Appeal number: FTC/14/2010

[2010] UKUT 361 (TCC)

SELF ASSESSMENT — return claiming that taxpayer not resident in UK — discovery assessment — validity — TMA s 29 — correct construction — whether statutory requirements satisfied — yes — appeal dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

DEREK WILLIAM HANKINSON **Appellant**

- and -

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

Tribunal: Mr Justice Warren, President
Judge Colin Bishopp

Sitting in public in London on 19 & 20 July 2010

Robin Mathew QC, instructed by Cowgill Holloway, for the Appellant

Ingrid Simler QC and Akash Nawbatt, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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DECISION

1. This is an appeal by Mr Derek Hankinson from the decision of the First-tier Tribunal (Judge Avery Jones CBE and Judge Clark) ("the Tribunal"), released on 29 December 2009, by which they dismissed Mr Hankinson's appeal against a discovery assessment in respect of the year 1998-99. The assessment was made on 24 January 2005, in accordance, or purported accordance, with s 29 of the Taxes Management Act 1970 ("TMA"). It was for income tax and capital gains tax amounting in the aggregate to £30,003,607.65.

2. Before the Tribunal the issues were: (1) whether Mr Hankinson was resident or ordinarily resident in the United Kingdom, as the respondents maintained, or in the Netherlands, as he contended; (2) if the Tribunal's finding on the first issue made the point relevant, whether application of the double taxation agreement between the UK and the Netherlands had the result that the income and gains which were the subject of the assessment were properly taxable in the UK or in the Netherlands; and (3) whether the assessment was lawfully made. The calculation of the tax, should Mr Hankinson be liable to pay it at all, was undisputed. The Tribunal decided all of the issues before it against Mr Hankinson, and upheld the assessment. Mr Hankinson appeals to this tribunal only in respect of the last of the three issues.

3. Section 29 of TMA, as it was in force at the time and so far as it is relevant to this appeal, is as follows:

> "(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—
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> (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
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> (b) that an assessment to tax is or has become insufficient, or
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> (c) that any relief which has been given is or has become excessive,
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> 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) Where—
>
> (a) the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, and
>
> (b) the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,
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> the taxpayer shall not be assessed under that subsection in respect of the year of assessment there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

(3) Where the taxpayer has made and delivered a return under section 8 or 8A of this Act in respect of the relevant year of assessment, 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 is attributable to fraudulent or negligent conduct on the part of 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 of this Act in respect of the relevant year of assessment; or

(b) informed the taxpayer that he had completed his enquiries into that return,

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 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) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer, whether in pursuance of a notice under section 19A of this Act or otherwise; or

(d) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above—

(i) could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or

(ii) are notified in writing by the taxpayer to an officer of the Board.

(7) …

> (8) An objection to the making of an assessment under this section on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the assessment ….”

4. Most of the Tribunal’s findings of fact related to the first issue, and we do not need to recite or summarise them save to mention, in order that what follows may be easily understood, that it was necessary to determine how much of his time Mr Hankinson spent in the UK, the Netherlands and Barbados. The first relevant finding in respect of the return is at para 7(57) of the decision:

> “The Non-residence etc pages were completed to show that the Appellant was not resident and not ordinarily resident and that he did not intend to live outside the UK permanently. The form showed 56 days in the UK in the year, and the country of residence as the Netherlands. The additional information was ‘Employed abroad under a full time working contract of employment for the whole of the 1999 tax year.’ The additional information in the return for box 18.3 (total tax) was ‘Excluded income for non-resident. There is no additional charge to tax for the year ended 5 April 1999 as all income in the tax return is excluded income.’ The date of signing was 12 January 2000 and the receipt date was 31 January 2000.”

