UPPER TRIBUNAL

TAX AND CHANCERY CHAMBER

Neutral Citation Number - [2026] UKUT 00355 (TCC)

Applicants: (1) Massala Exotic Limited; (2) Khosru Miah	Tribunal Ref: **UT-2026-000066**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL
DECISION NOTICE

JUDGE RUPERT JONES

Introduction

1. The Applicants apply to the Upper Tribunal (Tax and Chancery) ("UT") for permission to appeal the decision of the First-tier Tribunal (Tax Chamber) ("the FTT"), released on 29 January 2026 ("the Decision"). The Decision was made by the FTT following a hearing on 12 January 2026.

The FTT Decision

2. In its Decision the FTT dismissed three appeals against decisions made by HMRC.

3. References in square brackets [] are to paragraphs in the Decision unless context requires a different interpretation.

The background to the appeals

4. In refusing permission to appeal against its Decision ("the PTA Decision"), the FTT summarised the background to the appeals at [3]:

> "3.The background and issues in this appeal are set out in the Decision. In simple terms however:
>
> (1) The first appellant ran an Indian restaurant between 2008 and January 2020. Throughout that time, the second appellant was a director of the first appellant.

It was HMRC's view that for the VAT periods 09/13 to 09/19, the first appellant had underdeclared its takings and so they issued a best judgment assessment against the company for £280,903.

(2) They also visited a company penalty, based on deliberate behaviour, on the first appellant of 63% of the amount of VAT assessed, and then sought to impose that penalty on the second appellant under a personal liability notice ("PLN").

(3) Both appellants appealed. They challenged the assessment on the basis it was not made to best judgment. They also challenged the quantum of the assessment (and indeed the penalty).

(4) It was HMRC's position that the first appellant had owned and used a single card machine, and the merchant acquirer data in relation to its use justified the assessment.

(5) It was the appellants' position that there were three card machines, only one of which was used by the first appellant, the other two having been lent to companies run by family relations of the second appellant ("the associated companies"). The takings reflected from the use of the first card machine were credited to an HSBC account in the name of the first appellant The money derived from the use of those other card machines had initially been paid into a Lloyds bank account in the name of the first appellant but had then been transferred to accounts in the names of the associated companies. The associated companies had paid VAT on the amounts so transferred to them."

The first appeal

5. The first appeal was by the first Applicant (or "the company"), which ran an Indian restaurant, against a VAT assessment of £280,903. The VAT assessment was based on HMRC's best judgement assessment that the company had underdeclared VAT in that sum for the VAT periods 09/13 to 09/19 because it underdeclared its takings in its VAT returns (suppressed its turnover or sales) and therefore failed to pay the VAT due to HMRC.

6. The FTT found at [49]-[53] of the Decision:

> "49. The burden of establishing that the VAT assessment overcharges the first appellant rests with the first appellant. It must demonstrate that on the balance of probabilities it has been overcharged. Its case is that there were three card machines, two of which were used by AM and JM and only one of which was used by the first appellant. The takings from the businesses owned by AM and JM were paid into a Lloyds bank account and redistributed.
>
> 50. We have rejected this story. There is no compelling admissible evidence which supports it.
>
> 51. From the primary facts, we have drawn the inference that there was only a single card machine used by the first appellant in its business and the payments out of the Lloyds account were not payments for the supply of meals by businesses run by JM and AM. We find this as a fact…
>
> 53. We therefore uphold the VAT assessment in the amount assessed."

