



[2021] UKFTT 0256 (TC)

TC08202

Income tax – best judgment assessments – assessments partly based on expenditure - appeal allowed to the extent the evidence discharged the burden of proof on the appellant.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/01072

BETWEEN

MOHAMMED SHARIFFF

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE TRACEY BOWLER
MR MARK BUFFERY**

The hearing took place on 1 March 2020. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video platform. A face to face hearing was not held because of the circumstances of the pandemic.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

A summary decision was issued on 26 March 2021 but the Appellant subsequently requested this decision setting out the full findings and reasons.

Mr Ford of Parkers Accountants for the Appellant.

Ms Arnold, Litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents.

DECISION

INTRODUCTION

1. Mr Shariff has appealed against income tax assessments issued by HMRC under Sections 29, 34 and 36 Taxes Management Act 1970 (“TMA”) for the years 2001/2002 – 2016/2017 (“the Relevant Years”). No penalty notices have been issued by HMRC.
2. Mr Shariff accepts that he failed to notify a liability to tax in those years and does not challenge the ability of HMRC to issue the assessments under Sections 29, 34 and 36(1A) TMA and paragraph 7 of the Finance Act 2008 Schedule 39 (Appointed Day, Transitional Provisions Savings) Order 2009. The dispute concerns the amount of income taxable in those years.

BACKGROUND

3. On 22 July 2016 Officer Olatoye wrote to Mr Shariff with enquiries.
4. Mr Shariff’s accountants replied to the letter and an exchange of correspondence between HMRC and Mr Shariff’s accountants followed.
5. On 26 January 2017 Officer Olatoye issued an information notice under Schedule 36 to the Finance Act 2008 as he had not received a response to a request for information dated 2 December 2016. The documents requested included Mr Shariff’s personal bank statements.
6. On 1 March 2017 Officer Olatoye met with Mr Shariff and Mr Ford. Further documents were requested by Officer Olatoye. Mr Ford told Officer Olatoye that Mr Shariff had registered for self-assessment on 28 February 2017. In fact that step had not been taken.
7. On 7 June 2017 Mr Shariff’s accountants sent Office Olatoye a copy of the bank statements which Mr Shariff had been able to obtain.
8. On 21 December 2017 Officer Olatoye wrote to Mr Shariff and his accountants following a review of Mr Shariff’s bank statements requesting further information by 19 January 2018. It identified that more than £450,000 had been paid into Mr Shariff’s bank account between 18 March 2011 and 1 February 2017. It also identified various sums relating to rent payments and property transactions. Officer Olatoye requested annual profit and loss accounts for the period 2011/12 to 2016/17 as well as more information regarding Mr Shariff’s letting and Property Management activities.
9. The 21 December 2017 letter was acknowledged by Mr Shariff’s accountants on 30 January 2018 saying that a reply would be sent for 28 February 2018. However, no such reply was forthcoming.
10. On 22 June 2018 Officer Olatoye wrote to Mr Shariff and Mr Ford setting out the chronology to date and explaining that as the information requested on 21 December 2017 had not been provided Officer Olatoye had prepared pre-assessment calculations of the outstanding tax. A call from Mr Shariff on 6 July 2018 identified a discrepancy which resulted in Officer Olatoye amending a detail in the pre-assessment calculations, but this amendment did not alter the amounts.
11. On 25 July 2018 Mr Ford emailed a set of spreadsheets to Officer Olatoye covering the years 2011 to 2015 together with a covering letter explaining directorship income and details of property transactions.
12. On 23 August 2018 Officer Olatoye issued the appealed assessments having registered Mr Shariff for income tax self-assessment purposes.

13. On 15 September 2018 Mr Shariff's accountants wrote to Officer Olatoye to appeal against all of the assessments on the grounds that they were estimated and excessive and not in accordance with the information provided. A statutory review was requested.

