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Case No: CO/2478/2016
CO/3077/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/07/2018

Before :

THE HONOURABLE MR JUSTICE LEWIS

- -

Between :

R on the application of Zarathustra Jal Amrolia	**Claimant**
- and -	
The Commissioners for HM Revenue & Customs	**Defendant**

And

Isadora Ranjit Singh	**Claimant**
- and -	
The Commissioners for HM Revenue & Customs	**Defendant**

- -
- -

Thomas Chacko (instructed by **Jurit LLP Solicitors**) for the **Claimants**
Timothy Brennan QC and Christopher Stone (instructed by **HMRC**) for the **Defendants**

Hearing date: 21 June 2018

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Approved Judgment

THE HONOURABLE MR JUSTICE LEWIS:

INTRODUCTION

1. These are two claims challenging decisions of the defendants seeking the payment (or repayment) of tax following an amendment to a tax return of each claimant reducing the amount of allowable losses that the claimants could set against income for the purposes of reducing their liability to tax. In the first case the defendants notified the first claimant, Dr Amrolia, by letter dated 4 February 2016, that it had reduced the amount of allowable losses incurred in the 2004/2005 tax year which the claimant had sought to set against income received in an earlier year. The defendants sought the recovery of tax previously repaid to him by the defendants. In the second case, the defendants notified the second claimant, Dr Ranjit-Singh, by letter dated 15 March 2016, that it had reduced the allowable losses incurred in the 2004/2005 tax year and which the second claimant had partly sought to set against income (and thereby reduce her liability to tax) in the 2004/2005 year of assessment and partly against income received in an earlier year. The defendants sought both payment of tax for the 2004/2005 year and repayment of tax previously repaid to her in respect of an earlier year.

2. Initially, the claimants sought to contend that the defendants could only seek to recover the tax payments by use of the procedure in section 30 of the Taxes Management Act 1970 ("TMA"). Following the decision of the Supreme Court in *R (de Silva) v Revenue and Customs Commissioners (Cotter Solutions Ltd. Intervening) [2017] UKSC 74,* [2017] 1 W.L.R. 4384, the claimants accept that the defendants had power in certain circumstances to recover repayments of tax by virtue of section 59B(5) TMA. The claimants contend, however, that the notifications sent by the defendants had not, in fact, amounted to a proper exercise of that power. Further, in the case of the second claimant, she contends that the power in section 59B(5) of the TMA could not be used where the losses claimed had been set against income in the year of assessment.

THE FACTUAL BACKGROUND

3. The claimants were members of a limited liability partnership, Tower MCashback 3 LLP, which was engaged in a trade of software licensing. During the 2004/2005 tax year, the first claimant contributed £400,000 to that partnership, 75%, or £300,000, of which he had borrowed. Within 7 months, his share of the partnership losses was £399,953.

4. The first claimant submitted a tax return for 2004/2005 which included a self-assessment of the income tax and capital gains tax due from or payable to him for 2004/2005. In section 18 of his return, he gave that figure as a sum of £7,160.72 being payable by the defendant to him for that year. In his return, he also claimed relief in respect of the partnership losses of £399,543 to be calculated by reference to income received in an earlier year. Those figures appeared in a different part of the return, namely in section 4. He received a provisional repayment of tax in respect of those losses in the sum of £173,781.19.

5. During the 2004/2005 tax year, the second claimant contributed £232,000 to the partnership, 75%, or £174,000, of which she had borrowed. Within 9 months her share of the partnership losses was £231,975.

6. The second claimant submitted a tax return for 2004/2005 which included a self-assessment of the income tax and capital gains tax due from or payable to her. In section 4 of her return, she claimed relief on her share of the partnership loss in the sum of £231,973. She indicated that she wished £99,984 to be offset against other income for 2004/2005. She sought relief for the remainder of the loss (£131,989) to be calculated by reference to earlier years. In section 18 of the return, she gave the sum of £28,757.57 payable by the defendants to her for the 2004/2005 tax year. She also received a provisional repayment of tax in the sum of £45,050.84 in respect of the losses that she had carried back and set against income received in an earlier year.

