

INCOME TAX - assessments and further assessments - some assessments made outside the ordinary time limit - whether in respect of the out of time assessments there was fraudulent or negligent conduct -yes - whether the assessments and further assessments should be confirmed, reduced or increased - appeals dismissed - TMA 1970 - Ss 29, 34, 36 and 50

PENALTY - for failure to comply with directions of Special Commissioners - determined at £250 - Special Commissioners (Jurisdiction and Procedure) Regulations 1994 SI 1994 No. 1811 Reg 24

THE SPECIAL COMMISSIONERS

SALIM MASHOOD (1)
M MASHOOD & CO (2)
H MASHOOD & CO (3)
S MASHOOD MANAGEMENT LIMITED (4)
S MASHOOD ACCOUNTANT LIMITED (5)
S MASHOOD INSURANCE AGENCY LIMITED (6) - Appellants

- and -

MARTIN WHITEHEAD
(H M INSPECTOR OF TAXES)
Respondent

SPECIAL COMMISSIONERS : DR NUALA BRICE
T H K EVERETT

Sitting in London on 11 December 2001

Mr Salim Mashood for the Appellants (for part of the hearing)

The Respondent in person

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DECISION
The appeals

1. Mr Salim Mashood ATII, FAAI, FAPA (Mr Mashood) appeals against:

(1) further assessments issued on 19 July 1996 for the following years in the following amounts:

1976/77 £ 5,000
1977/78 £ 5,000
1978/79 £ 5,000
1979/80 £ 5,000
1980/81 £ 5,000
1981/82 £10,000
1982/83 £10,000
1983/84 £20,000
1984/85 £25,000
1985/86 £25,000

(2) further assessments issued on 25 July 1990 for the following years in the following amounts:

1986/87 £15,000
1987/88 £25,000

(3) estimated assessments for the following years in the following amounts and issued on the following dates:

1988/89 £ 80,000 2 November 1988
1989/90 £100,000 1 November 1989
1990/91 £100,000 5 November 1990
1991/92 £100,000 5 November 1991
1992/93 £150,000 29 October 1992
1993/94 £170,000 8 November 1993

2. Messrs M Mashood & Co appeals against estimated assessments issued on 1 June 1993 for the following years in the following amounts:

1991/92 £150,000
1992/93 £150,000

3. Messrs H Mashood & Co appeals against estimated assessments issued on 1 June 1993 for the following years in the following amounts:

1991/92 £150,000
1992/93 £150,000

4. S Mashood Management Limited appeals against an estimated assessment issued on 3 July 1996 covering the period from 7 November 1994 to 6 November 1995 in the sum of £50,000.

5. S Mashood Accountant Limited appeals against an estimated assessment issued on 3 July 1996 covering the period from 7 November 1994 to 6 November 1995 in the sum of £50,000

6. S Mashood Insurance Agency Limited appeals against an estimated assessment dated 3 July 1996 for the period from 1 February 1994 to 31 January 1995 in the amount of £50,000.

7. On 21 March 2001 the Presiding Special Commissioner gave a direction under the provisions of Regulation 7 of the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 SI 1994 No. 1811 (the Regulations) that all the appeals be heard at the same time and by the same tribunal.

The legislation

8. The legislation giving power to issue assessments and further assessments is contained in section 29 of the Taxes Management Act 1970 (the 1970 Act) which provides that if it appears to the inspector that there are any profits in respect of which tax is chargeable and which have not been included in a return, or if the inspector is dissatisfied with any return, he may make an assessment to tax to the best of his judgment. Section 29 also gives the inspector power to make further assessments if he discovers that any profits which ought to have been

assessed to tax have not been assessed, or that an assessment to tax is or has become insufficient.

9. Section 34 of the 1970 Act provides that an assessment to tax may be made at any time not later than six years after the end of the chargeable period to which the assessment relates. Thus the ordinary time limit for making an assessment is six years but section 36 provides that this may be increased to twenty years for the purpose of making good to the Crown a loss of tax attributable to fraudulent or negligent conduct.

10. Section 50 gives the appeal Commissioners power to confirm, reduce or increase an assessment.

The issues

11. The assessments against Mr Mashood were issued because the Inland Revenue were of the view that he had knowingly under-stated his income as an accountant and tax practitioner for the periods up to and including 5 April 1991 and because he had failed to render accounts for the periods after 5 April 1992. The assessments against the other five Appellants were estimated assessments.

12. All the assessments were issued within the ordinary time limit of six years save for those issued to Mr Mashood on 19 July 1996 for the years from 1976/77 to 1985/86. These were issued under the provisions of section 36 and in respect of these assessments the Inland Revenue alleged that there had been a loss of tax attributable to fraudulent or negligent conduct.

13. Thus the issues for determination in the appeal were:

(1) whether, in respect of the out of time assessments, there had been a loss of tax attributable to fraudulent or negligent conduct; and

(2) whether, in respect of all the assessments, the amount assessed should be confirmed, reduced or increased.

The evidence

14. Six bundles of documents were produced by the Respondent being (1) Correspondence No 1; (2) Correspondence No 2; (3) Accounts; (4) Tax returns; (5) Partnership; and (6) Divorce proceedings. Also produced were six statements of facts, one in respect of each appeal.