14. On 24 September 2018 Mr Ford indicated that further information would be sent to Officer Olatoye. However, no further information was provided. Officer Olatoye contacted Mr Ford on 30 October 2018 about the delay. Mr Ford requested another two weeks in order to submit further information, but Officer Olatoye responded that the matter should now go to statutory review, with which Mr Ford agreed on 5 November 2018.

15. On 24 January 2019 Officer Olatoye issued a further view of the matter letter maintaining the same position as set out in the letter of 22 June 2018.

16. On 25 January 2019 Mr Ford submitted a notice of appeal for Mr Shariff appealing against the assessments totalling £234,077.88 as well as penalties.

17. On 8 March 2019 an independent review letter was issued to Mr Shariff confirming that Officer Olatoye's assessments had been based on reasonable inferences from the evidence available.

18. ADR was attempted but was not successful.

THE APPEALED ASSESSMENTS

19. The assessments for income tax issued on 23 August 2018 were for the following amounts:

Year	Amount of tax
2001-2002	9443.95
2002-2003	2039.57
2003-2004	2185.56
2004-2005	2260.44
2005-2006	2307.34
2006-2007	2440.36
2007-2008	5041.28
2008-2009	4625.32
2009-2010	4849.84
2010-2011	12141.57
2011-2012	27327.07
2012-2013	32041.96
2013-2014	14550.54
2014-2015	28631.17
2015-2016	48737.75
2016-2017	35454.16

20. The assessments for the tax years 2001/2002 - 2013/2014 were issued under section 36(1A) TMA and the assessments issued for the tax years 2014/15-2016/17 were issued under section 34 TMA.

21. No penalty notices have been issued.

HMRC'S CASE

22. HMRC submit that the onus is on Mr Shariff to show that the assessments are wrong. They rely upon *Jonas v Bamford (H M Inspector of Taxes)* 51 TC 1, *Johnson v Scott* 52 TC 383, *Graeme Allen v HMRC* [2016] UKFTT 504 (TC) and *Bi-Flex Caribbean Ltd v The Board of Inland Revenue* 63 TC 515

23. Mr Shariff should have notified charge ability so that returns could be issued to him for the Relevant Years.

24. Mr Shariff and his wife purchased a house with a deposit of £75,000. Given the lack of any other explanation half of that deposit must have been funded from income. Based on information provided by Mr Shariff as well as other information held by HMRC and found by way of internet searches Officer Olatoye has made an estimate of rental income received by Mr Shariff on two properties let by him. An allowance for expenses and empty periods has been made and any further deductions should be evidenced by Mr Shariff. Officer Olatoye has identified regular receipts from various companies and persons into the same bank account as that to which the rental payments are made. In the absence of other evidence the receipts have been treated as giving rise to taxable income.

25. Officer Olatoye has identified non-business expenditure from another business bank account and has treated this expenditure as reflecting personal income. Mr Shariff has described working as a self-employed property broker from April 2014 but the bank statements suggest that this activity started much earlier.

26. Mr Shariff owns 50% of the shares of MS2 Solutions Ltd. The remaining 50% is owned by his brother. HMRC have assumed that Mr Shariff received the same dividends as those declared by his brother.

27. The identification of earnings and rental income which have not been declared to HMRC justify the application of the presumption of continuity.

28. At the hearing Ms Arnold submitted that Mr Shariff had not challenged the legal basis for the assessments. He was only challenging the amounts therein.

MR SHARIFF'S CASE

29. Mr Ford noted that Mr Shariff regretted his failure to notify his liability to tax and wanted to correct the position, but maintains that the appealed assessments are excessive. The companies he operated have gone out of business and the tax liabilities he faces will cause him to be bankrupt.

30. Mr Ford submitted that if payments made to landlords were identified this would show that Mr Shariff was left only with a small commission.

31. He submitted that Mr Shariff had explained that he and his wife had been employed and had saved in order to afford the deposit on the house.

