMRC or FTT was relied upon against the Applicant to find him to be unreliable, I accept the summary of interview was material evidence which the FTT relied upon to make its findings.

26. Nonetheless, I reject this ground as it does not raise an arguable error of law in the FTT's Decision. The FTT was entitled to find the note / summary of the interview the Applicant gave to the police in 2009 to be reliable and rely upon it as set out at [39] and [43]-[45] of the Decision and rely upon any inconsistencies with the account the Applicant gave to the Tribunal as explained at [76(1)-(3)].

27. It is recorded at both [39] and [43] that in the interview the Applicant also said that he had been working at the pub for 10 years. The Applicant did suggest in submissions to me that he the summary of interview should have said 10 years (although even this would not tally with the pub being bought in 2002 and an interview taking place in 2009). Further at various points in the Decision it appears that the 2009 summary records that he said he was working for his brother or in a pub for 12-13 years – that is not the same as saying the Applicant had been working at the New Tyke throughout that time (ie. he may have been referring to another pub(s) prior to 2002).

28. In any event, PC Picken's statement and the interview summary (short descriptive note of interview) were served on the Applicant in advance of the hearing as part of the evidence and HMRC were entitled to rely on it at the hearing. The Applicant had an opportunity to challenge the accuracy of the contents of the summary / record if he contended that it was not an accurate note of what he had earlier said to the police. He could have sought to obtain a recording of the interview in advance of the hearing as soon as HMRC served and relied upon PC Picken's statement and summary of interview (the Applicant said he had not asked for nor retained a recording back in 2009). The Applicant could have given evidence to the FTT as to which parts of the interview transcript that he disagreed with and why. It does not appear

that he did either and there is no suggestion that he gave the FTT any evidence or made submissions as to the nature of his disagreement with the transcript which he now seeks to rely upon before me. The FTT was entitled to decide that the contents of the summary of interview were a reliable account of what the Applicant had said (and prefer any contemporaneous record of what the Applicant had said to the police in 2009 to the Applicant's account that he only worked in the pub in the years 2008-2011).

*Ground (d)*

29. The FTT considered the Applicant's explanation that his winnings came from gambling. HMRC had taken account of this explanation throughout its enquiry and significantly reduced the assessments accepting that some credits and income were accounted for from this source. Thereafter the FTT was entitled to reject the explanation that all of the unexplained credits came from this source and gave sufficient reasons for doing so. This was a finding open to the FTT on the evidence for the reasons it gave (particularly those at [74]-[79]).

*Ground (e)-(g)*

30. The FTT was entitled to reject the evidence that the Applicant had not received any income from the pub after 2011 as he had only worked at the New Tyke pub between 2008 and 2011. It considered the Applicant's evidence on the topic as recorded in the Decision at various points (see for example, [36(1)]) and rejected it for the reasons given, in particular at [74]-[79].

31. The Applicant did not identify the evidence to me that was said to come from his father, Brian Hague, beyond setting a hearing bundle reference in his speaking note. He did not provide this statement to me during the hearing but only emailed me during the hearing with a generic letter dated 30 March 2020 said to be from Brian Hague that stated to the effect that the Applicant ceased work at the New Tyke Inn in 2011. After the hearing, the Applicant emailed me to provide the copy of the two page statement of Brian Hague which is in similar terms. However, he did not identify the relevant paragraphs of that statement which he suggested the FTT had failed to take into account or explain why they would have been material to the findings on this issue in accordance with the guidance in *Georgiou*.

32. To the extent that the Applicant submits that the evidence of his father, Brian Hague, was not taken into account by the FTT on this topic, I reject this. The FTT set out at [74] that it had taken into account the statement (evidence) of his father (and others) on the issue of gambling wins. It also took account of the email sent by Brian Hague on 27 September 2020 at [35(5)] which set out the claim that the Applicant worked at the pub between 2008 and 2011 which the FTT noted was turned into the witness statement of September 2021. The FTT's record of the email and statement concludes: 'After this payment in 2011 Steven [h]as not been to the premises or received any money whatsoever from myself or new tyke, and didn't have any communication till after my prison sentence in June 2016.'