7. Case law subsequently established that only the cash element (25% of the investment in each claimant's case) was eligible for relief. The loan element was not eligible. The defendants opened an enquiry into the partnership under section 12AC TMA on 27 September 2006. That had the effect of giving notice of an enquiry into the individual returns filed by each claimant (see section 12AC(6) TMA). At the conclusion of the enquiry into the partnership return, the defendants issued a closure notice under section 28B(1) TMA on 28 June 2011, stating that it had concluded that the losses were excessive. An appeal was lodged by the partnership but withdrawn. Amendments to the partnership return were agreed.

8. By letter dated 4 February 2016, the defendants wrote to the first claimant in the following terms:

> "Dear Dr Amrolia
>
> **Tower MCashback 3 – Amendment to your personal Self Assessment Tax return – year ending 5 April 2005 (Section 28B(4) Taxes Management Act 1970)**
>
> On 27 September 2006 an enquiry was opened into the Tower MCashback 3 partnership's Self Assessment tax return for the period ended 5 April 2005.
>
> Those enquiries were completed on 28 June 2011 and the conclusion was that the claim to Capital Allowances was excessive. An appeal was made against the closure notice on 28 July 2011 but this was subsequently withdrawn in October 2015. As a consequence the appeal process has been exhausted and the amendments agreed.
>
> I have today amended your Self Assessment Account for the year ended 5 April 2005 to take account of the reduction in losses allocated to you by the partnership. The share of the loss has been changed from £399,953.00 to £127,516.00. You originally claimed tax relief to be calculated by reference to earlier years and credits of £159,981.20 tax and £13,799.99 repayment supplement were applied to your Self Assessment account and a repayment of £173,781.19 was paid on 27 February 2009.
>
> The result of this amendment is that your tax refund has decreased by £108,974.80 to £51,006.40. This credit due on 31 January 2006 attracts a repayment supplement of £4,396.87 to 27 February 2009. I have therefore applied a credit of £55,403.27 to your Self Assessment Account today.
>
> I enclose a statement of your Self Assessment account."

9. By letter dated 15 March 2016, the defendants wrote to the second claimant in the following terms:

> "Dear Miss Ranjit-Singh
>
> **Tower MCashback 3 – Amendment to your personal Self Assessment Tax return – year ending 5 April 2005 (Section 28B(4) Taxes Management Act 1970)**
>
> On 27 September 2006 an enquiry was opened into the Tower MCashback 3 partnership's Self Assessment tax return for the period ended 5 April 2005. Those enquiries were completed on 28 June 2011 and the conclusion was that the claim to Capital Allowances was excessive. An appeal was made against the closure notice on 28 July 2011 but this was subsequently withdrawn in October 2015. As a consequence the appeal process has been exhausted and the amendments agreed.
>
> Your share of the partnership loss was previously stated as £231,973.00. £99,984.00 was set against that current year's income and £131,989.00 was set against previous year's income. A credit was applied to your Self Assessment account for £45,050.84 and repaid on 10 November 2005 in respect of the carry back claim.
>
> I have today amended your Self Assessment return for the year ended 5 April 2005 to take account of the reduction in losses allocated to you by the partnership. The amount of your share of the partnership loss is now £73,960.00 which I have carried back to set against previous year's income.
>
> I have amended the carried back loss claim to £24,834.08. The interest due on the over-repayment of £20,216.76 is £8,975.13 as at today's date. The revised credit is therefore £15,858.95.
>
> I enclose a revised tax calculation for the year ended 5 April 2005 to reflect the cancellation of that current year's loss claim. This has resulted in additional tax due of £35,300.78. The interest charges as a result of this amendment are £15,188.47 as at today's date."

10. In the second claimant's case, part of the allowable losses had been set against income received in the 2004/2005 year of assessment. As the amount of the losses that could be set against income had been reduced, the amount of tax payable had increased and the tax chargeable for that year also had to be recalculated. The letter attached a revised tax calculation for the 2004/2005 year of assessment showing that the tax chargeable was £6,543.21.