32. Mr Ford submitted that taxing Mr Shariff on the basis of deposits received by him into his bank account would give rise to duplication of amounts. He also submitted that there is no basis to conclude that payments of expenses (as shown in one of Mr Shariff's bank accounts) could give rise to an assessment of income. A person may spend more than their income by not paying their debts or by borrowing.

THE LAW

33. Under section 29 TMA HMRC may make a “discovery” assessment where an officer discovers any income which ought to have been assessed to income tax and has not been assessed.

34. Section 31 TMA provides a right of appeal against the assessments. Under section 50 TMA the Tribunal may decide that the appellant is overcharged or undercharged by an assessment and reduce or increase the assessment accordingly.

35. The burden of proof is on Mr Shariff to show that he was overcharged by one or more of the assessments. The usual civil standard of the balance of probabilities applies.

36. As identified by Judge Poon in *Graeme Allan v HMRC* [2016] UKFTT 504 (TC), there is no onus on HMRC to identify matters such as, for example, whether amounts are business or personal expenses, business income or personal income.

37. Once an officer has discovered income which ought to have been assessed to income tax, the presumption of continuity applies to the raising of assessments for earlier years. The onus is on the taxpayer to rebut that presumption (*Jonas v Bamford* (1973) 51 TC 1).

38. In this case HMRC have relied on the approach described in cases as “best judgement”. Caselaw has made clear that such assessments are necessarily guesses to some extent and almost certainly inaccurate (*Bi-Flex Caribbean Ltd v. Board of Inland Revenue* 63 TC 515. In that case Lord Lowry said:

“The element of guess-work and the almost unavoidable inaccuracy in a properly made best of judgment assessment, as the cases have established, do not serve to displace the validity of the assessments, which are prima facie right and remain right until the taxpayer shows that they are wrong and also shows positively what corrections should be made in order to make the assessments right or more nearly right. It is also relevant, when considering the sufficiency of evidence to displace an assessment, to remember that the facts are peculiarly within the knowledge of the taxpayer.”

39. Similarly, in *Johnson v Scott* it was recognised that all estimates are unsatisfactory, but where a taxpayer has failed to provide the necessary information, HMRC should be able to make reasonable or fair inferences. Those inferences may be made on the basis of expenditure where appropriate. Indeed, in *Johnson Walton J* expressly made various assumptions about the taxpayer’s expenditure as a basis to calculate his assumed income. That does not mean that a person is in some way taxed on their expenditure. Instead, the expenditure is used as a measure of expected income. It is for the taxpayer to show that such a measure is incorrect.

APPLICATION TO ADMIT EVIDENCE

40. On 26 February 2021 HMRC applied to admit two schedules: a schedule of bank credits for Mr Shariff and a schedule of outgoings. These were not in fact new evidence but schedules of the items identified in the bank statements by Officer Olatoye. Mr Ford agreed that the schedules could be admitted.

FINDINGS OF FACT AND REASONS

41. It was accepted by Mr Ford that Mr Shariff did not notify liability to tax for any of the Relevant Years.

42. Mr Shariff has not challenged the validity of the assessments issued by HMRC. It is accepted by him that he received taxable income which was not declared. The matter in dispute is the amount of the taxable income in each of the Relevant Years.

43. In the course of the hearing it was agreed by Mr Shariff that the following amounts should be included in Mr Shariff's assessed income:

(1) Rental income received for the lease of a property known as 18 Crossley Road in the tax years 2002/2003 -2016/2017 as listed in HMRC's Statement of Case;

(2) The amounts shown as rental income received for the lease of a property known as 468 Wilmslow Road in the tax years 2007/2008 – 2016/2017 as listed in HMRC's Statement of Case

(3) The amounts shown as the (gross) dividends received from MS2 Solutions Ltd in HMRC's Statement of Case, except for the amount of £24,444 shown for the tax year 2015/2016.