The second appeal

7. The second appeal was by the company against the penalty for 63% of the amount of VAT assessed, namely £176,966.37, based on HMRC's judgment that the company's under-declaration was result of the deliberate behaviour of the company, through, its officer and director, the second Applicant ("Mr Miah"). The FTT stated at [57]-[62]:

> "57. Throughout the relevant periods, the second appellant was the sole director of the first appellant. It is recorded that it was he who supplied the information regarding the first appellant's takings to the agent who then put them into the relevant VAT return.
>
> 58. When doing this, the second appellant knew that the takings he reported were inaccurate. They did not include the payments made into the Lloyds bank account.
>
> 59. These inaccuracies persisted over a number of years.
>
> 60. The penalty explanation letter describes the inaccuracy as being output tax underdeclared over a period of four years as evidenced by the merchant acquirer data; no explanations have been given for this; this is deliberate behaviour to suppress the true amount of sales.
>
> 61. We agree. The first appellant through the agency of the second appellant knew the level of sales to be incorrect. The second appellant passed this on to the agent to be included in the first appellant's VAT returns with the intention that HMRC would rely upon those returns as accurate documents. This is deliberate behaviour.
>
> 62. We therefore find that the company penalty is a valid in time penalty."

The third appeal

8. The third appeal was against HMRC issuing a personal liability notice ("PLN") making Mr Miah liable for the penalty on the basis that he was personally responsible for the deliberate behaviour by the company in under-declaring the VAT. The FTT stated at [63]-[66]:

> "63. In order to visit a valid PLN on the second appellant, HMRC must show that the company penalty is a result of a deliberate inaccuracy which is attributable to an officer of the company.
>
> 64. This is clearly the case here. The deliberate inaccuracy in the VAT returns is attributable to the second appellant who was responsible for providing information about the level of sales, to the agent.
>
> 65. Mr Shahabuddin submits that the PLN is invalid because the notice of it, visiting personal liability on the second appellant, dated 14 September 2020, states that the reason for personal liability was because the company is either insolvent or likely to become insolvent. And this is not a statutory prerequisite to issuing a PLN.
>
> 66. We certainly agree that it is not a statutory prerequisite. However, all that HMRC have to show is there was a deliberate inaccuracy which is attributable to an officer of the company. They have done this."

The applications for permission to appeal to the Upper Tribunal

9. By the PTA Decision dated 30 April 2026, the FTT refused the Applicants permission to appeal the FTT's Decision to the Upper Tribunal ('UT') on the grounds of appeal pursued.

10. The second Applicant renewed the application to the UT for permission to appeal in-time within a month thereafter on 29 May 2026.

11. In a decision dated 27 July 2026, I refused the Applicants permission to appeal to the UT on the papers on all four grounds of appeal then pursued.

12. Mr Miah, the second Applicant, renewed his application for permission to appeal, requesting it be reconsidered at an oral hearing. The renewed application relies on three grounds of appeal only, some of which differ from those previously pursued.

13. The hearing of the renewed application for permission took place before me by video on 15 September 2026.

14. Mr Shahabuddin, Mr Miah's accountant since 2024 and representative before the FTT, appeared for Mr Miah, together with his colleague Mr Hussein. Mr Miah also attended the hearing and participated. All three individuals made oral submissions. I am grateful to them all for their assistance. They relied on the two earlier sets of grounds of appeal submitted to the FTT and the UT together with a letter dated 15 September 2026 from Mr Miah titled 'Mr Khosru Miah Notes to Read at the Hearing'. This document was effectively a speaking note.

UT's jurisdiction in relation to appeals from the FTT

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

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

Grounds of Appeal

17. The second Applicant now relies on three grounds of appeal before the Upper Tribunal in his document dated 15 September 2026. These grounds submit that the FTT made arguable errors of law in its Decision. The grounds are summarised in the document as follows:

> "I respectfully ask for permission to appeal. I rely mainly on three points based on the legal basis.
> First, I say that the Tribunal did not properly consider whether HMRC's repeated assessment figures after June 2016 satisfied the legal test of best judgment.
> Second, I say that the Tribunal did not properly consider the decision to make me personally liable for 100 per cent of the company penalty.