THE STATUTORY FRAMEWORK

Returns and Self-Assessments

11. Section 8 TMA requires an individual to provide a return containing such information as may reasonably be required for "the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment".

12. Section 9 TMA provides that, subject to certain exceptions, a return under section 8 shall include a self-assessment, that is an assessment of (1) the amounts, taking account of any reliefs or allowances, in which the person "is chargeable to income tax and capital gains tax for the year of assessment" and (2) the difference between the

amount chargeable by way of income tax and any tax deducted at source or otherwise credited to the individual for the year of assessment in question.

13. Section 12AA TMA deals with partnership returns, that is a return where a trade, business or profession is carried on in partnership by two or more persons. The information provided in the return is intended to facilitate the establishment of the amount, amongst other things, in which each partner is liable to income tax.

Claims for Relief Involving Two or More Years

14. Although a tax return relates to a particular year of assessment, the taxpayer may seek to claim relief in respect of tax paid in earlier years of assessment. Section 380 of the Income and Corporation Tax 1988 ("ICTA") provided (in the relevant year) that where a person sustains a loss in any trade, profession, vocation or employment carried on by him either solely or in partnership in any year of assessment, he may claim relief from income tax on (a) so much of his income for that year of assessment as is equal to the loss or (b) so much of his income for the last preceding year as is equal to the amount of the loss (although relief cannot be given for the same part of the loss under both). In other words, a person who has suffered loss in a particular year of assessment may set that part of the loss against income in that year of assessment and part against income in an earlier year of assessment (as the second claimant sought to do) or may set the loss entirely against income in an earlier year (as the first claimant sought to do).

15. The machinery for making such claims is contained in paragraph 2 of Schedule 1B to the TMA which, so far as material, is in the following terms:

> "(1) This paragraph applies where a person makes a claim requiring relief for a loss incurred or treated as incurred, or a payment made, in one year of assessment ("the later year") to be given in an earlier year of assessment ("the earlier year").
>
> "(2) Section 42(2) of this act shall not apply in relation not the claim".
>
> "(3) The claim shall relate to the later year.
>
> "(4) Subject to sub-paragraph (5) below, the claim shall be for an amount equal to the difference between—
>
> (a) the amount in which the person is chargeable to tax for the earlier year ("amount A"); and
>
> (b) the amount in which he would be so chargeable on the assumption that effect could be, and were, given to the claim in relation to that year ("amount B").
>
> "(5) Where effect has been given to one or more associated claims, amounts A and B above shall each be determined on the assumption that effect could have been, and had been, given to the associated claim or claims in relation to the earlier year.
>
> "(6) Effect shall be given to the claim in relation to the later year, whether by repayment or set-off, or by an increase in the aggregate amount given by section 59B(1)(b) of this Act, or otherwise."

16. The operation of that schedule was considered in *Revenue and Customs Commissioners v Cotter* [2013] 1 W.L.R. 3514. There, the argument was that the

schedule operated by altering the amount of tax assessed to be due in the earlier year (in that case, the claim for relief was included in the return for 2008/2009 but related to an earlier year, 2007/2008) so that the person could not be said to owe, or be sued for, the amount of tax originally assessed in that earlier year (there the 2007/2008 year of assessment). The Supreme Court rejected that argument and held that a claim "in respect of losses incurred in 2008/2009 did not alter the tax chargeable or payable in relation to 2007/2008" (see paragraph 26 of the judgment). Rather the Schedule operates either by reducing liability to pay tax in respect of the later year or by obtaining a repayment of tax in the later year. As Lord Hodge explained at paragraph 16 of his judgment:

> "16 In my view it is clear, in particular from paragraphs 2(3)(6), that the scheme in Schedule 1B allows a taxpayer, who has suffered a loss in a later year ("year 2") and seeks to attribute the loss to an earlier year of assessment ("year 1"), to obtain his relief by reducing his liability to pay tax in respect of year 2 or by obtaining a repayment of tax in year 2. It does not countenance by virtue of the relief any alteration of the tax chargeable and payable in respect of year 1. On the contrary, the sum for which the taxpayer receives relief in year 2 is the difference between what was chargeable in year 1 and what would have been chargeable "on the assumption that effect could be, and were, given to the claim in relation to that year": paragraph 2(4). In other words, the relief is quantified on the basis that the tax liability in year 1 has already been assessed."