15. From the evidence before us we find the following facts.

The facts relating to the appeal of Mr Mashood

Mr Mashood

16. Mr Mashood was born on 15 June 1942 and was, at the date of the hearing of the appeal, 59 years old. He is an Associate of the Institute of Taxation (ATII), a Fellow of the Institute of Administrative Accountants (FAAI), and a Fellow of the Association of Public Accountants (FAPA). Mr Mashood trained as a chartered accountant but did not complete the examinations and so did not qualify as a chartered accountant.

17. Since 1975 Mr Mashood has practised on his own account under the name of S Mashood & Co accountants, auditors and income tax consultants (the firm) from premises at 21, Hendon Lane, Finchley Central, London.

18. In March 1990 Mr Mashood was divorced in the Barnet County Court and his financial affairs were considered within the context of a settlement for his wife and children. During the course of those proceedings the court indicated that the Inland Revenue should investigate certain dealings.

1988 - the estimated assessments for 1986/87 and 1987/88

19. The firm's accounts for the years ending on 5 April 1986 and 5 April 1987 were not submitted in time. On 23 March 1988 an estimated assessment for 1986/87 of £35,000 was confirmed by the General Commissioners. On 13 September 1988 an estimated assessment for 1987/88 of £40,000 was confirmed by the General Commissioners.

20. On 6 March 1990 the firm submitted its accounts for the period from 6 April 1987 to 31 May 1988 and on 7 March 1990 the firm submitted its accounts for the period from 1 June 1988 to 5 April 1989.

21. It was not until 18 September 1990 that the firm submitted its accounts for the two years ending on 5 April 1987. These showed profits (for those two years) of £175,102.66. It thus became clear that the estimated assessments made in 1988 were inadequate as declared profits for the two-year period exceeded the estimated assessments by about £100,000.

1990 - the Inspector's investigation

22. The Inspector, therefore, decided to investigate the accounts for the two-year period ending on 5 April 1987 and wrote to the firm on 20 September 1990 asking for certain information. The information requested included details of the records from which the accounts were prepared and details of the divorce proceedings in the Barnet County Court relating to maintenance payable by Mr Mashood to his wife and children.

23. The information requested was not supplied. Accordingly, in December 1990 the General Commissioners issued precepts requiring the production of the relevant records.

24. The Inspector reviewed these records and formed the view that some work done had either been invoiced late or not at all and that some monies had been received from clients to whom no invoices had been rendered. As Mr Mashood was a practising accountant the investigation was, on 28 March 1991, passed to the Accountancy Unit (now part of the Special Compliance Office).

1991-1996 - The investigation by the Accountancy Unit

25. The Accountancy Unit reviewed the firm's records for the two years ending on 5 April 1987. These indicated that £561,937 had been banked in the period but that sales in the accounts amounted to only £223,745. After due allowance was given for non-business receipts it appeared that there were receipts of about £100,000 which were unexplained. Also, the records showed that insurance commissions of £24,996 had been received but only £2,328 was shown in the accounts. Further, the review revealed acquisitions of one property, and expenses

paid in respect of another property, neither of which properties were known to the Inland Revenue.

26. The Accountancy Unit also obtained information about Mr Mashood's divorce proceedings in 1990. During those proceedings it had become clear that Mr Mashood had accumulated substantial capital. There were a number of properties, a number of bank and building society accounts, and offshore assets including a school, a flat in Karachi and a Spanish Villa. Total funds amounted to about one million pounds. A schedule of expenses submitted to the Court for the three years ending on 31 January 1989 showed that total expenditure in those three years was £428,240 which averaged £142,746 each year. The Inland Revenue calculated, from the accounts supplied to them, that an average of £43,495 was available each year from the profits of the firm for expenditure. The bank interest declared had not increased sufficiently to account for the balance of expenditure and there was no explanation as to the derivation of the funds required to sustain a level of expenditure of £142,746 each year. These investigations confirmed the previous view that professional fees had been understated by about £100,000.

27. A meeting was provisionally arranged to take place on 9 January 1992 between the Inland Revenue and Mr Mashood. This meeting was however cancelled at the request of both parties. The Inland Revenue wanted to do more work and Mr Mashood was not feeling well. A meeting was instead suggested for 11 February 1992 at Mr Mashood's offices. That meeting however did not take place. The Inland Revenue visited Mr Mashood's offices on 3 March 1992 when they saw Mr Mashood's brother and suggested that Mr Mashood might wish to take professional advice. The Inland Revenue wrote to Mr Mashood on 4 March 1992. Thereafter various requests for meetings were made but to no avail.

28. On 14 September 1992 Mr Mashood submitted his returns for the years 1990/91 and 1991/92 and on 15 September 1992 the firm submitted its accounts for the years ending on 5 April 1990 and 5 April 1991. These gave details of certain bank and building society accounts.

29. On 27 October 1992 the Inland Revenue applied to the General Commissioners of Finchley District for leave to serve notices under section 20(3) of the Taxes Management Act 1970 on four institutions, namely: the National Westminster Bank; the Midland Bank; Lloyds Bank; and Barclays Bank. Leave was granted by the General Commissioners. In addition information was sought from the Abbey National Building Society and the Nationwide Building Society. Other matters were also investigated including Mr Mashood's acquisition of certain properties.