> Third, I submit that the First-tier Tribunal failed to address the alleged duplication of turnover and failed to give adequate reasons for rejecting that material submission.
> …
> For these reasons, I respectfully ask the Tribunal to grant permission to appeal, particularly on the following two questions:
> First, whether the First-tier Tribunal properly applied the best judgment test to HMRC's repeated assessment figures after June 2016.
> Second, whether the First-tier Tribunal properly considered the lawfulness and amount of the 100 per cent personal liability imposed on me."

Discussion, Analysis and Decision

<u>Application to admit new evidence on appeal</u>

18. The FTT did not receive any evidence from Mr Miah at any stage before makings its Decision, neither a written statement nor oral evidence in support of the original appeal. He did not attend the FTT hearing.

19. In his application for permission to appeal made to the FTT, and in his earlier application for permission made to the UT on the papers, Mr Miah sought to provide evidence in support of his applications. He asked the FTT and UT to admit a statement prepared by him by way of evidence of relevant facts regarding his case.

The contents of Mr Miah's witness statement

20. The permission application to the FTT dated 25 March 2026 summarises the contents of that statement as follows:

> "7.One of the main reasons the original appeal was dismissed was that Mr Miah did not provide a formal witness statement and did not attend the hearing. The Tribunal was understandably critical of this. We acknowledge that this was a serious shortcoming and one that we deeply regret.
>
> 8.Mr Miah is now prepared to provide a full witness statement, signed with a statement of truth, and to attend any future hearing to give evidence and answer questions. His statement will confirm the following key facts:
>
> a) There were two card machines and not three**.** MEL had its own card machine, used only at the restaurant and linked to the HSBC bank account. A second card machine was linked to the Lloyds bank account. This second machine was first used by Bayview Services (Cardiff) Ltd, and when Bayview stopped using it, it was passed on to Spice Master Trading Ltd. The two companies used it one after the other and not at the same time.
>
> b) Official HSBC Bank Statements were sent to HMRC. Mr Miah will confirm that he had sent official HSBC Bank Statements to Officer Wells during the enquiry, these were original copies that were provided by the bank and posted to be received by HMRC.
>
> c) Mr Miah deducted his fee before transferring money. For lending the card machine and managing the Lloyds account, Mr Miah charged between £150 and £200 per month. He deducted this amount himself before transferring the remaining balance to Bayview and later to Spice Master. This means the transfers shown in the Lloyds bank schedule are the amounts after the fee had already been taken out.

d) When Mr Miah Stated that the company had one account he meant that only one account was used to collect money for the sales of the company. On the 17th of October Mr Miah had told HMRC that there was only one bank account for the company, this was because it was the only account used for trading and the Lloyds account was separate collecting money for the other two companies.

e) The money belonged to the other businesses. Mr Miah will confirm that the card receipts going into the Lloyds account were entirely the trading income of the other businesses. MEL did not benefit from those receipts. MEL's own trading income went into the HSBC account and was declared on MEL's VAT returns.

9. We respectfully ask the Tribunal to take into account that this evidence was not provided before because, Mr Miah a small business owner with no legal training did not fully understand the importance of his personal attendance. This was a genuine misunderstanding, not an attempt to avoid giving evidence. He is now fully willing to attend and be cross-examined."

The refusal to admit fresh evidence on appeal

21. In my decision refusing permission on the papers, I refused to admit Mr Miah's statement in support of the application for permission to appeal. It constituted new evidence on appeal to the UT that was not before the FTT.

22. I was not satisfied that it would be just and fair to admit the new evidence on appeal applying the overriding objective in Rule 2(1) of the Upper Tribunal Rules, as to what is just and fair, and the power to admit evidence contained in Rule 15. I took into account the *Ladd v Marshall* criteria in relation to admitting fresh evidence on appeal to the UT.