33. To the extent that the email and statement supported the Applicant's account that he stopped working at the pub in 2011, and hence the residual unexplained credits after 2011 could not be undeclared wages but must have been gambling wins, the FTT rejected this at [74]: 'These third-party statements do not assist the appellant in quantifying any further amounts that can be reduced than what Officer Tailor has already done in revising the quantum of the discovery assessments.'

34. The FTT gave sufficient reasons at [74]-[79] for rejecting the general account and explanation of the Applicant which was consistent with the statement of Brian Hague. The FTT's reasons for rejecting the Applicant's account as to the wages coming from the time he was working at the pub apply equally to the account set out in Brian Hague's statement.

35. Furthermore, even if the FTT did not give any specific reasons for rejecting Brian Hague's statement, I am satisfied that any lack of reasons was not a material error of law as it was entitled to find reject the evidence on the balance of probabilities and find that it did not undermine its findings regarding the unexplained residual credits. This is because: a) the evidence of Brian Hague was only contained in a written statement and was untested hearsay – there was no oral evidence given by him as he was not called to give evidence at the hearing and the statement was not tested in cross examination so less weight would normally be given to it; b) Brian Hague was not an independent witness because he was father of the Applicant; and c) the FTT set out at various points in the Decision evidence as to Brian Hague's criminal conviction for drugs offences. Relying on all these matters the FTT was entitled not to place further weight on Brian Hague's evidence in corroboration of his son, the Applicant, on this topic (see [36](12) and [37]). There was no material error in rejecting the explanation put forward by Brian Hague and the FTT did not arguably fail to take the statement into account.

*Ground (h)*

36. The FTT specifically considered at [35] the evidence of third parties – Jessica Gilfoyle and Darren Troy – which were given in witness statements which it noted had 'identical typed wording'. It was entitled to make the findings that it did at [74] regarding these statement – and was entitled to give it the weight it chose for the reasons it gave at [74]-[79] accepting it supported revising the assessments but not eliminating them. The FTT gave due allowance that some of the Applicant's income came from gambling but not all of the cash receipts were from gambling but some were also cash deposits from earnings at the pub. This is not inconsistent with accepting the statements of these witnesses that he did gamble and receive some non-taxable income from his winnings. There is no arguable error of law in the FTT's findings of fact and it did not fail to take into account the statements of these witnesses.

*Ground (i) and (j)*

37. An important point is that the FTT did not rely on the notes of the Applicant's meetings with HMRC on 15 March 2017 and 9 August 2018 against him except at [76](4) of the Decision so their relevance to the ultimate findings was minimal, although I accept it was material.

38. Nonetheless, the FTT was entitled to rely on HMRC's minutes of both those meetings. Again, the documents were served upon the Applicant in advance of the hearing and if he wished to challenge their accuracy he had a reasonable opportunity to do so prior to and at the hearing. There is no record of him challenging their accuracy at the hearing before the FTT or giving any evidence explaining the matters he now raises as being inaccurately recorded.

39. The Applicant has provided no proper reason for saying that that he did not have an opportunity to challenge the minutes during the hearing. Furthermore, there is strong support in the Decision for the fact that the minutes of the meetings were sent to him by HMRC for his approval and that he had an opportunity to challenge them at the relevant time which he did not take. For example, the Decision sets out at [17] that copies of the minutes of the 2017

meeting were sent to him or his representative to approve or confirm and that in the absence of response they would be assumed not to be disputed. It does not appear that the Applicant and his representative ever disputed the minutes at the relevant time.

40. After the hearing before me the Applicant sent me documents headed 'Correction of HMRC Notes of Meeting 1 and 2' which he says he had sent to the FTT. Even if he did challenge the accuracy of the minutes of the meetings in writing before the hearing at the FTT took place, it does not appear he challenged them during the hearing at the FTT. In any event, even if the corrections in these documents do indeed represent what was said at the meetings, they do not undermine the FTT's only material finding on the minutes at [76(4)].

41. At no point in the corrections documents does the Applicant say that he lived at Heathcroft Crescent, as he later said in his witness statement, nor that HMRC was wrong to record that he said he did not live there at either meetings. Even if the FTT should have taken into account of the Applicant's corrections, there is no relevant challenge by the Applicant to the FTT's material finding that he said at the meeting with HMRC that he did not live at the property and this was inconsistent with what he later said in the statement to the FTT.