5. Further material findings appear at paras 73 and 74:

> “73. … There were no other relevant documents and there was no further information that could reasonably be expected to be inferred from the tax returns. No further information was available by the end of the enquiry window for the 1998-99 return on 31 January 2001.
>
> 74. By the time the discovery assessment was made on 24 January 2005 the officer had two ring binders of additional information including in particular the following: (a) a copy of the contract of employment and details of his remuneration; (b) schedules of visits to the UK; (c) departure times of flights; (d) boarding passes; (e) two schedules, presumably prepared by HMRC showing the number of whole days in Amsterdam between 23 February 1998 and 28 May 1999 amounting to a total of either 183 or 185 days (for the tax year 1998-99 the number is 146 or 148 days); (f) a schedule, presumably prepared by HMRC showing the maximum whole days spent in Amsterdam between 23 February 1998 and 21 December 1998 amounting to 199 days (for the tax year 1998-99 the number is 162 days); (g) particulars of the Appellant’s apartment in Dordrecht; (h) that the Appellant’s wife continued to live in the UK; and (i) the Appellant’s Dutch tax return for 1998. The flight details show the time he was in Barbados from 2 January to 28 May 1999, and there was information about how he was taken ill in Barbados.”

6. From those facts, the Tribunal concluded (as is not now controversial) that a “discovery” within the meaning of s 29(1) had been made. They went on to consider whether either or both of the two conditions referred to in sub-s (3) was fulfilled, and whether in consequence the impediment to the making of an assessment for which sub-s (3) provides was overcome. They dealt first with sub-s (5), and set out their finding of fact in respect of that condition at para 104:

> “Without the disclosure of these additional items of information, we find that on the basis of the Appellant’s 1998-99 return an officer could not reasonably have been expected, as at 31 January 2001 when the enquiry

> window closed, to have been aware of the insufficiency. There was no evidence of any information as to these matters having been provided by or on behalf of the Appellant between the submission of that return and the closure of the enquiry window."

7. That, they decided, was all that was necessary for the assessment to be valid. They went on nevertheless to consider whether the sub-s (4) condition was fulfilled, and again concluded that it was, Mr Hankinson having been, as they found, negligent in not making a full disclosure of the time he spent respectively in the UK, the Netherlands and Barbados: see para 109 of the decision. For completeness we should add that there was no suggestion that the taxpayer's conduct was fraudulent, and that it was not argued before us that the "prevailing practice" exception of sub-s (2) was of any relevance.

8. Mr Robin Mathew QC, for Mr Hankinson, did not seek to challenge the Tribunal's findings of fact, but argued that they were not sufficient to support their conclusion. Before the introduction of self-assessment, he said, s 29, as it then was, allowed an inspector to make an assessment for which there was little or even no evidence; it was, as Henderson J put it in *Revenue and Customs Commissioners v Household Estate Agents Ltd* [2008] STC 2045 at [47], an "unfettered right". The change effected by self-assessment, and reflected in the current version of s 29, was described by Park J in *Langham v Veltema* [2002] STC 1557 at [10]:

> "The self-assessment system was a significant change to the tax machinery. It imposed new burdens on taxpayers by requiring them to submit fuller tax returns than had previously been required (not that the earlier forms of returns were by any means short and simple), including in many cases the taxpayer's own calculation of the amount of tax payable by him: his 'self-assessment'. The new burdens were balanced by new protections for taxpayers who conscientiously complied with the system, in particular by new and tighter time limits on the power of the Revenue to make further tax assessments."

9. That passage was accepted as uncontroversial by the Court of Appeal on the appeal from Park J (see [2004] STC 544) and again by Henderson J in *Household Estate Agents*. Mr Mathew referred us also to the observation of Stanley Burnton J in *R (Johnson) v Branigan* [2006] EWHC 885 (Admin) at [15] that

> "The power [now] conferred by Section 29 is very substantially qualified. It is so qualified no doubt because Parliament considered that generally a taxpayer who has honestly provided a tax return under the self-assessment scheme should not be indefinitely liable to a demand for the payment of an amount of taxes beyond that which, by his return, he has disclosed is payable by him."