23. I considered that Mr Miah had not given a good explanation or reason why he could not have presented this evidence to the FTT on the original appeal. The FTT explained, when refusing permission to appeal at [7]-[19] of the PTA decision, that the second Applicant was represented by Mr Shahabuddin throughout the FTT proceedings, even though the representative was an accountant and not a lawyer. The second Applicant had a more than reasonable opportunity to give written and oral evidence by filing a statement and attending the hearing at the FTT to give evidence. As the FTT noted in its PTA decision:

> "Furthermore, the appellants were on notice of the defects of their evidential position. We repeat what we said at [32(1) and (5)] of the Decision. Directions had been given that any person wishing to rely on witness evidence should call the witness to be available at the hearing, and that the appellant's representative had been told specifically, in a letter dated 18 October 2024 from the tribunal, that as things then currently stood, "the appellants have neither documentary evidence nor spoken evidence to support their appeal…".

24. The FTT's directions had told Mr Miah what evidence he could provide and when, in support of his appeal. There was no good reason for his failure to do so when his evidence was, on his case, an important basis for making his appeal. It was not demonstrated that the evidence could not have been obtained with reasonable diligence for use at the trial.

25. Second, I accepted that Mr Miah's evidence might have had a material impact on the outcome of the appeal before the FTT – whether or not it would probably have had an important influence on the result of the case. Nonetheless, thirdly I took into account that Mr Miah's

evidence was disputed by HMRC, the reliability and credibility of his account having been rejected by the FTT. In its Decision, as summarised above, the FTT found he had deliberately filed inaccurate VAT returns on behalf of the first Appellant in order to suppress the true amount of sales and VAT repayable. Therefore, the evidence was not such as to be taken to be apparently credible.

26. Balancing all these factors together I refused to admit Mr Miah's statement for the purpose of the application for permission to appeal to the UT.

Application to admit the HSBC bank statements

27. During the hearing of the renewed application before me Mr Miah did not renew the application to admit his statement.

28. Nonetheless, Mr Shahabuddin, Mr Hussein and Mr Miah sought to admit a series of HSBC bank statements that they say were in the sole name of Mr Miah at the relevant times (2013-2019) and which they say provided independent corroboration of Mr Miah's bank account and his case on appeal. They say that the statements represent Mr Miah's personal income from the first Applicant, his company, during the relevant period. They say the statements would demonstrate the true amount of the income or turnover of the restaurant during the period, substantiating his explanation that the Lloyds bank account was simply receiving income from the other two restaurants, through the card machines Mr Miah lent them, but which income was immediately transferred back to them.

29. There were a number of obstacles to granting this application.

30. First, Mr Miah had not supplied the HSBC bank statements to the FTT and they had never been relied upon before the FTT so again they were fresh evidence on appeal to the UT.

31. During the hearing Mr Miah sent to the UT the application for permission to appeal that he had originally sent to the FTT on 25 March 2026.

32. This application included photographs as attachments: including a photograph of a number of piles of HSBC bank statements which appeared to be in his name. However, none of the bank statements entries were visible on these statements – neither the balance, income or outgoings. Mr Miah stated that he had sent these HSBC bank statements to HMRC back in 2019 and they were the originals. He had not retained any copies and was not able to provide any copies to the FTT nor the UT. He noted that the statements would now be over six years old and that this bank account had been closed for a long time. He had not sought to obtain any copies from HSBC but believed HMRC should have retained these statements.

33. His submission was that HMRC should have retained the bank statements and presented them to the FTT – they had much better access to documents – just as they had should have had access to the company's filed annual accounts and (corporation tax) returns which would also provide independent verification of the company's turnover.

34. Therefore, Mr Miah was not able to provide copies of the HSBC bank statements to the UT that he sought to admit on appeal (nor the company's returns nor accounts).

35. For similar reasons to those given above in relation to Mr Miah's witness statement, I refuse the application to admit the HSBC bank statements as fresh evidence.

36. First, if Mr Miah had wanted to, he could have, with reasonable diligence, presented these bank statements to the FTT for the hearing of the original appeal. Even if he had sent the original documents to HMRC and had not kept copies, he could either have contacted the bank to obtain duplicate copies, or sought directions from the FTT for HMRC to disclose the statements he stated he had sent.