Enquiries into Tax Returns

17. The defendants may give a notice of enquiry into a return: see section 9A(1) TMA. Such an enquiry may extend to anything contained in a tax return including any claim in a tax return. Section 28A TMA provides that an enquiry is completed by the service of a closure notice informing the taxpayer of the defendants' conclusions and stating either that no amendment to the return is required or by making amendments to the return to give effect to their conclusion.

18. Section 12AC TMA provides for the defendants to give notice of an inquiry into a partnership return. The giving of such a notice is also deemed to be the giving of a notice to each individual partner who has made a return under section 8 TMA of an inquiry into that return.

19. Section 28B TMA provides for the completion of an enquiry into a partnership return and provides so far as material that:

> "(1) This section applies in relation to an enquiry under section 12AC of this Act.
>
> "(1A) Any matter to which the enquiry relates is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "partial closure notice") that the officer has completed his enquiries into that matter.
>
> "(1B) The enquiry is completed when an officer of Revenue and Customs informs the taxpayer by notice (a "final closure notice")—
>
> (a) in a case where no partial closure notice has been given, that the officer has completed his enquiries, or
>
> (b) in a case where one or more partial closure notices have been given, that the officer has completed his remaining enquiries.

"(2) A partial or final closure notice must state the officer's conclusions and–

(a) state that in the officer's opinion no amendment of the return is required, or

(b) make the amendments of the return (including anything included in the return by virtue of section 12ABZB(7)(b) (amendment of partnership return following reference to tribunal)) required to give effect to his conclusions.

"(3) A partial or final closure notice takes effect when it is issued.

"(4) Where a partnership return is amended under subsection (2) above, the officer shall by notice to each of the partners amend–

(a) the partner's return under section 8 or 8A of this Act, or

(b) the partner's company tax return,

so as to give effect to the amendments of the partnership return."

Payments, and Repayments, of Tax

20. Payments of tax are governed by Part VA of the TMA. Section 59A TMA deals with payments on account of income tax. Section 59B TMA deals with payment of income tax and capital gains tax. Section 59B(1) TMA provides so far as material that:

"(1) Subject to subsection (2) below, the difference between -

(a) The amount of income tax and capital gains tax contained in a person's self-assessment under section 9 of this Act for any year of assessment, and

(b) the aggregate of any payments on account made by him in respect of that year (whether under section 59A of this Act or otherwise) and any income tax which in respect of that year has been deducted at source,

shall be payable by him or (as the case may be repayable to him ….."

21. Section 59B(5) TMA deals with the position where a self-assessment included in a tax return is amended or corrected in specified circumstances including under section 28B(4) TMA (that is, following completion of an enquiry into a partnership return). It is this subsection which lies at the heart of these claims. It provides that:

"(5) An amount of tax which is payable or repayable as a result of the amendment or correction of a self-assessment under–

(a) section 9ZA, 9ZB, 9C or 28A of this Act (amendment or correction of return under section 8 or 8A of this Act), or

(b) section 12ABZB(8), 12ABA(3)A), 28B(4)(a), s. 30B(2)(a), 22A(4)(a) or 50(9)(a) of this Act (amendment of partner's return to give effect to amendment or correction of partnership return),

> is payable (or repayable) on or before the day specified by the relevant provision of Schedule 3ZA to this Act."