30. By the Autumn of 1994 the information from the banks and building societies, and the information about the properties, had been received and collated and the Inland Revenue desired a meeting with Mr Mashood. On 21 November 1994 the Inland Revenue wrote to Mr Mashood at the firm's address. The letter recorded that the Inland Revenue had attempted to contact Mr Mashood on several occasions, and had visited his offices, without success; Mr Mashood had not taken the opportunity of discussing his accounts and returns with the Inland Revenue. Enclosed with the letter was a schedule, referred to as the "without prejudice schedule", which compared the income amounts at the banks and building societies with the income amounts shown in the accounts. A meeting on 8 December 1994 was suggested.

31. The "without prejudice schedule" itemised seven differently numbered accounts, one at the National Westminster Bank, one at Barclays Bank, and five

at the Abbey National Building Society. It showed the amount in each account for the seven years from that ending on 5 April 1986 to that ending on 5 April 1991. Some amounts were not known (for example the Abbey National Building Society had not supplied figures for 1990/91) and some amounts were estimated. The total amounts in all the accounts for the seven years was £1,279,026; the total amounts shown in the submitted accounts for all the years was £710,190; and thus the potential understatements of income for all the years was £568,836. For the individual years the calculated understatements were:

Period ending on Amount

5 April 1986)

5 April 1987) £178,798

31 May 1988 £261,765

5 April 1989 £ 84,211

5 April 1990 £ 44,062

Total £568,836

32. On 7 December 1994 Mr Mashood replied to the letter of 21 November and asked for a comprehensive schedule of the workings showing how the figures in the "without prejudice schedule" had been arrived at. The Inland Revenue replied on 8 December to say that the information from which the schedule was prepared was based on Mr Mashood's bank and building society accounts of which he would have full details. It was accepted that the Inland Revenue had limited access to the evidence necessary to identify the source of all the credits and for that reason a meeting was again requested to take place on 21 December 1994. The letter of 8 December 1994 stated that the Inland Revenue were happy to grant Mr Mashood access to their relevant working papers. Mr Mashood replied to the letter of 8 December on 19 December in exactly the same terms as his letter of 7 December (to which he had, of course, already received a reply).

33. Mr Mashood did not meet the Inland Revenue on 21 December 1994 nor indeed at any time and did not enter into any meaningful correspondence with them.

1996 - The investigation by the Special Compliance Office

34. In the Spring of 1996 Mr Mashood's affairs were referred to the Hansard Group in the Special Compliance Office; the purpose of the Hansard Group is to investigate cases of suspected serious tax fraud. In view of the level of possible understatements of income; of the level of the substantial property acquisitions; of the fact that Mr Mashood was a tax practitioner; and of the comments of the Registrar of Barnet County Court; a decision was made that the investigation should proceed under the provisions of Code of Practice 9.

35. Accordingly, on 21 June 1996 the Special Compliance Office wrote to Mr Mashood and sent him a copy of the booklet entitled "Special Compliance Office Investigations : Cases of suspected serious fraud - Code of Practice 9" and also a copy of the leaflet entitled "You and the Inland Revenue - Personal Taxpayer Series IR 120". The letter said that the writer would attend Mr Mashood's offices on 2 July 1996 for a meeting and that he should be present. Mr Mashood replied on 27 June to say that he would not be present at the meeting and requested a reply to his letter of 19 December 1994. (It will be recalled that the letter of 19 December 1994 asked for a reply to the letter of 7 December 1994 which reply had been sent on 8 December.)

36. Two representatives of the Inland Revenue attended Mr Mashood's offices on 2 July 1996 and waited for over forty-five minutes but he would not see them. The Inland Revenue wrote to Mr Mashood on the same day to say that if he did not get in touch with them by 5.00 pm on 5 July 1996 proceedings would commence on a formal basis. Mr Mashood replied on 4 July to say that he wanted a comprehensive list of queries in writing and also a full reply to his letter of 19 December 1994. The Inland Revenue replied on 5 July and sent to Mr Mashood the Hansard Extract and a list of questions relating to the previous twenty years; replies were requested within fourteen days. Mr Mashood replied on 18 July; he acknowledged receipt of the letter of 5 July but said that he wanted a list of questions in writing (even though the questions in writing had been sent on 5 July) and a full reply to his letter of 19 December 1994.

37. In view of the lack of co-operation by Mr Mashood, on 19 July 1996 the out of time assessments for the years 1976/77 to 1985/86 were made and appealed on the grounds that they were estimated. These out of time assessments are in issue in these appeals.

The facts relating to the appeal of Messrs M Mashood & Co

38. On 1 April 1993 M Mashood & Co, accountants of 21 Hendon Lane, Finchley wrote to the Inspector of Taxes saying that they had commenced trading on 6 April 1991. The partners were Mr S Mashood, Mr F H Khan and Mrs Z Fatani. On 6 May 1993 the Inspector replied and asked for details about Mr Khan and Mrs Fatani. On 1 June 1993 estimated assessments were issued for 1991/92 in the sum of £150,000 and for 1992/93 in the sum of £150,000. These were appealed on 21 June 1993 and are in issue in these appeals.