42. The challenges that the Applicant makes to the notes at (i) and (j) do not undermine any of the findings relied upon by the FTT in respect of the notes of the meetings.

*Grounds (k) and (l).*

43. These grounds are that the HMRC Officer had insufficient information on which to make a discovery assessment.

44. I reject this ground as unarguable. The FTT was entitled to make the decision that it did on the evidence available to it for the reasons it gave at [55]-[68] of the Decision. The FTT accepted that HMRC's assessing officer believed, and a reasonable officer would have formed the view, that there had been a loss of tax based on the information available. Therefore, the subjective and objective grounds on which to make a discovery assessment under section 29 TMA 1970 were satisfied.

*The CGT appeal*

45. The FTT was entitled to find that the Applicant made a profit on the property at Heathcroft Crescent for the reasons it gave at [36(3)]-, 51, 64 68, 76 and concluding at [87]:

> As to the capital gains he realised on Heathcroft Crescent, it is unnecessary to make a finding of fact whether on the balance of probabilities, the appellant had to incur renovation expenses twice. The appellant has not produced any documentary evidence to support the claim that there was theft and flood to the property, such as police report or insurance claims. Suffice it to note that even by the appellant's estimates of expenses from memory, there was a chargeable gain realised. The appellant's intention to make 'a quick flip' on the property suggests that the profit motive was a main reason for purchasing Heathcroft Crescent. With the intentionality to profit from the transaction in the fore, the appellant's failure to take the necessary steps to discharge his obligations as a taxpayer in reporting the chargeable gain on the disposal of the property took on that selfsame intentionality as to render it deliberate.

46. The FTT was entitled to rely on the reasons it gave (including lack of any documentary record of expenses relied upon) for its finding on liability to CGT. The Applicant relies on the FTT giving no or insufficient weight to the witness evidence of Gavin Brady and refers to page numbers of the hearing bundle. However, he did not provide me with the hearing bundle from the FTT nor provide or quote any extract from any statement from Mr Brady so it is impossible for me to know what relevant evidence he relies upon as being before the FTT but not being taken into account. This ground does not meet the *Georgiou* requirements. Furthermore, the FTT refers to a statement at [36](3) of the Decision that it has taken account of: 'A statement dated 28 September 2021 by a plumber allegedly attending to the emergency call out to deal with the flood in 2006 is lodged.' It refers again to the plumber's statement at [74]. If this is from Mr Brady then the statement was clearly taken into account by the FTT.

*Further grounds from the speaking note / oral submissions*

47. The Applicant also argued that he was cut off from giving much further oral evidence at the end of the hearing when he was speaking and there were a number of further factual points he wanted to make. He included this in the section: 'The facts I rely on' in his speaking note. I asked him to clarify from this what was the evidence was he wanted to give that he was unable to give to the FTT and why it was material. He said there was a specific written statement he had prepared that he had not been allowed to read out. I asked him to provide this to me after the hearing and he subsequently did so (that document consists of some factual submissions and some questions).

48. I asked him to identify the evidence he wanted to give but was cut off from doing so. At the hearing before me he said that he was unable to but wanted to give evidence to the FTT about the burglary and insurance at Heathfield Crescent but he was cut off from doing so. He addressed this in the speaking note as follows:

> Another struggle was with the reference to the burglary at Healthfield Crescent. Another assumption was made that because I didn't claim on the insurance or call the police it is not relevant. Well what evidence can I provide if I didn't have insurance? I did have a statement from a plumber though. But maybe as to more evidence I can show somehow that in the last 13 years of owning Harrogate Road I have never had property insurance? That's my choice and when I started to speak later in the hearing which would have defended the assumption, I was shot down, unknowingly to me that my time to speak was over? Again in the pursuit of an open honest and fair hearing in UK courts how is this so?

49. Even assuming that this was evidence the Applicant wanted to give to the FTT, he has not explained why he did not give it during the part of the hearing that considered his statement and his oral evidence, even if he was not able to give it during closing submissions. He has not explained why he did not provide this as written evidence or a statement in advance of the hearing if he wanted to rely upon it.

50. The Applicant has not identified any specific evidence or argument that he was unable to make during the course of the hearing and why it would have been material to the outcome. Even if he was interrupted by the FTT on any one occasion, this would not give rise to an arguable error of law in itself. It is readily apparent from the Decision that the Applicant was

given a reasonable opportunity to present his case by giving evidence orally and in writing and making submissions throughout the hearing.