44. In the course of the hearing it was agreed by HMRC that the following amount should not be included in Mr Shariff's assessed income

(1) The amounts shown as the (gross) dividends received from MS2 Solutions Ltd of £24,444 for the tax year 2015/2016.

45. The agreed amounts are listed fully in the Schedule to this decision.

General assessment of evidence

46. We have considered all of the evidence which is provided by the bundle, the supplementary summaries of bank statements provided by HMRC and the oral evidence of Mr Shariff and Mr Olatoye.

47. The chronology and evidence of meetings set out in Officer Olatoye's Witness Statement was not challenged and we rely upon that evidence.

48. There are certain matters in this appeal on which Mr Shariff's evidence has been consistent. We have relied on his evidence to make findings even where there is a lack of documentary supporting evidence. That is the approach adopted in relation to the house deposit amount.

49. Mr Shariff's evidence about a dividend paid in 2015/16 by MS2 Solutions Ltd was consistent and there was supporting documentary evidence to show that the payment was not made to him. This led to HMRC accepting in the hearing that the amount treated as having been received by Mr Shariff was not in fact received by him. We agree that in the light of the evidence provided at the hearing that that was the correct approach.

50. However, in relation to other matters at the heart of this appeal, we have concluded, for the reasons described below, that inconsistencies in the evidence, a lack of evidence which should be readily available and a lack of an explanation for its omission mean that the weight given to Mr Shariff's evidence in his Witness Statement and provided orally at the hearing should be reduced. We have concluded that he has not discharged the burden of proof on him in relation to those matters, with the attendant consequences for the findings of fact about them.

51. Dealing with inconsistencies first, where Mr Shariff's evidence is internally inconsistent we consider that this undermines the weight we give to it. For example, in his Witness Statement Mr Shariff states that his accountant told HMRC in 2016 that the property, 18 Crossley Rd, was rented out from 2011 to 2016, but he had checked and realised that he had received rent from 2006. In itself it may be considered somewhat surprising that it took Mr Shariff some four years from his accountants' letter on 2016 to his Witness Statement in March 2020 to identify an extra five years of rent had been received by him. However, in fact his accountants had told Officer Olatoye about rent receipts from 2006 in a letter dated November 2016. The statement in the Witness Statement therefore makes little sense.

52. In addition, following evidence from HMRC prior to the hearing that the property was advertised as early as 2002, Mr Shariff has now agreed the schedule of deposit income including income for that property back to that year. He explained at the hearing that the property was rented out on an ad hoc basis in the early 2000's. However, there was no such explanation in his Witness Statement.

53. Mr Shariff made no attempt to identify the errors in the Witness Statement. He adopted his Witness Statement confirming that it was true and correct, when in fact it clearly was not. It was only when inconsistencies in the evidence about the rental income were put to Mr Shariff in cross examination that Mr Ford conceded that the figures set out in HMRC's Statement of Case were accepted.

54. Another example which illustrates the reasons why we have reduced the weight given to Mr Shariff's Witness Statement is that he says in it that he received a dividend in 2016, even though his case is that the entire dividend was paid to his brother. He confirmed to us that his Witness Statement was wrong when this was pointed out to him.

55. Given the clear inconsistencies in Mr Shariff's Witness Statement we have therefore reduced the weight given to it.

56. We also found other parts of Mr Shariff's evidence to be inconsistent and frequently vague. For example, Mr Shariff has claimed that amounts paid to him by Clear Claims Ltd were repayments of a loan. However, he was unable to give more than the broadest description of the amount of the loan as being "£30,000 – £40,000; something like that". He has provided no further evidence to support this claim. In cross-examination he claimed that Clear Claims Ltd had not produced any accounts and that, despite the fact he was a director of the company, its operation, including preparation of accounts, was nothing to do with him. His own representative, Mr Ford, then corrected him and clarified that Clear Claims Ltd had in fact produced accounts for three years from its incorporation in 2010 until 2013. In fact only abbreviated balance sheets have been produced for 2012 and 2013.