39. On 21 October 1993 S Mashood & Co submitted accounts for M Mashood & Co showing profits of £34,369 for 1991/92 and of £34,369 for 1992/93. Profits were apportioned as to 96% to Mr Mashood, 4% to Mr Khan and 0% to Mrs Fatani. The Inspector of Taxes requested further details of the partnership but no reply was received. The case was listed for hearing before the General Commissioners on 25 January 1994 and Mr Mashood attended. It was stated that there was an oral agreement between the partners and that Mr Khan played a small part in the business. The source of sales was accountancy fees all invoiced in the name of the partnership. Further information was later requested from which it emerged that the partnership did not maintain a bank account and that no capital had been introduced into the business. The partnership fees were received by cheque and were deposited in an Abbey National Building Society in the name of Mr Mashood.

40. On 21 March 1995 the Inland Revenue wrote to S Mashood & Co to say that, on the information they had received, they were unable to accept that the partnership of M Mashood & Co had ever existed. There was no documentary evidence of establishment of the partnership; Mr Khan and Mrs Fatani had no recent employment history and no recent work experience and there was no commercial reason to support the establishment of a partnership; Mr Khan and Mrs Fatani did not appear to have contributed in any way to the partnership; none of the partners had put any capital into the partnership; there was no evidence of any receipt of income by the partners; the sole account used was in the name of Mr Mashood; there was no evidence of drawings by the other partners; and it appeared that the clients of the alleged partnership were in fact clients of S Mashood & Co.

41. On 19 September 1995 Mr Mashood, for S Mashood & Co, replied at length to the letter of 21 March. He relied upon section 1(1) of the Partnership Act 1890

which defined a partnership as the relation which subsisted between persons carrying on a business with a view to profit. He also relied upon the evidence of the invoices delivered by M Mashood & Co. He said that the income of the partnership was not put into the Abbey National account, but only the drawings of the partners. He did not say where the income of the partnership was lodged. He said that M Mashood & Co did not have any clients but did work on a piecemeal basis.

42. The Inland Revenue analyzed invoices delivered to seven clients by M Mashood & Co in 1991 and 1992. These invoices were on letter heading showing the name of M Mashood and Co and the names of the three partners. The names of the clients were compared with the Inland Revenue records for those seven clients from which it appeared that all the clients were existing clients of S Mashood & Co. We give two examples.

43. On 2 January 1992 S Mashood & Co submitted to the Inland Revenue accounts for Client A. The profit and loss account showed an amount for accountancy fees of £611. On 2 January 1992 M Mashood & Co submitted a fee note to Client A for £611; there was no mention of value added tax.

44. On 2 January 1992 S Mashood & Co submitted to the Inland Revenue the accounts of Client B. The profit and loss account included accountancy fees of £499 and was signed by S Mashood & Co. On 10 April 1991 M Mashood & Co sent a fee note to Client B for fees of £499 for the preparation of accounts; there was no mention of value added tax.

45. The profit and loss account for M Mashood & Co for the period from the date of commencement on 6 April 1991 to 5 April 1992 showed turnover of £34,785. The value added tax registration limit was £35,000.

The facts relating to the appeal of Messrs H Mashood & Co

46. On 2 April 1993 H Mashood & Co accountants of 21, Hendon Lane, Finchley wrote to the Inspector of Taxes saying that it had commenced trading on 6 April 1991 and that the partners were Mr Mashood and Mr Khan. Estimated assessments were issued on 1 June 1993 for 1991/92 and 1992/93 each in the sum of £150,000. They were appealed on 21 June 1993 and are in issue in these appeals.

47. On 26 October 1993 S Mashood & Co submitted first year accounts for H Mashood & Co showing profits of £34,217 for each of the years 1991/92 and 1992/93. Profits were apportioned as to 96% to Mr Mashood and as to 4% to Mr Khan. Correspondence followed on the lines of that described for M Mashood & Co. This included a letter from the Inland Revenue of 21 March 1995 and a lengthy reply from S Mashood & Co of 19 September 1995 again very similar to that sent in connection with M Mashood & Co.

48. The Inland Revenue analyzed invoices delivered to eleven clients of H Mashood & Co in 1991 and 1992 and compared these with the Inland Revenue records for those eleven clients. From this it appeared that all the clients were existing clients of S Mashood & Co.

49. For example, the accounts for Client C for the year ending on 13 April 1989 were submitted to the Inland Revenue on 16 July 1992 by S Mashood & Co. However, Client C was sent an invoice on 30 April 1991 by H Mashood & Co for

the preparation of the accounts for the year ending on 13 April 1989; the fee was £752 and no value added tax was shown.

50. The profit and loss account for H Mashood & Co for the period from the date of commencement on 6 April 1991 to 5 April 1992 showed turnover of £34,633. The value added tax registration limit was £35,000.

The facts relating to the appeal of S Mashood Management Limited

51. S Mashood Management Limited was incorporated on 7 November 1994. The registered address was 21 Hendon Lane Finchley. There were 100 issued shares of which Mr Mashood held 99 and Mr Richard Mashood held 1. Mr Mashood was the sole director.

52. The Inspector of Taxes was notified of the existence of this company on 30 March 1995 and on 3 July 1996 he issued an estimated assessment for the period from 7 November 1994 to 6 November 1995 in the amount of £50,000. The assessment was appealed on 24 July 1996 and is in issue in these appeals.