51. The FTT provided a detailed Decision setting out extensive oral submissions made and evidence given by the Applicant during the hearing together with the reasons why it was found to be unreliable. The FTT also provided an audio recording of the hearing at the Applicant's request.

52. The Applicant was invited by me in my decision refusing permission to appeal on the papers, to supply the recording and a transcript or reference to the relevant timings he relies upon as part of any application for reconsideration of permission to appeal at a hearing. The Applicant has not provided a copy of the recording to the UT or a transcript of that recording for the UT to independently examine the allegation that he was cut off from speaking. In the absence of the objective record, the UT is satisfied that this is bare assertion without substance.

*Conclusion to the speaking note and fresh evidence application and grounds*

53. In the conclusion to his speaking note and in his oral submissions the Applicant also concentrated upon fresh evidence that he sought to admit in support of his appeal to the UT accepting that it was evidence which he had not provided to the FTT. The fresh evidence consisted of short statements or letters to the effect that the Applicant had only worked at the New Tyke Inn between 2008 and 2011 and not thereafter.

54. The fresh evidence he sought to rely upon (which I requested him to email during the hearing as it was not provided in advance) consisted of three statements from three witnesses whom the Applicant described as independent as they were not from friends or family. They consisted of one handwritten statement (Michael Simmon dated 15 December 2024) and two typed statements (Gordon Lamonby and Ryan Blyth both dated 12 December 2024). The describe the Applicant not being seen in the pub outside the 2008-2011 time period despite their frequently the pub before, during and after these times. The statements are not professionally prepared and the wording of the statement of truth is not one that is in line with the standard wording in civil proceedings. Nonetheless that does not render them inadmissible as they may be admissible pursuant to Rules 2 and 15 of the FTT or UT procedural rules. However, it may undermine their cogency.

55. The Applicant also referred during the hearing to further statements from friends and family which he had previously obtained but had not sought to provide to the UT because they were not from 'independent' witnesses so he had been advised they would be given less weight by the UT.

56. I nonetheless permitted him to provide the statements from friends and family that he also after the hearing. This he did as attachments to further emails sent after the hearing on 16 December 2024. There were handwritten or typed letters or statements from: Christopher Hague (brother, undated), stating he would be willing to give oral evidence as a witness; Paul Hague (uncle and owner of the pub) dated 7 May 2024, Brian Hague (father) dated 3 May 2024, Rebecca Hague (relative) undated, Albert Muff (uncle) dated 1 May 2024 and Michael Simmon (referring to May 2024, who subsequently provided the December statement). These letters or statements give written evidence on the same topic as the three 'independent' witnesses– the Applicant only working at the New Tyke Inn pub between 2008 and 2011.

These witnesses (the statement makers or letter writers) variously described the family dispute resulting in the Applicant not working in the pub after 2011.

57. . I take into account the tests for admitting fresh evidence set out in *Ladd v Marshall* [1954] 1 WLR 1489 as explained as applying to the UT in *Donald Graham Ketley v Revenue and Customs* [2021] UKUT 218 ('*Ketley*') at [52]-[54] but ultimately must apply the tests under Rules 2 and 15 of the Tribunal Procedure Rules to decide if it is just and fair to admit the new evidence. I reject the application to admit the fresh evidence. I have decided that it is not just and fair nor in the interests of justice to admit any of the fresh evidence for the following reasons.

58. First, the application to admit fresh evidence before the UT was made on the day of the hearing before me on 16 December 2024. The evidence itself could and should have been obtained reasonably at an earlier time. The FTT's decision was handed down in February 2024. If the Applicant wanted to challenge the FTT's findings by way of admitting fresh evidence it should reasonably have obtained these statements at an earlier time. It is noteworthy that he did not even provide them to the FTT on his application for permission to appeal to the UT, or to me on the earlier application made on the papers in October 2024. They are only provided at the last moment. There is substantial delay in obtaining and serving all these statements. The application to admit and rely upon the fresh evidence could and reasonably should have been made at an earlier time – at least in May 2024 at a time when the Applicant said he had instructed lawyers (whom he subsequently dispensed with) and obtained the statements from family and friends.