22. The operation of that provision was considered in detail in *R (de Silva) v Revenue and Commissioners (Cotter Solutions Ltd. Intervening)* [2017] 1 W.L.R. 4384. The case involved two taxpayers in limited partnerships involved in investing in films. One taxpayer, Mr de Silva, included in his return for the 2000/2001 year of assessment a claim for tax relief by setting losses incurred in that year of assessment against his income in an earlier year of assessment, namely 1999/2000. A second taxpayer, Mr Dokelman, similarly included in his return for 2000/2001 a claim for relief by setting losses incurred in that year of assessment against income received in earlier years. The Revenue initially accepted Mr de Silva's claim and credited his self-assessment account with tax paid (that is, it seems, they accepted provisionally that the losses were allowable losses which could be set-off against income in earlier years so that the relevant amount of tax should be repaid). Mr Dokelman had not received a provisional repayment of tax. The partnership was the subject of enquiry and, in substance, claims for losses based on investment made by way of non-recourse loans were disallowed. As Lord Hodge noted at paragraph 8 of his judgment:

> "After the partnership claims were determined in the partnership settlement agreement, HMRC wrote to the taxpayers to intimate that their carry-back claims in their personal tax returns would be amended in line with the lower figures for the partnership losses which had been agreed in the partnership settlement agreement. HMRC informed Mr de Silva that he had to pay additional tax of £17,176·80 and £32,400. HMRC informed Mr Dokelman, who had not been given credit for the partnership losses, that those losses available for a claim for 2000/2001 were reduced to the levels agreed in the partnership settlement agreement. HMRC's letters to Mr de Silva were dated 16 September 2011 and 17 November 2011. Their letter to Mr Dokelman was dated 28 October 2011."

23. The taxpayers challenged the decisions set out in those letters. The taxpayers contended that the claim for relief was a "stand-alone" claim, and any challenge to the claims had to be made in accordance with the procedure set out in Schedule 1A to TMA and could not be the subject of an enquiry made under section 9A(1) TMA. As the time limits for instituting that procedure had passed, the taxpayers contended that the Revenue could not now challenge their claims for relief.

24. The Supreme Court rejected that contention. The Court held that claims for relief relating to earlier years still had to be included within the return made in accordance with section 8 TMA and could therefore be the subjection of an enquiry under section 9A TMA. Section 8(1AA)(a) TMA provided that it was the net amounts in which a person is chargeable to income tax and capital gains tax which were to be established, "that is to say amounts which take into account any relief or allowance a claim for which is included in the return". As Lord Hodge held in paragraphs 29 and 30:

> "29 In summary, section 8(1AA)(a) defines the amounts in which a person is chargeable to income tax in a year of assessment as net amounts taking account of any relief, a claim for which has been included in the return. The claims to carry back losses relate to Year 2 and effect is given to them in relation to that year: schedule 1B, paragraph 2(3(6). It follows, therefore, that the taxpayer must make a claim in his tax return in respect of Year 2 and state the extent to which the relief claimed has already been given in order to establish the amounts in which he is chargeable to income tax for that year of assessment.

> If too much has already been given as relief, the self-assessment can take that into account by adjusting the amount in which the taxpayer is chargeable to income tax for Year 22: section 9(1)(a).
>
> "30. HMRC may inquire into a return under section 8 or 8A if an officer gives notice of his intention to do so (section 9A(1)) and that inquiry may extend to anything contained in the return, or required to be contained in the return, including any claim: section 9A(4). HMRC were therefore empowered under section 9A to inquire into the taxpayers' carry back claims contained in their Year 2 tax returns. HMRC were not required to institute an inquiry under Schedule 1A in order to challenge the taxpayers' claims."

25. In the course of dealing with that issue, the Supreme Court noted that Cotter Solutions Ltd. had argued that that interpretation of the relevant provisions could not be correct as it would not, amongst other things, enable the Revenue to recover any tax relief found not to be due. Lord Hodge summarised the argument, and his reasons for disagreeing with it at paragraph 31 of the judgment in the following terms:

> "31 In a written intervention Cotter Solutions Ltd have argued that the interpretation of the relevant provisions of the TMA which Sales J and the Court of Appeal favoured, by contrast with the straightforward provisions of Schedule 1A , would not allow HMRC either to postpone giving effect to the claim or to recover any tax relief which was subsequently found, following inquiry, not to have been due. I do not agree for three reasons. First, in relation to a Schedule 1B claim, the obligation in paragraph 4 of Schedule 1A to give effect to the claim as soon as practicable after the claim is made applies to a claim to which effect is given in relation to Year 2 and in relation to which HMRC can institute an inquiry under section 9A. Schedules 1A and 1B operate in tandem in this context. A claim to carry back loss relief made early under Schedule 1A may need the Year 2 losses to be established before effect is given to the claim. The relevant time limit for inquiring into the claim in paragraph 5 of Schedule 1A operates from Year 2, to which the claim relates, and what is practicable in giving prompt effect to a claim must be assessed in that context. Secondly, the mechanisms in paragraph 2(6) of Schedule 1B for giving effect to a claim in Year 2 are not confined to repayment, set off and the increase in the aggregate of payments on account, none of which would alter the tax chargeable for Year 2. Paragraph 2(6) includes the words "or otherwise", which open the door to an adjustment of the amount chargeable to income tax by virtue of both section 8(1AA)(a), which provides that the amounts in which a person is chargeable "take into account any relief … a claim for which is included in the return" and section 9(1)(a) which makes similar provision for the self-assessment. Where relief has already been given in error, it would in my view be open to HMRC, in completing an inquiry, to amend the return (for example, under section 28A(2) TMA (as inserted by section 188 of the Finance Act 1994)) by altering the amount chargeable to income tax for Year 2 in order to recover the sums which were wrongly paid as relief. Thirdly, section 59B(5) provides for payment of income tax which is payable as a result of an amendment of a self-assessment under section 28A on completion of an inquiry into a personal tax return."

THE PROCEEDINGS AND THE ISSUES

26. The claimants in these proceedings initially contended, as did the unsuccessful taxpayers in *de Silva*, that challenges could only be brought in relation to a claim for relief by way of a particular procedure, in this case the procedure in section 30 TMA and the Revenue were out of time to invoke that procedure. Permission was granted in Dr Amrolia's case to argue that ground but the claim was stayed pending the Supreme Court's decision in *de Silva*. Permission was refused in Dr Ranjit-Singh's case. In the

light of the decision in *de Silva*, it is clear, and the claimants accept, that they can no longer succeed on the grounds originally advanced in their claim forms.

27. The two claimants each sought to amend the grounds of claim to argue the point raised in paragraph 20 of their supplemental skeleton argument, namely that in the letters of 4 February 2016 and 15 March 2016 the defendants had not in fact amended the amount of the tax chargeable for the 2004/2005 year assessment to reflect the change in allowable losses. The second claimant, Dr Ranjit-Singh also sought to argue that, in her particular case, the defendants had no power to amend her return for the 2004/2005 year of assessment (or the self-assessment contained within it) as she was claiming relief for part of the loss by setting that against income for 2004/2005 and part for earlier years. She contended, as explained in paragraph 25 of the supplemental skeleton, that any recovery of tax had to be by way of paragraph 2(6) of Schedule 1B to the TMA and that did not give power to adjust the amount of tax chargeable for 2004/2005. I grant permission to Dr Amrolia to amend his grounds to include a ground in the terms of paragraph 20 of the supplemental skeleton dated 15 June 2018 and to Dr Ranjit-Singh to amend her grounds to include grounds in the terms of paragraphs 20 and 25 of that supplemental skeleton. I grant Dr Ranjit-Singh permission to apply for judicial review on those grounds. It was accepted by all parties that there should be, and there was, full hearing of Dr Ranjit-Singh's claim and it was accepted that I should deal with the claim as if it were the substantive hearing.

28. In the light of that, the issues are as follows:

    (1) were the letters of 4 February 2016 and 15 March 2016 valid for the purposes of amending the returns and enabling the defendants to recover the tax previously repaid or did the defendants have to amend the amount of the tax chargeable for 2004/4005 in each self-assessment included in each claimant's tax return?

    (2) did the defendants have power to amend the second claimant's return for 2004/2005 in a way which enabled the defendants to recover the tax not paid for the 2004/2005 year of assessment and repaid for earlier years?