53. On 17 September 1996 Messrs S Mashood submitted first year accounts for the company for the period 7 November 1994 to 31 December 1995. Taxable profits returned were:

7 November 1994 to 6 November 1995 £36,969
7 November 1995 to 31 December 1995 £ 9,242

£46,211

54. The accounts showed that an interim dividend of £31,800 had been paid.

The facts relating to the appeal of S Mashood Accountant Limited

55. S Mashood Accountant Limited was incorporated on 7 November 1994. The registered address was 21 Hendon Lane Finchley. There were 100 issued shares of which Mr Mashood held 98, Mr Richard Mashood held 1 and Mr Farid Mashood held one. Mr Mashood was the sole director.

56. The Inspector of Taxes was notified of the existence of this company on 12 April 1995 and on 3 July 1996 he issued an estimated assessment for the period from 7 November 1994 to 6 November 1995 in the amount of £50,000. The assessment was appealed on 24 July 1996 and is in issue in these appeals.

57. On 17 September 1996 Messrs S Mashood submitted first year accounts for the company for the period 7 November 1994 to 31 December 1995. Taxable profits returned were:

7 November 1994 to 6 November 1995 £38,328
7 November 1995 to 31 December 1995 £ 5,776

£44,104

58. The accounts showed that an interim dividend of £32,900 had been paid.

The facts relating to the appeal of S Mashood Insurance Agency Limited

59. S Mashood Insurance Agency Limited was incorporated on 22 August 1972 and commenced trading on the same date. There were 1000 issued shares of which Mr Mashood held 999 and Mr Farid Mashood held 1. Mr Mashood was the sole director.

60. On 17 May 1996 Messrs S Mashood submitted accounts for the period from 1 February 1994 to 21 July 1995. Profits shown were:

1 February 1994 to 31 January 1995 £10,540

1 February 1995 to 21 July 1995 £ 4,938

£15,478

61. The accounts also showed that a dividend of £11,000 had been paid in the accounting period from 1 February 1994 to 21 July 1995.

62. On 3 July 1996 the Inland Revenue issued an estimated assessment for the period from 1 February 1994 to 31 January 1995 in the amount of £50,000. The assessment was appealed on 24 July 1996 and is in issue in these appeals.

The facts relating to all the appeals

63. Apart from the accounts submitted by the two partnerships, none of the Appellants has submitted any accounts of any business since 5 April 1991 and no self-assessments have been made. Although in our findings of facts we have mentioned some relevant hearings before the General Commissioners there were also a number of other hearings before the General Commissioners.

The facts relating to the progress of the appeals

64. On 7 January 1997 the Special Commissioners were informed about the appeals and there was then some delay while the appeals were formally transferred from the General Commissioners. In October 1998 the parties were asked for their dates to avoid for a preliminary hearing. Mr Mashood had instructed solicitors who wrote to say that he had a number of medical problems including diabetes, cataracts and a possible heart condition. On 4 December 1998 Mr Mashood telephoned to say that he could not give dates to avoid for the preliminary hearing as he might have to have an operation on his eyes in January 1999 and he also had an appointment at the heart hospital as well. By letter of 3 February 1999 he was asked for specific dates but did not reply. On 19 May 1999 he was asked for written evidence confirming his condition, the prognosis, and the reasons why it was preventing his attendance at the tribunal. In reply Mr Mashood sent three letters from Dr A R Daitz. One was dated 30 October 1998 and said that Mr Mashood had diabetes, hypertension, early cataract formation for which he had been referred to Moorfields Eye Hospital, and possible heart disease. The second was dated 16 March 1999 and said that Mr Mashood's problems essentially emanated from Type II diabetes which he had had since 1998. He also had mild early cataract formation for which he had been referred to Moorfields Eye Hospital. He had also been investigated for a heart condition in September 1998 when the advice had been to continue with aspirin and another medicine. The third letter was dated 4 June 1999 and said that Mr Mashood had diabetes and hypertension which were poorly controlled. In the light of this medical information the preliminary hearing was not then listed.

65. The appeals were reviewed in November 2000. It was expected that by then Mr Mashood would have received the treatment he needed. Accordingly, a

preliminary hearing was arranged for 8 February 2001 and the parties were informed that the date would not be changed unless an alternative date before 8 March 2001 was suggested or medical evidence was provided which stated categorically that Mr Mashood was unable to attend a hearing of one hour and also stated when he would be able to attend such a hearing. At Mr Mashood's request the hearing was adjourned to 7 March 2001. Mr Mashood was informed that no further postponement would be considered unless it was accompanied by a medical certificate or statement from his General Practitioner or medical adviser. On 6 March Mr Mashood wrote to ask for a postponement saying that he was suffering from diarrhoea and vomiting and sending a copy of a prescription. That application for postponement was not granted. At the preliminary hearing held on 7 March 2001 it was directed that the appeals be heard on 25 to 27 June 2001.

66. On 10 April 2001 the Inland Revenue wrote to Mr Mashood suggesting a meeting to discuss the identification of issues of fact and law which were in dispute; the preparation of a full statement of facts not in dispute; and the exchange of relevant documents to be relied on at the hearing on 25 June. No response to that letter was received from Mr Mashood.