10. The strictness of the modern approach was also described by Moses LJ in *Tower MCashback LLP v Revenue and Customs Commissioners* [2010] STC 809 at [24]:

> "As I have already observed, apart from a closure notice, and the power to correct obvious errors or omissions, the only other method by which the Revenue can impose additional tax liabilities or recover excessive reliefs is under the new s 29. That confers a far more restricted power than that

> contained in the previous s 29. The power to make an assessment if an inspector discovers that tax which ought to have been assessed has not been assessed or an assessment to tax is insufficient or relief is excessive is now subject to the limitations contained in s 29(2) and (3) (s 29(1)). Section 29(2) prevents the Revenue making an assessment to remedy an error or mistake if the taxpayer has submitted a return in accordance with s 8 or s 8A and the error or mistake is in accordance with the practice generally prevailing when that return was made. Section 29(3) prevents the Revenue making a discovery assessment under s 29(1) unless at least one of two conditions is satisfied (s 29(3)). The prohibition applies unless the undercharge or excessive relief is attributable to fraudulent or negligent conduct (s 29(4)) or having regard to the information made available to him the inspector could not have been reasonably expected to be aware that the taxpayer was being undercharged or given excessive relief (s 29(5)). There are statutory limitations as to the time at which the sufficiency or otherwise of the information must be judged. These provisions underline the finality of the self-assessment, a finality which is underlined by strict statutory control of the circumstances in which the Revenue may impose additional tax liabilities by way of amendment to the taxpayer's return and assessment."

11. The protection which the current version of s 29 provides for taxpayers is effected by what is now, Mr Mathew said, a two-stage process: the officer must first decide whether a "discovery" within the meaning of sub-s (1) which he has made warrants the making of an assessment; and, second, he must then go on to consider whether either of the two conditions referred to in sub-s (3) is fulfilled. It is not enough that one or the other is in fact fulfilled; the Commissioners must show that the officer himself considered them before making the assessment. That was the only conclusion to be drawn from the use in sub-s (3) of the phrase "shall not be assessed": fulfilment of one or both of the conditions must be established before an assessment could be made. And it followed that they must be shown to have been fulfilled on the material available at the time the assessment was made; it was not permissible to justify the assessment by material which became available only later.

12. There was no evidence before the Tribunal that the assessing officer in this case had considered the conditions before he made the assessment, which was therefore fatally flawed. It was made only six days before the expiry of the time limit for making an assessment, and it was described by the assessing officer himself as a "protective assessment". An assessment was commonly made in such circumstances before self-assessment was introduced; now, an assessment of that kind offended the protections afforded to a taxpayer by the new s 29. In addition, despite the Tribunal's finding, it was clear that the assessment in this case was not made on the ground that the taxpayer was negligent. That possibility was mentioned for the first time only after the appeal had been brought. It was no more than an afterthought, and plainly not something in the assessing officer's mind when he decided to make the assessment. The Tribunal should not have considered the issue of negligence at all.

13. Both HMRC and the Tribunal, Mr Mathew continued, had misunderstood the purpose of the section and had adopted an approach which, if it were correct, would make the safeguards in s 29 worthless. At para 94 of the decision they

referred to the taxpayer's ability to challenge a discovery assessment by way of an appeal, as sub-s (8) requires, and at para 95 they said

> "The ability to challenge the assessment in this way provides the safeguards referred to by Park J in *Langham v Veltema* [10]-[15], as analysed by Henderson J in *Household Estate Agents* at [29]. The discussion of burden of proof in the latter case at [43]-[50] implies that the raising of objections to the making of a discovery assessment is a process to be carried out after the assessment has been made, rather than imposing on the officer who makes the assessment the task of examining potential objections."