57. Furthermore, Mr Shariff's accountants said in correspondence that Clear Claims Ltd did not have a bank account and it was dissolved with no trading; but this is not consistent with the evidence in Mr Shariff's bank statements of transfers from Clear Claim Ltd.

58. Mr Shariff was vague at times in the hearing; for example when asked about how his company, Clear Claims Ltd, was able to make the payments to him which Mr Shariff describes as repayment of a loan. He vaguely described the company as doing some business but not a massive amount. His oral evidence on that matter was also inconsistent with evidence in a letter from his agent saying that the company never traded.

59. Turning to the lack of evidence, we refer to the principles set out in *Wetton -v- Ahmed and Ors* [2011] EWCA Civ 610 at [14]:

"14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence."

60. Mr Shariff has failed to provide much of the evidence which we would expect to see in a case such as this. HMRC's enquiries started in July 2016 and there is little reason shown why Mr Shariff has been unable to provide much of the information sought by HMRC and why

answers provided by him have frequently been inconsistent or incomplete. Section 12B TMA requires a taxpayer such as Mr Shariff to keep and preserve all such records as may be requisite for the purpose of enabling him to deliver a correct and complete return for the year or period of assessment. He has evidently failed to comply with this requirement.

61. The lack of evidence does not just extend to supporting documents which we would expect to see, such as agreements with landlords showing that Mr Shariff has been appointed as a managing agent and invoices /bills showing for what amounts have been paid, but to basic evidence such as a schedule identifying the nature of debits and credits shown in his bank accounts. The numerous schedules included in the evidence bundle identify payments received and made with the briefest of descriptions such as the name of a person or business, but with no attempt to identify the nature of the amount. Mr Shariff told us that he ran his bank accounts for both business and personal use and without further detail it is impossible for us to identify the nature of many entries. At the hearing he made an attempt to identify a few individual entries as examples of business expenditure, but we would expect, at the very least, that process to have been applied to all of the entries as part of the evidence for the hearing, if not before as requested by HMRC.

62. Mr Shariff has claimed that the bank credits include amounts received by him when collecting rent as the agent for other landlords. For example, he identified an amount as having been received for "House No 19". However, he could not identify a corresponding payment out in relation to that property. In addition, Mr Shariff has not produced any reconciliation statements showing how much was paid or owed to the landlords for whom he acted as agent.

63. Mr Shariff has not provided the most basic evidence such as a list of the landlords' names which would enable identification of payments received on properties and then paid to them when acting as agent, as he claims. At the hearing Mr Shariff named a couple of landlords. Although there are a few entries showing payments made to one of the named persons (Mr Wong) there is no attempt at identifying the relevant receipts to which they are said to relate.

64. Given that he described himself as getting into problems when he used landlord's monies for personal use and/or used one landlord's money to pay another, reconciliation statements would have been essential. Mr Shariff said that he had produced such statements, but no longer had them as he had destroyed all of the records when he ceased carrying on the property management business in 2016/2017. However HMRC's enquiries started in July 2016. It is therefore particularly concerning that he claims that at that point he destroyed relevant documentation.

65. Mr Shariff says that he was self-employed from 2012. He has not provided any invoices or other evidence identifying his self-employment income. He did not submit any self-assessment tax returns for those years.

66. At times in Mr Shariff's Witness Statement he says that HMRC have not provided evidence to show matters. For example, he says that HMRC have not provided evidence to show that he had an RBS bank account in 2002/2003. However, the evidential burden is on Mr Shariff, not HMRC (and the presumption of continuity applies in the absence of evidence to the contrary). It should have been a simple matter for Mr Shariff to obtain evidence to show when he opened his RBS bank account.