37. To the contrary, it appears that before the FTT he did not seek to rely on the HSBC bank statements and his representative did not seek to rely on the statements themselves.

38. From reading the FTT's Decision it is clear that while the Lloyds bank statements were provided as part of the appeal process all that was provided in respect of the HSBC accounts was a schedule about which the FTT stated at [43]-44:

> "43.What we were told were the HSBC bank statements tell us, effectively, nothing. There are entries which we were told reflected takings, but we were told that by Mr Shahabuddin. There was no oral evidence from the second appellant that this was the case.
>
> 44. The documents that we saw did not identify an account number, or name. We are being asked to take, effectively on faith, the fact that the receipts into that account were the only receipts reflecting sales made by the first appellant."

39. Mr Miah has not attempted to produce these statements even to the UT or suggested he has previously attempted to obtain them from HMRC or HSBC.

40. Second, without being able to see the bank statements themselves, it is impossible to know whether they might have any influence or impact on the outcome of the case. There is no evidence of the balance, income or outgoings from the account which would be capable of supporting Mr Miah's case that much of the income into the Lloyds Bank account did not represent the true income or sales of the company but simply was money from the other restaurants processed from card machines he lent them and then passed back to them.

41. Third, I accept that the statements might be a probative source of evidence - reliable and capable of belief - but without seeing the statements I cannot now what evidence I would be being asked to admit – whether it was even relevant, let alone supportive of Mr Miah's case. It would not be just and fair to admit such fresh evidence on appeal on such a speculative basis.

<u>Grounds of appeal</u>

42. I now turn to address the three grounds of appeal relied upon at the hearing.

Ground 1 – the assessment after June 2016

43. Mr Miah and his representatives submit that it is arguable that the First-tier Tribunal did not properly apply the best judgment test or did not give sufficient reasons for approving the figures relied upon and calculated by HMRC for the VAT periods after June 2016. For the earlier VAT periods, HMRC had merchant acquirer information showing card payment figures. However, for the VAT periods after June 2016, HMRC did not have the same merchant acquirer information. Instead, HMRC took the expected gross sales figure of £240,780.56 from the last period and repeated that same figure for every later quarter up to September 2019. This produced the same VAT assessment of £11,236.43 for each quarter for approximately three years. They argue that by repeating exactly the same figure for every quarter, HMRC did not take account of seasonal trading, changes in the business, declining sales or the fact that the restaurant later ceased trading in January 2020.

44. They therefore submit that it is arguable that the First-tier Tribunal failed properly to apply the principles of law on the making of best judgement assessments. For the periods after June 2016, HMRC repeatedly adopted exactly the same estimated gross-sales figure for every quarter until September 2019, despite the absence of merchant-acquirer data for those periods and without any reasoned consideration of seasonality, changes in trading circumstances or evidence of declining sales.

45. I reject this argument. There is no arguable error of law in the Decision and I refuse permission to appeal on this ground.

46. The FTT was entitled to find that HMRC had demonstrated, the burden being on them, that they made their VAT assessment to best judgement.

47. Mr Miah and representatives submit that HMRC did not obtain bank statements from HSBC nor company accounts nor returns nor other documents, such as the bank statements from the other restaurants nor their VAT returns which would have demonstrated that the company's gross and VAT income received after 2016 was not the same as that before 2016. They argue that HMRC were wrong to assume that VAT income remained the same in the following years and VAT periods. They contend that the restaurant's income declined such that HMRC's best judgement assessment was an over estimate and did not follow the legal principles to be applied.

48. I note that while the burden of proof is on HMRC to establish its assessments were made to best judgement, Mr Miah did not provide any document to the FTT to undermine HMRC's case that it calculated the assessment on the basis of best judgment or that its turnover declined or varied after 2016 such that the earlier figures should not be relied upon.