67. The appeals were called on for hearing on 25 June 2001. Mr Mashood attended and requested an adjournment. He said that his eyesight was not good and that he could not read the documents relating to the appeal. He mentioned Moorfields Eye Hospital. He produced a certificate dated 14 June 2001 from the Finchley Eyecare Centre (Ophthalmic Opticians and Optometrists). This stated that Mr Mashood had that day undergone a routine eye examination which had revealed a mature cataract in the left eye for which he had been referred to an ophthalmologist; his reading vision was well below normal standards and he would find it difficult to read without suffering from severe headaches and eyestrain. At our request the Respondent then handed to Mr Mashood copies of all the documents which the Inland Revenue intended to produce at the hearing of the appeal. We agreed to Mr Mashood's application for an adjournment on certain conditions which were recorded in Directions released on 25 June 2001. Among these Directions was a direction that within twenty eight days Mr Mashood should send to the Clerk to the Special Commissioners a certificate or letter from a qualified medical practitioner or from the Moorfields Eye Hospital stating whether Mr Mashood was able to read the documents relating to his appeal and, if not, the date when the necessary medical treatment would be completed which would enable him to read such documents. Another direction directed that the Respondent should within twenty eight days send to Mr Mashood a draft of an agreed statement of facts in each of the six appeals and that within twenty eight days of receiving the drafts Mr Mashood should send his comments on them to the Respondent.

68. On 1 August 2001 the Clerk received a further copy of the letter dated 14 June 2001 from the Finchley Eyecare Centre which further copy had been endorsed on 31 July 2001 by Dr A Daitz of the Torrington Park Health Centre with the words "I confirm this is correct" and also a copy of a certificate dated 31 July 2001 from Dr Daitz stating that Mr Mashood was suffering from diabetes which was poorly controlled. On 13 September 2001 Mr Mashood was informed that the certificates supplied did not comply with the direction as the certificate about his eyes was not from a qualified medical practitioner (although endorsed by one) and because it did not state the date upon which the necessary medical treatment would be completed which would enable him to read the documents relating to his appeal. That letter informed Mr Mashood of the provisions of Regulation 24(1) of the Regulations which provides that, if a party fails to comply

with any direction, the Tribunal may summarily determine a penalty against that party not exceeding £10,000. He was given a further fourteen days to comply with the direction but did not do so. On 1 November 2001 the parties were informed that the resumed hearing would take place on 11 and 12 December 2001.

69. On 7 December 2001 Mr Mashood wrote to the Clerk to the Special Commissioners requesting an adjournment of the resumed hearing. He sent copies of four medical letters. The first was a further copy of the letter dated 14 June 2001 from the Finchley Eyecare Centre which further copy had been endorsed on 31 July 2001 by Dr A Daitz of the Torrington Park Health Centre with the words "I confirm this is correct" and endorsed again on 21 November 2001 by Dr Daitz with the words "Condition unchanged; appointment in ophthalmology 28/1/02; may require cataract extraction ? 1 year wait". The second was dated 31 July 2001 and was from Dr Daitz; it stated that Mr Mashood was suffering from diabetes which was poorly controlled. The third was the same as the second save that it was dated 21 November 2001. The fourth was dated 5 September 2001 and was a letter from Edgware Community Hospital confirming an outpatient appointment for Monday 28 January 2002 in the Ophthalmology Clinic at Barnet General Hospital.

70. The resumed hearing was not taken out of the list and on 11 December 2001 both parties attended.

71. We first indicated to Mr Mashood that we were minded to impose a penalty of £250 in respect of his failure to comply with the Directions released on 25 June 2001. Mr Mashood argued that he had complied with the directions by sending the certificates which he had sent. We expressed the view that the information supplied on 1 August was not sufficient to comply with the directions. Accordingly, we imposed a penalty of £250.

72. Mr Mashood then applied for an adjournment of the resumed hearing, relying upon the documents he had sent on 7 December 2001. Before giving a decision on that application we heard from the Respondent about compliance with our directions of 25 June 2001 about the preparation of the agreed statement of facts.

73. The Respondent said that he had prepared the six draft statements of fact (one for each appeal) and that these had been served on Mr Mashood in two instalments, on 20 and 23 July 2001 respectively. They had been sent by special delivery but returned by the Royal Mail as Mr Mashood had refused to sign for them. We saw copies of the envelopes in which these documents were sent from which it appeared that they were inadequately stamped. Also, they bore no indication of the identity of the sender. However, on 2 August 2001 two representatives of the Inland Revenue delivered by hand the draft statements of fact to Mr Mashood at his business premises. Mr Mashood had made no comment on them. Three of the draft statements of fact (relating to the appeals of M Mashood & Co, H Mashood & Co and S Mashood Insurance Agency Limited) had documents attached to them which were additional to those in the bundles handed to Mr Mashood on 25 June 2001. The Respondent's letter of 20 July 2001 also asked Mr Mashood to contact the Inland Revenue to arrange for the hand delivery of his documents as the Inland Revenue did not wish them to be lost in the post. Mr Mashood did not reply to any of these letters. At the hearing Mr Mashood told us that the reason he had not requested his documents was because of his ill-health.