67. The evidence and submissions about Mr Shariff's status when conducting business have been notably inconsistent:

- (1) In August 2016 Mr Shariff's accountants said that no employment had been carried out by Mr Shariff in the past 6 years. In Mr Shariff's Witness Statement he describes being employed from 2007;

(2) At the start of the hearing Mr Ford said that Mr Shariff had conducted business through a company. He said that Mr Shariff had not been self-employed but had submitted some tax assessments as a self-employed person. In fact Mr Shariff has not submitted any such assessments for the Relevant Years;

(3) Later in the hearing Mr Ford said that Mr Shariff had carried on business as an unincorporated trader. Mr Shariff has not provided accounts for the business conducted as a sole trader and he confirmed at the hearing that he had never told HMRC that he had conducted business as a sole trader.

Property and employment income findings

68. Mr Shariff bought the freehold property known as 468 Wilmslow Rd on 25 October 2007 with the benefit of a lease for 21 years less one day over the ground floor granted on 4 September 2007. The property is a commercial property. A flat at the property has also been let to students.

69. Mr Shariff has owned the property known as 18 Crossley Rd since 1992.

70. The amounts of taxable income received by Mr Shariff in relation to these two properties have been agreed by the parties and we therefore make no further findings about them.

71. Mr Shariff has only provided two P60s for the tax years 2014/15 and 2015/16 showing employment income having been paid to Mr Shariff by MS2 Solutions Ltd. However, as identified by Officer Olatoye in his Witness Statement, those P60s state an incorrect National Insurance number. There has been no explanation of this error.

72. Officer Olatoye stated in a letter to Mr Shariff's accountants in December 2016 that HMRC had no PAYE record for him. Apart from the provision of the two P60s with the noted issue, Mr Shariff has failed to address this matter. He has continued to maintain in his Witness Statement that he was paid employment income from 2007. Although the amounts would not have given rise to income tax he should still have received payslips and P60s. Apart from the two P60s noted, none of these supporting documents have been provided. At the hearing Mr Shariff said that he had provided payslips from 2001 to Officer Olatoye, but there is no evidence of such documents having been provided.

73. We therefore conclude that the evidence regarding the extent to which Mr Shariff has been employed and the extent to which he has been paid employment income net of PAYE to be insufficient to lead to any findings of fact on that issue.

Tax Year 2001/2002

74. HMRC have assessed Mr Shariff as having had income of £37,500 equal to half the deposit paid for his house which he bought jointly with his wife, on the basis that the money has not been shown to have come from savings or another non-income source. No other amount has been assessed as income in the year 2001/2002 by HMRC in the appealed assessments.

75. Mr Shariff's evidence on this matter has been consistent that he and his wife funded the deposit out of savings and gifts from family. We found his evidence on this matter at the hearing to be consistent and credible. He described having found a statement which was provided to his solicitor in the course of the house purchase showing the existence of some of the deposit, but unfortunately had not provided this before the hearing. However, given the consistency of his Witness Statement and oral evidence we make the following findings:

(1) Mr Shariff was working as a computer consultant for some years prior to the purchase of his home. The income he earned through that work was taxed;

(2) At that time he and his wife were living with his parents and were therefore in a particularly good position to save money;

(3) As a result of these circumstances Mr Shariff was able to fund the purchase of his home from savings and from gifts from family members.

76. Accordingly Mr Shariff should not be found to have received income of £37,500 in the year 2001/2002.

Dividends from MS2 Solutions Ltd – tax year 2015-2016

77. As stated above, most of the amounts of dividends from the company MS2 Solutions Ltd are agreed between the parties. The one remaining amount in dispute is £24,444 paid by the company in the tax year 2015/2016. Mr Olatoye explained that he included the amount of £24,444 on the basis that Mr Shariff and his brother each held 50% of the shares in the company and his brother had declared a dividend of that amount. Mr Shariff has maintained that the dividend in that year was paid wholly to his brother. Although no dividend waiver documentation was produced, it is clear from the accounts of the company that the total dividend paid was £27,000 and HMRC say that £24,444 was declared as income by Mr Shariff's brother. The difference has been taken by us to reflect the 1/10th credit applied by Mr Shariff's brother in his tax return.