THE FIRST ISSUE – THE STEPS NECESSARY TO RECOVER THE RELIEF

29. Mr Chacko, on behalf of the claimants, submitted that the effect of the decision in *de Sliva* was that tax not paid, or tax repaid, could only be recovered by amendment of the self-assessment included within the return to vary the tax chargeable in the year of assessment in respect of which the enquiry had been raised. He submitted that that was the proper reading of paragraph 31 of the judgment in *de Silva,* drawing attention to the words of Lord Hodge in saying that where relief had already been given in error it would be open to the Revenue to alter the amount of the tax chargeable under section 28A or 28B TMA. The defendants had not sought to amend the tax chargeable amount in the present cases. Mr Chacko further relied upon the decision of the Court of Appeal in *R (Archer) v Revenue and Customs Commissioners* [2018] STC 38, as requiring the defendants to notify the precise amount of the tax chargeable and that it was not sufficient simply to provide figures from which the taxpayer could himself or herself calculate the amount. If that were not done, then the amendment to the return would be ineffective: see paragraph 30 of the judgment of the Court of Appeal in *Archer*.

30. Mr Brennan Q.C., on behalf of the defendants, submitted that it was sufficient if the notice under section 28B TMA amended the self-assessment included within the tax return by showing the amended, and different, amount of allowable loss that could be claimed by way of relief. Where that involves the recovery of tax previously repaid by the defendants to the taxpayer, the defendants, at most, had to notify the amount by which an earlier provisional repayment of tax was excessive. The notices in the present case did precisely that.

Discussion

31. First, the wording of section 59B(5) TMA recognises both that tax is payable (or repayable if already repaid to the taxpayer) "as a result of an amendment or correction of a self-assessment". The tax is payable (or repayable) by a specified day. In other words, the sub-section recognises that there is an obligation to pay (or repay) tax arising in consequence of an amendment or correction of a self-assessment included within a tax return. Secondly, the purpose of that sub-section is to facilitate the working out of tax due where self-assessments included in returns are amended or corrected. There is nothing in the words of the sub-section or the decision in *de Silva* which themselves require that the amendment or correction must be by way of an amendment to that part of the self-assessment included within a return for a year of assessment which specifies the amount of tax chargeable in that year of assessment. That may be a means, depending on the circumstances, whereby a particular claim for relief for one year of assessment is made.

32. Where, however, a claim for losses is reduced, the return can be amended or corrected by the reduction in the amount of the allowable losses that may be set against income received in earlier years. The figures included in the claim form part of the self-assessment included within the tax return (see *de Silva* at paragraphs 26 to 29, and *Knibbs v Revenue and Customs Commissioners [2018] EWHC 136 (Ch),* [2018] STC 650 at paragraph 82). Where the defendants have already given effect to the losses claimed by making a repayment of tax, section 59B(5) TMA provides that on amendment of the self assessment that amount is repayable by the taxpayer. The situation falls precisely within the words, and meets the purpose, of the sub-section. There has been an amendment or correction of the self-assessment in the return – the amount of the allowable losses that may be set against income has been amended. As a result, an amount of tax is repayable – because tax had been repaid on the basis that the amount of the loss could be set against income in earlier years and tax liability reduced, and now that the amount of the losses have been amended or corrected, the amount of the tax that should have been repaid is less. The taxpayer is obliged to repay that amount by reason of section 59B(5) TMA.

33. That is what happened in the case of the first claimant. He included in his return for the 2004/2005 tax year a figure for partnership losses of £399,953 which he sought to set against income received in earlier years. He was provided with a provisional repayment of tax from the earlier years in the sum of £159,981.20 (together with a sum of £13,799.99 as a repayment supplement). The letter of 4 February 2016 is said in the heading to be an amendment to the self-assessment tax return for 2004/2005. It effectively amends the self-assessment in the return by reducing the losses that may be claimed from £399,953 to £127,516. As a result, the tax refund (more accurately, the repayment of tax already made by the defendants) was reduced from £159,981.20, by £108,974.80, to the sum of £51,006.40 as explained in the letter of 4 February

2016. That is perfectly consistent with the wording of section 59B(5), as explained by the Supreme Court in *de Silva*.

34. In the case of Dr Ranjt-Singh, she had included a figure of £231,973 for allowable losses for 2004/2005 in her return for 2004/2005. She attributed £99,984 of those losses to income received in the 2004/2005 tax year and sought to set that amount of the loss against income for that year so that the amount chargeable to tax for the 2004/2005 year of assessment was a negative figure of £28,757.57 (that is, the defendants owed her that amount). In addition, she sought to set £131,989 (of the total losses of £231,973) against income in earlier years. The defendants had credited an amount of £45,050.84 (that is, it had made a repayment of tax in that amount) to reflect the amount of the claimed losses set against income in earlier years.