59. Second, I reject the explanation for why the evidence was not provided to the FTT in time for the hearing itself and why they were not part of the FTT proceedings. The Applicant suggests that the main issue in the appeal was whether his winnings were from gambling and he did not know in advance of the FTT hearing that it would be in issue that he was only working between 2008 and 2011 at the pub. Hence he did not previously seek to provide any of this evidence.

60. I am satisfied that the evidence should have been reasonably available to the Applicant before the FTT hearing as the evidence could and should reasonably have been obtained and served at an earlier time.

61. I reject this explanation because the Applicant should reasonably have known that it was in issue whether the assessed income was his taxable earnings were from the pub (as HMRC had suggested) or non taxable income from gambling and loan repayments (as he suggested). The burden was upon the Applicant to prove the assessed income, the unexplained credits, were not taxable. If he wanted to establish that none of his earnings were from the pub after 2011 because he did not work there then he should have placed this evidence before the FTT. It was clear from the HMRC correspondence that they assessed him on the basis the income was taxable earnings. HMRC asserted that he had received undisclosed earnings and income from the pub between 2007 and 2016. The Applicant should have known that the duration of his work and extent of his earnings from working at the pub was highly relevant evidence. Indeed Mr Lorriman raised the assertion that the Applicant only worked there between 2008 and 2011 in correspondence with HMRC in 2020 as part of the enquiry / assessment process.

62. Furthermore, I am satisfied the Applicant knew it was a relevant issue on which he could have called or provided evidence in support. He himself gave this very evidence in the appeal to the FTT: that he was only working at the pub between 2008 and 2011(as set out in various

parts of the Decision including [36(1)]). He should reasonably have known that if this was a relevant part of his case that he should provide evidence in support of this from other sources if it was available to him. He could reasonably have approached all these witnesses at an earlier time and does not suggest they were unavailable to him.

63. Third, I am not satisfied that the evidence is so cogent or reliable that it would have a significant impact on the appeal to the FTT or UT. First, is the form in which the statements are produced is set out above – they are either letters or if they are statements, they do not contain formal statements of truth and they are mostly from family members. While the Applicant is no longer legally advised or represented, although assisted by Mr Lorriman, the statements could reasonably have been accompanied by formal statements of truth. Very few of the witnesses suggest that they are available for cross examination or to give oral evidence (in which case the written evidence, while admissible, would be afforded less weight). Second the contents of those witnesses who are said to be independent and not family members, are based upon some observations of those who attend the pub at relevant times. None of the independent witnesses suggest that they were in the pub on all days during the relevant period from 2011 to 2016. Third, the evidence relies upon memories of events taking place some 13 to 16 year before the letters / statements were written. There is no cotemporaneous documentary evidence provided in support. Again, this reduces its potential weight. I am satisfied, that even if it were to be admitted, the evidence would not significantly undermine the factual finding that the Applicant was likely to have received taxable earnings for working in the pub from 2007 onwards and in particular from, 2011-2016.

64. For the same reasons, I likewise refuse to admit the written evidence of the Applicant contained in the Speaking note in relation to the further facts he relies on. Not only have I found that he was not unfairly prevented from raising this evidence before the FTT, but he could and reasonably should have put this in a written statement to the FTT if he wanted to rely upon it.

65. In light of refusing to admit this evidence, I reject this ground as unarguable.

*The summary of grounds in the conclusion in the speaking note*

66. The first of the grounds of appeal set out in the conclusion to the speaking note challenges the FTT's factual findings and treatment of written evidence by suggesting that the FTT failed to give sufficient weight to the template letters and third party witnesses. I reject this as not raising an arguable error of law in the FTT's findings of fact. I had addressed the position of the third party witnesses above. Matters concerning the weight to be given to evidence are for the FTT to determine and it gave reasons within the Decision for explaining why it found this written evidence not to be of assistance or reliable.

67. I reject the second ground in the conclusion to the speaking note for the reasons set out above. The FTT was entitled to reject the Applicant's case on the facts for the reasons it gave – it did not apply assumptions but found that the Applicant to discharge his burden of proof to establish that the unexplained credits were not taxable.

68. I also reject the third and fourth grounds in the conclusion to the speaking note for the same reasons as rejecting the application to admit fresh evidence.

69. In relation to the fifth grounds in the conclusion, I am satisfied there was no procedural unfairness relating to the bundles or other evidence before the FTT.