74. We then considered Mr Mashood's request for an adjournment of the resumed hearing. We offered Mr Mashood the opportunity of returning the following day with a friend who could read documents for him. He did not accept this offer.

75. In considering the application for a further adjournment we bore in mind a number of factors. First, these appeals were already old relating as they did to assessments going back to 1976; we were of the view that further adjournments might result in the hearing not taking place within a reasonable time. Secondly, Mr Mashood's illnesses were of long standing and it was not clear to us why any necessary treatment had not already been received. Thirdly, on 25 June 2001 Mr Mashood had been handed copies of the bundles of documents to be produced by the Inland Revenue at the hearing and we had directed that he should receive copies of any other documents to be produced at the hearing no later than two weeks in advance; they were actually handed to him with the draft statements of facts on 2 August 2001. Accordingly, he could have arranged for the documents to be read to him well before the hearing. Fourthly, almost all the documents would have been very familiar to Mr Mashood as they consisted of correspondence between himself and the Inland Revenue, his accounts and his tax returns. Fifthly, there had been a history of non-co-operation between Mr Mashood and the Inland Revenue and of a failure by Mr Mashood to prosecute his appeals and we were not confident that a further adjournment would not be used to further delay the hearing of the appeals indefinitely. Sixthly, Mr Mashood is an ATII and practises as an accountant and income tax consultant and so would be familiar with the subject matter of the appeals. Finally, Mr Mashood could have asked a friend to assist him, or he could have instructed a representative to appear on his behalf; the amount of tax at issue in these appeals indicates that Mr Mashood was not without resources. For all these reasons we dismissed the application for an adjournment.

76. We indicated that we intended to proceed with the hearing of the appeals and at that stage Mr Mashood left the hearing.

The arguments of the Appellants

77. Accordingly, Mr Mashood was not present to present the arguments for the Appellants. The grounds of the appeals were that the amounts were estimated. We have recorded his views, as expressed in such correspondence as was before us, in our findings of fact.

The arguments of the Inland Revenue

78 For the Inland Revenue Mr Whitehead argued that the evidence supported the view that Mr Mashood had knowingly under-stated his income as an accountant and tax practitioner. No explanation had been given of the unexplained income of sum of £568,836 in the building society accounts. Not all bank accounts had been seen. The schedule of expenses claimed in the divorce proceedings showed a minimum requirement of income of £142,746 per annum when the Inland Revenue had calculated that only £43,495 was available each year from the profits of the firm for expenditure.

79. Mr Whitehead invited us to confirm the further assessments issued on 19 July 1996 for the years 1976/77 to 1985/86 inclusive.

80. As far as the year 1986/87 was concerned, there had been an original assessment of £35,000 which had been paid and then a further assessment of £15,000 which was under appeal. The accounts subsequently submitted by Mr

Mashood showed a further addition of £37,551 (making a total of £87,551) and there was a further estimated understatement of £89,399 being one half of the sum of £178,798 shown in the "without prejudice" schedule prepared by the Accounts Unit for the two years ending on 5 April 1996 and 5 April 1997. Thus the total assessable was £176,950 of which £35,000 had been paid leaving a balance of £141,950 and Mr Whitehead invited us to determine the further assessment for that year in that figure.

81. As far as the year 1987/88 was concerned, there had been an original assessment of £40,000 which had been paid and a further assessment of £25,000 on 25 July 1990 which was under appeal. The accounts subsequently submitted by Mr Mashood showed a further addition of £22,551 (making a total of £87,551) and there was a further estimated understatement of £89,399 being the other half of the sum of £178,798 shown in the "without prejudice" schedule prepared by the Accounts Unit for the two years ending on 5 April 1996 and 5 April 1997. Thus the total assessable was £176,950, of which £40,000 had been paid, leaving a balance of £136,950 and Mr Whitehead invited us to determine the further assessment for that year in that figure.

82. Turning to the estimated assessments for the years 1988/89 to 1990/91 Mr Whitehead invited us to increase these to an amount which was the sum of the profits returned in the accounts together with the amount shown on the "without prejudice" schedule prepared by the Accounts Unit. In 1988/89 the amount returned was £29,443 and the amount in the "without prejudice" schedule was £261,765 making a total of £291,208. In 1989/90 the amount returned was £84,822 and the amount in the "without prejudice" schedule was £84,211 making a total of £169,033. And in 1990/91 the amount returned was £86,498 and the amount in the "without prejudice" schedule was £44,062 making a total of £130,560.

83. Turning to the partnerships Mr Whitehead argued that there was no evidence that either partnership existed. They may have been established so that value added tax need not be charged on their purported fees, The position of Mrs Fatani in the partnership of M Mashood & Co was inexplicable as she took no profits; it may be that her presence was only required so that M Mashood & Co was a separate partnership from H Mashood & Co. Mr Whitehead requested that the assessments for both partnerships should be confirmed at Nil for the years 1991/92 and 1992/93 on the basis that the activities were properly those of S Mashood & Co.

84. That meant that the estimated assessment for Mr Mashood for 1991/92 should be increased to £114,297 being:

Profits returned by S Mashood & Co	£45,711
Profits returned by M Mashood & Co	£34,369
Profits returned by H Mashood & Co	£34,217

Total	£114,297

85. As far as 1992/93 was concerned no accounts had been received for S Mashood & Co. Mr Whitehead asked that the estimated assessment of £150,000 be confirmed but to include the amounts of £17,568 returned for H Mashood & Co and of £13,828 returned for M Mashood & Co.