49. I am satisfied that there is no arguable error of law in the FTT's Decision that HMRC made their VAT assessment to best judgement. It gave sufficient reasons at [19]-[23] of the Decision applying the correct tests in law for the making of best judgement assessments:

> "19. We have no hesitation in concluding that the VAT assessment was made to best judgement by Officer Wells.

> 20. It was based on empirical evidence. He had the evidence of the VAT returns. He had the evidence from the merchant acquirer data which provided evidence of card sales. He grossed those up at an appropriate rate. For those years in which he did not have the merchant acquirer data, he simply used the sales figure for the last year in which he did have that data. He could have uplifted this by RPI but didn't (thus benefitting the first appellant).
> 21. He had not been told, either in correspondence when seeking information from the appellants, nor at the unannounced visit, nor at the meeting on 17 October 2019, that there was more than one card reader.
> 22. We find this as a fact. Notwithstanding the submission by Mr Shahabbudin that he was in possession of the knowledge that there were three card readers, we can find no evidence corroborating that this was the case on the date on which the VAT assessment was made. The first time (on the evidence presented to us) that HMRC were made aware of the appellants' story that there were three card readers, was on 26 March 2021 when the statements made by JM and AM of 18 March 2021 were sent to HMRC.
> 23. And while this information is relevant to whether the first appellant can displace the VAT assessment on the basis that it overcharges it, it is not relevant to the issue of best judgement which must be tested at the date on which the assessment was made."

50. There is no arguable error of law in the approach relied upon by the FTT as per the relevant authorities which it set out in Appendix 1 to the Decision:

> "7. In *Van Boeckel v Customs and Excise Commissioners* [1981] AER 505 ("Van Boeckel") the High Court (Woolf J as he then was) considered the application of best judgment.
>
> > "...It should be recognised...that the Commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgement is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the commissioners to obtain that information without carrying out exhaustive investigations. In my view, the use of the words 'best of their judgment' does not envisage the burden being placed on the commissioners of carrying out exhaustive investigations. What the words 'best of their judgement' envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to a decision which is one which is reasonable and not arbitrary as to the amount of tax which is due".
>
> 8. In the Court of Appeal decision of *Customs & Excise Commissioners v Pegasus Birds Ltd* [2004] EWCA Civ 1015, that court approved the approach of Woolf J. It went on to add that the tribunal's primary task is to find the correct amount of tax on the basis of the material before it and in all but very exceptional cases this should be the focus of the hearing; any mistake which I consider that HMRC has made in its assessment may still be to best judgment if it is consistent with an honest and genuine attempt to make a reasoned assessment of the VAT payable; and an assessment which appears to be unreasonable or wholly unreasonable may still be the result of an honest and genuine attempt to assess the VAT properly due."

<u>Ground 2 – the amount attributed under the Personal Liability Notice</u>

51. This ground does not give rise to any arguable of law in the FTT Decision and I refuse permission to appeal upon it.

52. Mr Miah and his representatives submit that HMRC issued a Personal Liability Notice making him personally liable for the company's entire penalty of £176,966.37. HMRC's letter

dated 14 September 2020 stated that the company's penalty arose from conduct attributed to him. However, it also stated that personal liability was being imposed because HMRC considered the company to be insolvent or likely to become insolvent. Mr Miah accepts that a company's actual or anticipated insolvency may explain why HMRC decided, as a matter of recovery policy, to pursue a company officer personally. Insolvency is not, however, one of the statutory conditions that establishes an officer's liability under paragraph 19 of Schedule 24 to the Finance Act 2007.

53. Mr Miah's narrower point concerns HMRC's separate decision to attribute 100% of the company's penalty to him. Paragraph 19 permits HMRC to specify a portion of the company's penalty, which may be 100%, but it does not make 100% attribution automatic. He respectfully submits that the FTT did not separately determine whether HMRC had lawfully exercised its judgement when specifying the entire penalty. In particular, the FTT did not determine whether HMRC had considered the extent to which the deliberate inaccuracy was attributable to my conduct, whether any other person contributed to it, and why my appropriate portion was 100%.