70. I reject this ground as unarguable for the reasons set out above. All relevant evidence was before the FTT as was available to the Applicant throughout the hearing so there was no arguable procedural unfairness. To the extent that the meeting notes or interview notes were said to be unreliable, the Applicant had the opportunity to give evidence and make submissions about these during the hearing. The FTT was entitled to find the written evidence on behalf of HMRC to be reliable as well as finding the Applicant's evidence to be unreliable for the reasons it gave in the Decision. Findings of fact and the weight to be given to evidence are matters for the FTT and do not give rise to arguable errors of law as is explained above.

*Problems with the bundle rendering the hearing procedurally unfair*

71. I reject this ground as unarguable for the reasons set out in the FTT's post Decision directions dated 9 April 2024 with which I agree.

> 'Bundles used at the Hearing
> In relation to the bundles used at the hearing, I can confirm that two Documents bundles were electronically provided to the Tribunal and used at the hearing. The first bundle (the 'Core Bundle') contains 758 pages of documents, most of which would have been exchanged between the parties in the course of the enquiry. The second bundle (HMRC's 'Witness Bundle') contains Officer Tailor's witness statement and exhibits of 465 pages, which would have been exchanged between the parties prior to the hearing.
> Mr Hague's latest communication has referred to pagination not matching up. I infer that Mr Hague is in physical possession of a version of the hearing bundle, albeit not of the version as finally produced electronically to the Tribunal and used at the hearing. It is likely that Mr Hague's single paper bundle is a version that was subsequently re-made into two separate electronic bundles, with the final Core Bundle being 'reduced' by extracting the HMRC's witness statement and exhibits into a separate electronic bundle. (It has been noted that the Core Bundle is labelled as 'Reduced' during lodgement, and the need to separate the original bundle into two separate bundles can be due to the overall file size, as the Tribunal's Documents Upload Centre may have a limit to the size of each PDF file that can be uploaded.)
>
> Implications for the pending costs application
> I am aware of a costs application against Mr Hague that is currently pending. The fact that HMRC had made several unsuccessful attempts at their own expense for the delivery of the Core and Witness Bundles to Mr Hague (as detailed in their response of 28 March 2024) will be a factor to be taken into account in the costs application. A party could have made all reasonable efforts to deliver the documents bundles, but if the intended recipient has made no reasonable effort to facilitate successful delivery, such as by notifying an alternative time for delivery, or by collecting in person from the delivery office, then the sending party cannot be found to be wanting in meeting its obligations.
> If, and to whatever extent, Mr Hague is going to apply for permission to appeal on the ground that he did not have the correct version of the Bundles for the hearing, HMRC will be afforded the opportunity to make representations in that respect. The factual matrix as concerns the delivery of bundles are not part of the evidence heard at the substantive hearing. The representations to be made by HMRC in this regard will most likely be incorporated into their costs application against the appellant.'

72. I am satisfied that the Applicant had available him to the material evidence and information that HMRC relied upon against him in either documentary or electronic format during the course of the hearing (even if not paginated or numbered in the same order as the FTT of HMRC).

73. He has not made any reference to any specific and material documents that were unavailable to him during the hearing (and he has had the opportunity to review HMRC's bundle subsequently produced to him). I am satisfied that the relevant documentary material was reasonably accessible to him throughout the hearing. He therefore had a fair opportunity to engage with HMRC's case based upon the relevant documents (to cross examine and make submissions) as well as present his own case (by giving evidence or making submissions relying upon documents that assisted him).

74. I am further satisfied that HMRC made reasonable efforts to serve him upon the identical bundle they were using in advance of the hearing and any non-delivery was not their responsibility when they had made reasonable efforts.

75. I am not satisfied this ground identifies any arguable error of law in the FTT's Decision or renders the proceedings arguably unfair.

**Conclusion**

76. I have considered all the other grounds of appeal put forward in oral submissions, contained in the speaking note or in the post hearing submissions and evidence. I reject all the grounds of appeal because they do not raise arguably material errors of law in the FTT's Decision.

77. Permission to appeal to the Upper Tribunal is **refused**.

**Signed:** **Date: 20 December 2024**

**JUDGE RUPERT JONES**
**JUDGE OF THE UPPER TRIBUNAL**