14. That passage, he said, showed that the Tribunal had fundamentally misunderstood the scheme of the modern version of s 29. That was apparent from *R (Pattullo) v Revenue and Customs Commissioners* [2010] STC 107, in which Lord Ballantyne in the Outer House of the Court of Session, dealing with an application for judicial review to quash a discovery notice issued under s 20 of TMA, and having adopted the observations of Park J and of Stanley Burnton J set out above, concluded that he first needed to consider whether an assessment might validly be made. At [102] he said

> "In my opinion the test has to be a two-stage one to fit in with the underlying purpose of the scheme [of s 29]. The officer has to discover something new otherwise the underlying purpose of early finality of assessment would be defeated. His assertion of the newly discovered insufficiency is then tested against the adequacy of the disclosure by the taxpayer. It is only if the taxpayer has made a return which has clearly alerted the officer to the insufficiency that it will be considered adequate and will shut out a s 29 discovery assessment."

15. That comment was consistent only with the proposition that it is the officer who has to undertake the two-stage process. The Tribunal had instead construed the section as if it provided that the taxpayer "may be assessed if it appears to the officer making the discovery that one of the two conditions might be fulfilled", wrongly placing the burden on a taxpayer who wished to mount a challenge to do so by way of appeal (that being the only means of challenge, as sub-s (8) makes clear). The section itself shows, again by its use of the phrase "shall not be made", that the burden is on the Commissioners to demonstrate that one or the other condition was fulfilled when the assessment was made, and not upon the taxpayer to show the converse.

16. In addition, despite the use of the word "may" in sub-s (1), the authorities showed that if an officer concluded that a discovery had been made and at least one of the conditions was fulfilled, he was required to assess, unless the Commissioners were exceptionally exercising their management powers and discretion (now conferred by s 5(1) and (2) of the Commissioners for Revenue and Customs Act 2005) in order to make a positive decision not to do so. In other words, sub-s (1) does not confer a discretion on an officer to make an assessment, since there is no such discretion—the officer's duty is to assess tax which is due—but an obligation to assess the tax provided the conditions are satisfied. For those propositions Mr Mathew relied by analogy on the comments of Lord Hoffmann in *R v Inland Revenue Commissioners, ex p Newfields Developments Ltd* [2001] STC 901 at [20]:

> "… the word ['may'] appears in an impersonal construction—'there may also be attributed'—and I think that its force is not facultative but conditional, as in 'VAT may be chargeable'. The question of whether VAT is chargeable does not depend upon anyone's choice but on whether the conditions for charging VAT are satisfied: are the goods or services subject to VAT, is the trader registrable and so on."

17. If an officer making a discovery is obliged to assess it is, Mr Mathew said, all the more clear that before doing so he must conclude on reasonable grounds that the impediments to an assessment are not in place. The authorities show that the introduction of self-assessment has rendered it impossible for HMRC officers to make speculative, or protective, assessments. The Tribunal had applied the wrong test and their conclusion could not stand.

18. For the respondents, Miss Ingrid Simler QC, leading Mr Akash Nawbatt, argued that there was no warrant for interpreting s 29 in the manner urged on us by Mr Mathew. As a first stage, an officer making an assessment must be satisfied that he has discovered an insufficiency of tax. Only if he was so satisfied did sub-s (3), and with it sub-ss (4) and (5), come into play. The purpose of sub-s (3) was to protect the taxpayer who had made a complete and honest disclosure. Though the assessing officer would no doubt normally consider whether the taxpayer was protected by sub-s (3), there was nothing in the section which required him to do so, nor could any such requirement be inferred. Consequently his failure to do so, even if established, was not fatal to an assessment. The conditions could be tested on appeal, as they had been tested in this case. The proper approach was described by Auld LJ in *Langham v Veltema* [2004] STC 544 at [33]:

> "… it is plain from the wording of the statutory test in s 29(5) that it is concerned, not with what an Inspector could reasonably have been expected to do, but with what he could have been reasonably expected to be aware of. It speaks of an Inspector's objective awareness, from the information made available to him by the taxpayer, of 'the situation' mentioned in s 29(1), namely an actual insufficiency in the assessment, not an objective awareness that he should do something to check whether there is such an insufficiency …."