54. I reject these submissions.

55. The scope of the appeal against a PLN, and the FTT's jurisdiction by virtue of paragraphs 15-17 and 19-20 the Schedule 24 to the Finance Act 2007 is full merits. The appeal to the FTT is not a review of the justification asserted by HMRC in the PLN notice (which might be an issue for a judicial review) but whether the substance and amount of PLN is factually and legally correct – whether the statutory criteria are satisfied. In other words, HMRC and the FTT may rely at the hearing on a different justification for upholding the PLN than the one asserted in the notice so long as the statutory conditions are established for the taxpayer to be liable for the PLN. In relation to the amount of attribution of the company's penalty in the PLN – 100% being attributed to Mr Miah – no issue was taken on this point before the FTT and the FTT's reasoning in the Decision was sufficient to justify the full attribution to him of the company penalty (which in turn was 63% of the potential lost revenue).

56. I agree with the FTT's reasons given at [31]-[35] of the PTA decision when refusing permission to appeal on this issue:

> "31. The second appellant asserts that the PLN was issued on incorrect legal basis. HMRC issued it on the basis that the first appellant was insolvent, and that is not the correct legal test.
> 32. The tribunal agreed that this was not the correct legal test [66] of the Decision. But went on to say that all HMRC have to do is show that the company penalty was a result of a deliberate inaccuracy which was attributable to an officer of the company.
> 33. The tribunal therefore posed the correct legal test and found that it was satisfied. We found as a fact that the failure by the first appellant to account for VAT on the sales reflected in the assessment was a deliberate inaccuracy which in turn was attributable to the deliberate behaviour of the second appellant.
> 34. The second appellant says that we should have considered whether the penalty should have been reduced. We cannot review whether that penalty was a reasonable one. We can however consider the penalty and whether it should be decreased or

increased. However, no submissions for a decrease were made by the second appellant, nor was there any evidence or justification for us to do so. Having found as a fact that the first appellant underdeclared its takings and that was due to the deliberate behaviour of the second appellant, there was no reason for us to consider whether or not HMRC's decision to impose a company penalty at 67% (and therefore the same amount on the second appellant under the PLN) was one which should be disturbed.

35. I can discern no error of law in the tribunal having failed to do so"

<u>Ground 3 – failure to address the alleged duplication of turnover</u>

57. This ground does not raise any arguable error of law in the FTT Decision. I refuse permission to appeal upon it.

58. Mr Miah and his representatives submit that his position has consistently been that some of the Lloyds card-machine receipts represented sales made by other restaurant businesses—initially Bayview Services (Cardiff) Limited and subsequently Spice Master Trading Limited. Those amounts were transferred to the respective businesses, and it was understood that they accounted for their own turnover and VAT. If those receipts represented supplies made by the other businesses, they should not also have been treated as consideration for supplies made by Massala Exotic Limited. Doing so would duplicate the same receipts in calculating the VAT liabilities of two different taxable persons.

59. Mr Miah does not submit that HMRC bore the burden of proving that the other companies accounted for the VAT. His narrower submission is that the FTT recorded the company's case concerning the duplicated receipts at paragraph 15(6), but did not expressly explain in its substantive reasoning whether that case was rejected because:

1. the transfers to the other businesses were not proved;
2. the receipts were not shown to relate to supplies made by those businesses;
3. the absence of their VAT returns meant that the necessary duplication was not established; or
4. the evidence was rejected for some other reason.

60. He contends that it is arguable that the Tribunal failed to give adequate reasons for rejecting a material submission that directly affected the amount of VAT assessed.

61. I have already rejected this ground is unarguable and I refuse permission to appeal upon it. Mr Miah and his representatives did not expand upon it in any meaningful way in oral arguments and I refer to my earlier reasoning in rejecting it.