78. We have therefore found that the dividend paid by MS2 Solutions Ltd in the tax year 2015/16 was paid only to Mr Shariff's brother.

Deposits into Mr Shariff's bank accounts

79. Mr Shariff owned shares in, and was director of, PFI Management Ltd and Clear Claims Ltd for some of the Relevant Years. PFI Management was formed in February 2006 and was liquidated in June 2015. Clear Claims Ltd was incorporated on 11 February 2010 and dissolved on 30 September 2014.

80. At the hearing Mr Shariff challenged the inclusion of amounts shown as received from Clear Claims Ltd. He said that the amounts were repayments of a loan of around £30,000 he had provided to the company.

81. However, when asked about this in more detail Mr Shariff's responses were vague. He was unclear about when Clear Claims Ltd operated.

82. Mr Shariff's agent stated in a letter dated 26 January 2017 that Clear Claims Ltd had no bank account and was dissolved without trading. The bank statements provided for Mr Shariff show no transfer of monies to Clear Claims Ltd (which is consistent with it having no bank account). However, Mr Shariff's bank statements show repeated receipts of £1500 from Clear Claims Ltd. Mr Shariff could not explain how the company could make what he has described as repayments of a loan if it never traded. The receipts are not consistent in themselves with the statement that Clear Claims Ltd had no bank account.

83. We therefore find that the receipts from Clear Claims Ltd have not been adequately explained by Mr Shariff as being anything other than payments which should be treated as receipts of income by Mr Shariff.

84. Other payments, for example from "EMS" have been identified by Officer Olatoye but no explanation of them has been offered by Mr Shariff. Given the lack of evidence provided by Mr Shariff we also conclude that the other deposits treated as receipts of income by Mr Olatoye have been correctly identified by Mr Olatoye.

Mr Shariff's outgoings

85. HMRC have also assessed Mr Shariff on the basis that his expenditure shown in bank statements for the years from 2011/2012 to 2016/17 reflected income of the same amount. Mr Shariff explained at the hearing that he set up an RBS bank account which was used for his self-employment business as a sole trader and for personal transactions. He has not provided evidence identifying what payments were made for the purposes of his business and what payments were made for personal reasons, despite the burden on him to provide satisfactory evidence. He has not identified the amount of his self-employment income in any way beyond a very limited description in his Witness Statement, to which we have given reduced weight.

86. Officer Olatoye has specifically asked Mr Shariff to provide annual profit and loss accounts for his business for the period 2011/2012 to 2016/2017 but these were not provided. Instead of assessing Mr Shariff's income on the basis of the receipts, Mr Olatoye has relied upon Mr Shariff's expenses as a fair basis to imply a corresponding income. He has not simply relied on the total expenditure, but has attempted to identify payments that could be attributable to a business, despite the lack of such attribution by Mr Shariff.

87. We are satisfied that in this case HMRC's approach was "fair". Other approaches could have validly been taken, for example starting with the evidence of receipts/credits and estimating a reasonable deduction for matters such as allowable expenses, but in fact that may well have produced a higher figure than that resulting from Mr Olatoye's approach.

88. Mr Ford is correct that the tax system does not tax the person on their expenses, but on their income. However, in view of the extraordinary lack of evidence provided by Mr Shariff, we are satisfied that the expenses formed a fair basis for Mr Olatoye's best judgement assessments of income. Mr Shariff has not provided evidence to show that his expenses were funded from savings or from other sources such as gifts or loans. On that basis, we are satisfied that it is reasonable to infer that the expenditure must have been funded from income. Such an approach inferring income on the basis of expenditure was approved in the case of *Johnson v. Scott (H M Inspector of Taxes)* 52 TC 383.