19. Those comments were quite contrary to Mr Mathew's argument. It was plain that the test was objective, being referable to what the officer could reasonably have known from the material described in sub-s (6). Even the fact that the officer might have other information was irrelevant. At [36] Auld LJ added that

> "… the key to the scheme is that the Inspector is to be shut out from making a discovery assessment under the section only when the taxpayer or his representatives, in making an honest and accurate return or in responding to a s 9A enquiry, have clearly alerted him to the insufficiency of the assessment, not where the Inspector may have some other information, not normally part of his checks, that may put the sufficiency of the assessment in question. If that other information when seen by the Inspector does cause him to question the assessment, he has the option of making a s 9A enquiry before the discovery provisions of s 29(5) come into play. That scheme is clearly supported by the express identification in s 29(6) only of categories of information emanating from the taxpayer."

20. Although s 29 had been amended following the introduction of self-assessment, it was not a section whose scope was limited to self-assessment returns; and while there were differences between it and its predecessor, discovery assessments were essentially the same under both the old and the new legislative regimes. Subsections (4) and (5), in particular, are not new, but are the statutory embodiment of previous practice and judicial authority, for example *Cenlon Finance Co Ltd v Ellwood* (1962) 40 TC 176 and *Scorer v Olin Energy Systems Ltd* [1985] STC 218. A taxpayer is indeed entitled to finality at the end of the enquiry window, but only if his return is honest and complete, and he has not been negligent or fraudulent. That is precisely what s 29 provides.

21. There was no substance to Mr Mathew's argument that the Commissioners were required to assess if they discovered an insufficiency. That was made clear by Scott J in *Vickerman v Mason's Personal Representatives* [1984] 2 All ER 1 in which he said, of the similarly worded power to assess contained in s 30(3) of TMA, that "the power to make an additional assessment is permissive, not mandatory". Section 29(1) should be construed in the same way. There was also no substance in Mr Mathew's argument that the assessment was described as a protective assessment; that was not a term of art, either before or after self-assessment was introduced, and the use of the phrase was no more than an indication that the assessment was made in order that the overall six-year time limit was not breached. The only pre-condition for the making of an assessment was that the officer had discovered an insufficiency. There was no dispute in this case that a discovery had been made.

22. The course open to a taxpayer who wished to dispute a discovery assessment made in accordance with s 29 on the ground that neither sub-s (4) nor sub-s (5) was fulfilled was made clear by sub-s (8): it had to be by way of appeal. The burden of establishing that the conditions were fulfilled rested on the Commissioners, as Miss Simler accepted, but the fact that the burden was on the Commissioners was the safeguard to which the taxpayer was entitled. It was plain from the decision that they had discharged that burden, and it necessarily followed that the Tribunal were obliged to dismiss the appeal.

Conclusions

23. In our view, s 29 is not concerned with the subjective view of the assessing officer (or the Board) about fulfilment of either or both of the conditions specified in sub-ss (4) and (5). The officer must, of course, have made a discovery. Unless he has done so, he cannot raise an assessment; but subject to that, if he does raise an assessment its validity is to be tested by reference to those two conditions. The phrase "he shall not be assessed", as it is used in s 29, means "he shall not be validly assessed". Accordingly, if one or both of the conditions is fulfilled, the assessment is valid; if neither of them is fulfilled, the assessment is invalid. The subjective opinions of the assessing officer or the Board about fulfilment of the conditions have no part to play in the operation of s 29. We consider this to be the only conclusion consistent with sub-s (8): the subject matter of an appeal is whether or not either of the conditions is fulfilled, without any form of qualification. If neither is fulfilled, the assessment should not have been made and will be invalid. And that is so whether the officer had formed the view that the

conditions were fulfilled (and turns out to be wrong) or whether he has not considered them at all. The protection for the taxpayer in either case is his right of appeal under sub-s (8).