35. The letter of 15 March 2016 is, again, headed amendment to the second claimant's self-assessment tax return of 2004/2005. It amended the return by reducing the amount of the allowable losses to £73,960. The letter also amended the calculation of the amount of tax chargeable for 2004/2005 to reflect the fact that the allowable losses set against income for that year had been reduced (so that a further £35,000.78 of tax was payable and the amount of tax chargeable was £6,543.21 as opposed to the negative figure of £28,757.57 included by the second claimant in her return for 2004/2005). In addition, the second claimant had received a repayment for earlier years and the letter notified the claimant that, as a result of the amendment or correction of the allowable losses figure, this had been reduced to £24,834.08 (and then further reduced to reflect interest due on the overpayment, that is the difference between the £45,050.84 originally repaid and the amount of £24,834.08). In other words, the letter did what section 59B(5) TMA, and *de Silva*, contemplated. The allowable losses figures forming part of the self-assessment included in the return were amended. The amount of tax chargeable for 2004/2005 was recalculated. The amount of the repayment due for the earlier year was reduced. As a result, the second claimant is now liable to pay the amounts specified in the letter itself. This ground of challenge therefore fails in relation to each claimant.

THE SECOND ISSUE – THE POWER TO MAKE THE AMENDMENTS IN THE SECOND CLAIMANT'S CASE

36. Mr Chacko contends that the only mechanism by which tax (or a repayment of tax) may become payable (or repayable) is by way of paragraph 2(6) of Schedule 1B TMA. That, he submits, does not entitle the defendants to alter the tax chargeable for the year of assessment for 2004/2005. He submits that the power recognised in *de Silva* only applied to adjustments relating to changes relating to losses set against income in an earlier year and did not enable an adjustment where losses were set against income in the year of assessment.

Discussion

37. Section 59B(5) TMA provides that tax is payable (or repayable if a repayment has already been made) as a result of an amendment or correction to a self-assessment. That sub-section creates a right on the part of the defendants to recover the tax and, correspondingly, imposes an obligation on the part of the taxpayer to pay (or repay) the tax, as Mr Chacko accepted in argument. That is what the notice of amendment

pursuant to section 28B(4) TMA does. There is no reason why the machinery used to effect that cannot involve an amendment to the figure of allowable losses and a recalculation and amendment of the tax due for the year of assessment in which the claim was made, and also a requirement to repay a repayment of tax made in respect of losses set against income received in earlier years. For that reason, this ground of challenge also fails.

ANCILLARY MATTERS

38. Mr Brennan submitted that if there had been some flaw in the way in which the defendants had given notice of the amendment to the tax return in its letters, then the matter could have been corrected under section 114 TMA. Alternatively, he submitted that the court should refuse any remedy by reason of section 31(2A) Senior Courts Act 1981 on the basis that it was highly likely that the outcome for the claimants would not have been substantially different if the conduct complained of had not occurred. As the decisions are valid, it is not necessary to consider these matters.

CONCLUSION

39. The defendants were entitled to the payment (or repayment) of tax as a result of amending or correcting each of the claimants' self-assessments included within their tax returns on completion of an enquiry into the partnership return pursuant to section 28B TMA. That is what the defendants did here. It corrected the self-assessment included within the return of each of the claimant by reducing the allowable losses included in the return that could be set against income. The second claimant, thereupon, had to pay tax chargeable for 2004/2005 and both claimants had to repay tax previously repaid to them as a result of setting the losses against income received in earlier years. The claims for judicial review are therefore dismissed.