89. Neither bank statements for the periods prior to 2011/2012 nor evidence that the bank account was not operating have been provided by Mr Shariff. Mr Olatoye has therefore applied the presumption of continuity to extend the inferred income back to 2002/2003, applying RPI in so doing.

90. As explained above, case law makes clear that the onus is on Mr Shariff to rebut that presumption. For the reasons set out above we have reduced the weight given to Mr Shariff's Witness Statement and his oral evidence at the hearing. That evidence is therefore insufficient to rebut the presumption of continuity.

91. Indeed, the amounts of income resulting from the application of the presumption of continuity lead to a modest total income, in particular for the years up to 2007/2008 prior to the rental income from 468 Wilmslow Road, particularly given that Mr Shariff described to us how he was working as a well-paid computer consultant in the 1990s. He has provided no evidence to explain why his income reduced so dramatically in 2002, or how he managed on such a low income.

92. We therefore find as facts that:

- (1) Mr Shariff carried on business as a self-employed person in the Relevant Years;
- (2) The expenses identified by Mr Olatoye indicate corresponding amounts of income received by Mr Shariff as income from that self-employment;

(3) The presumption of continuity means that income from the self-employment should be treated as having arisen in the Relevant Years prior to 2011/12.

DISCUSSION

93. In essence, this appeal comes down to a matter of the extent of evidence provided by Mr Shariff. Where consistent evidence has been provided we have found in Mr Shariff's favour. Otherwise, the lack of evidence and inconsistencies in what has been provided have led us to find in HMRC's favour.

94. We have considered whether there is some element of double counting by virtue of the fact that the assessments take into account the deposits made into Mr Shariff's NatWest account and payments out of his RBS account. However, we are satisfied that this is not the case because the RBS accounts do not show transfers from the NatWest account and indeed it has not been claimed by Mr Shariff that any such double counting has arisen.

95. We are satisfied that Mr Olatoye has applied a reasonable and pragmatic approach to the estimation of Mr Shariff's income given the inconsistent and inadequate information with which he has been provided. For example, the Wilmslow Road property was advertised for £1473 in November 2016 but Mr Olatoye used the figure of £1200 told to him by Mr Shariff. Mr Olatoye has then made allowance on an estimated basis for expenses and empty periods.

96. Similarly, with barely any assistance from Mr Shariff or his advisers, Mr Olatoye has attempted to identify items of expenditure shown in Mr Shariff's RBS bank account which cannot be attributed to business expenses given that Mr Shariff says that he uses the bank account for business and personal expenses.

CONCLUSION

97. The appeal is partially allowed as follows:

(1) the appeal of the assessment for the year 2001/2002 is allowed and that assessment should be reduced to nil; and

(2) the assessment for the year 2015/2016 should be amended to reflect the fact that Mr Shariff did not receive the dividend of £24,444.

98. Otherwise, the assessments issued on 23 August 2018 for the tax years 2002/2003 – 2016/17 are confirmed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

99. 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.

**TRACEY BOWLER
TRIBUNAL JUDGE**

RELEASE DATE: 09 JULY 2021

Schedule

Amounts of income agreed at the hearing

Tax Year	18 Crossley Rd	468 Wilmslow Rd	MS2 Solutions Ltd dividends
2002/2003	£2579		
2003/2004	£2643		
2004/2005	£2727		
2005/2006	£2797		
2006/2007	£2923		
2007/2008	£3046	£11323	
2008/2009	£3110	£11191	
2009/2010	£3171	£11789	
2010/2011	£3336	£12,403	£11111
2011/2012	£3452	£12832	£11111
2012/2013	£3551	£13202	£14444
2013/2014	£3639	£13530	£10000
2014/2015	£3672	£13652	£12000
2015/2016	£3721	£13832	Nil
2016/2017	£3852	£14319	£10000