24. We do not consider that our conclusion in any way undermines the protection for a taxpayer on which Mr Mathew relied, nor that it conflicts with the authorities to which he referred. The purpose of the new s 29 is to protect the taxpayer who has made an honest, complete and timely return from a late assessment. We agree with Miss Simler that the need to demonstrate fulfilment of one or both of the objective conditions found in sub-ss (4) and (5), far from undermining the protection, is the means by which it is directed at those for whom it is intended.

25. We do not accept Mr Mathew's argument that the phrase "may … make an assessment", as it is used in sub-s (1), is to be interpreted as "must make an assessment" since there is no reason to suppose the draftsman used the word "may" in anything other than its ordinary permissive sense. The observation of Scott J to which we have referred is directly in point, and we respectfully agree with it. The analogy with Lord Hoffmann's observation in *ex p Newfields Developments* which Mr Mathew sought to identify is not, in our view, valid: the phrase under consideration and its context were quite different.

26. In addition, the approach advocated by Mr Mathew gives rise to substantial conceptual problems. If he is right, an officer who has made a discovery is obliged to raise an assessment if one or both of the conditions is fulfilled. As we have explained, the conditions are to be viewed objectively. Accordingly, the officer's supposed duty to raise an assessment is one which depends not on his own assessment of whether the conditions are fulfilled, but on whether they are in fact fulfilled. Mr Mathew therefore has to gloss the provisions by saying that the officer needs to consider the conditions and if he considers that they are fulfilled, he must raise an assessment, but if he considers they are not fulfilled he cannot do so. But this is to read the apparent mandatory duty to raise an assessment as qualified by the officer's subjective view. Suppose, then, that the officer considers that one or both of the conditions is fulfilled: he is, if Mr Mathew is right, under a duty to raise an assessment. But if he, the officer, is wrong, the assessment should not have been raised. Accordingly, he appears to be under a duty to raise an assessment which sub-s (3) provides is not to be made. Similarly, the officer might conclude that there may have been negligence on the part of the taxpayer, but his conclusion is very much on-balance. Is it really the case that he must raise an assessment if he thinks the chance of success is slightly over 50% but is not permitted to do so if he thinks the chance of success is slightly under 50%? We do not think so. We consider that the officer can raise an assessment once he has made a discovery: but HMRC have to accept the burden of proving, on an appeal by the taxpayer, that one or both of the conditions is fulfilled.

27. It is unrealistic, in any case, to think that the result, if we are correct, leads to a risk that an officer may simply raise an assessment once he has made a discovery without considering the two conditions. It is hardly credible that an officer dealing with assessments under s 29 will be unaware of the requirements imposed by sub-ss (3), (4) and (5) or will fail, in fact, to consider the two

conditions. It seems to us highly improbable that the officer in the present case failed to consider the conditions at all but that is not a matter for us. If it were critical to our decision whether the officer did or did not consider the conditions, we would remit the case to the Tribunal to make a further finding of fact—which they may be able to do on the evidence which they already have, making such inferences as they consider appropriate. In the light of our conclusions, it is not necessary for us to take that course.

28. We add this. It seems to us that on an appeal under sub-s (8), the tribunal will be entitled to take into account all the evidence then available in deciding whether one or other of the conditions was satisfied at the time of the assessment. Thus if an assessment is made because the officer has made a discovery and also considers that the taxpayer was negligent, but later discovers clear evidence of fraud, there is no reason why reliance should not be placed on that clear evidence in resisting an appeal. This emphasises the objective nature of the tests in subsection (4) and (5) and demonstrates again that what is important is whether at least one of the conditions is fulfilled and not whether the officer thinks that it is.

29. The Tribunal concluded that a discovery had been made and that the conditions were both fulfilled. Those were findings of fact which are not susceptible of challenge before this tribunal. In our judgment the Tribunal came to the right conclusion for the right reasons and the appeal must be dismissed.

Mr Justice Warren

President

Colin Bishopp

Upper Tribunal Judge

Release Date:

30 September 2010