86. As far as the three companies were concerned Mr Whitehead sought a determination in accordance with the figures shown in the accounts as submitted by the three companies.

Reasons for decision

87. We consider separately each of the issues for determination in the appeal.

(1) Was there fraudulent or negligent conduct?

88. The first issue is whether, in respect of the out of time assessments, there had been a loss of tax attributable to the fraudulent or negligent conduct of Mr Mashood.

89. In this issue the burden of proof is on the Inland Revenue to prove fraudulent or negligent conduct; the standard of proof is the balance of probabilities; and the cogency of the evidence required to meet the standard of proof depends upon the seriousness of the allegation. The present appeal is concerned with allegations of fraudulent or negligent conduct leading to a loss of tax. Fraudulent conduct is a serious allegation; negligent conduct is somewhat less serious.

90. We therefore consider whether the facts we have found, and any reasonable inferences, drive us to the probable conclusion that Mr Mashood's conduct was fraudulent or negligent.

91. In connection with the out of time assessments the inferences which we draw from the facts are that, for the years 1976/77 a to 1985/86 inclusive, Mr Mashood under-stated his income as an accountant and tax practitioner. We rely on the facts that bankings exceeded sales as shown in the accounts for the two years ending on 5 April 1987; that the divorce proceedings indicated the ownership of a number of properties and there was no explanation of the derivation of the funds required for the purchase of the properties; that there was no explanation for the amounts shown in the seven building society accounts listed in the "without prejudice" schedule in excess of the amounts returned; and that there was no other explanation of the source of the funds required to support the level of expenditure revealed in the divorce proceedings. We also bear in mind that at no time has Mr Mashood made a full and frank disclosure. He has refused to provide any information, and he has refused to co-operate with the enquiries of the Inland Revenue, over a long period.

92. We therefore conclude that, in respect of the out of time assessments, there was a loss of tax attributable at least to the negligent conduct of Mr Mashood.

(2) Should the assessments be reduced, confirmed or increased?

93. The second issue in the appeal is whether, in respect of all the assessments, the amount assessed should be confirmed, reduced or increased.

94. In this issue the burden of proof is on the Appellant to prove that the assessments are too high and the standard of proof is the balance of probabilities. The Appellant adduced no evidence in the appeal. In each appeal the grounds of appeal were that the assessments were estimated but no evidence was put forward to show why they should be reduced.

95. We have specifically considered the arguments put forward in the letters of 19 September 1995 arguing that the two partnerships of M Mashood & Co and H Mashood & Co existed. The evidence before us does not support the conclusion that either partnership existed. In particular, there is no evidence of a genuine sharing of profits.

96. We therefore confirm, reduce or increase the assessments as requested by Mr Whitehead.

Decision

97. For the reasons mentioned earlier in this Decision we determine a penalty against Mr Mashood of £250 for failure to comply with our directions of 25 June 2001.

98. Our decisions on the issues for determination in the appeal are:

(1) that, in respect of the out of time assessments, there was a loss of tax attributable to fraudulent or negligent conduct; and

(2) that, in respect of all the assessments, the amount assessed should be confirmed, reduced or increased as follows:

(a) the appeals of Mr Mashood:

(i) further assessments issued on 19 July 1996 for the following years in the following amounts:

1976/77 £ 5,000 Confirmed
1977/78 £ 5,000 Confirmed
1978/79 £ 5,000 Confirmed
1979/80 £ 5,000 Confirmed
1980/81 £ 5,000 Confirmed
1981/82 £10,000 Confirmed
/ 1982/83 £10,000 Confirmed
1983/84 £20,000 Confirmed
1984/85 £25,000 Confirmed
1985/86 £25,000 Confirmed

(ii) further assessments issued on 25 July 1990 for the following years in the following amounts:

1986/87 £15,000 Increased to £141,950
1987/88 £25,000 Increased to £136,950

(iii) estimated assessments for the following years in the following amounts:

1988/89 £ 80,000 Increased to £291,208
1989/90 £100,000 Increased to £169,033
1990/91 £100,000 Increased to £130,560.
1991/92 £100,000 Increased to £114,297
1992/93 £150,000 Confirmed
1993/94 £170,000 Confirmed

(b) the appeals of M Mashood & Co

1991/1992 £150,000 Reduced to nil
1992/1993 £150,000 Reduced to nil

(c) the appeals of Messrs H Mashood & Co

1991/1992 £150,000 Reduced to nil
1992/1993 £150,000 Reduced to nil

(d) the appeal of S Mashood Management Limited

07.11.94 to 06.11.95 £50,000 Reduced to £46,211

(e) The appeal of S Mashood Accountant Limited

07.11.94 to 06.11.95 £50,000 Reduced to £44,104

(f) The appeal of S Mashood Insurance Agency Limited

01.02.94 to 31.01.05 £50,000 Reduced to £15,478.

99. The appeals are, therefore, dismissed.

DR NUALA BRICE

T H K EVERETT
SPECIAL COMMISSIONERS
SC 3052-53/96
SC 3007-10/97