62. The FTT did not need to deal with any double taxation argument because it rejected the factual premise that there had been any double taxation. It made a finding of fact that the first Applicant had not declared or paid VAT which it was required to declare and pay and had suppressed its true turnover and sales figures in its returns ie. that the company made sales and failed to declare and pay all the VAT due to HMRC. This was a finding of fact that the FTT was entitled to make on the evidence before it on the balance of probabilities. The FTT made no arguable *Edwards v Bairstow* error – it took into account all the relevant evidence, it did not

fail to take into account relevant or take into account irrelevant evidence; it came to rational, reasonable conclusions which were not perverse; and made findings of fact and came to conclusions that a properly instructed tribunal could arrive at based upon the evidence before it. The FTT gave sufficient reasons for its findings.

63. Therefore, the FTT did not need to make findings as to whether the two other companies had paid VAT on these sales, as the company was required to declare and pay the VAT on these sales. Further and in any event, the FTT impliedly made a finding that the transfers to the other businesses were not established and that the receipts in the Lloyds bank account were not shown to relate to the other two businesses. It found at [39]-[42] that:

> "39. The only explanation we have had for these payments is set out in the appellants' submissions and in the statements of AM and JM.
> 40. There is nothing in schedules themselves which suggests that these are payments which were made for meals supplied by those recipients. This is filled in by those explanations, and we have rejected the veracity of those explanations.
> 41. We also note, as mentioned by HMRC, that the schedule supporting the summary which evidence the payments do so in mainly round terms and do not record pence. This is something which seems too pat. It is likely that the sales would have been in pounds and pence, and if pence were recorded on some occasions, why were they not recorded on others.
> 42. There could be any number of reasons why those payments were made, and not that they were payments for meals supplied by anyone other than the first appellant."

64. There was insufficient evidence before the FTT that the other two companies had otherwise paid the VAT which the second Applicant asserts they paid. There were no bank records, sales records or receipts or VAT returns or witness statements for the FTT from the directors of the other two companies provided from which the FTT could reasonably infer the other two companies had indeed paid the VAT which the company was due to pay on its sales. Mr Miah submits that HMRC hold the records that prove that the other two companies paid the VAT but the burden was on the Applicants to provide the evidence to prove their case which they failed to do. Further there was no application made to the FTT for directions to require HMRC to provide or disclose any further evidence they held so it is unknown whether the evidence exists and what it might say. He asserts that the FTT was required to consider the double taxation argument even without any relevant independent or reliable documents being provided in relation to the other two companies. This holds no realistic prospect of success. Without the Applicants establishing any factual premise for the legal argument as to double taxation, the FTT was not required to consider the argument.

65. Further, I agree with the FTT's reasoning in its PTA Decision:

> "27. It is true, as set out in the Decision at [38], that there was evidence of payments from the Lloyds bank account to two recipients namely Cardiff Bay and JUBORAJ group. These are the associated companies. But there was no documentary evidence of the nature of these payments, nor the reasons for them, from the perspective of the payer. And there was no documentary evidence, whatsoever, from the perspective of the payees. It seems to us that if the appellants' position is to be accepted, then this would have been readily available to the appellants and could have been produced as evidence to support the witness evidence.

> 28. But, in the same way that no corroboration was provided by way of VAT records of the associated companies, no corroborating evidence was supplied by those companies of the reason for the payments, nor was anything supplied which would justify a conclusion that the reason for those payments was takings of the restaurants run by the associated companies.
> 29. As we said in the Decision, those payments could have been made for any number of reasons, and we could not infer that it was more likely than not, on the relevant proven facts, that the payments reflected takings of those restaurants.
> 30. We can discern no error of law in this element of the Decision."

Conclusion

66. I know this decision will come as a disappointment to Mr Miah and it may have serious financial consequences for him, but my jurisdiction on an appeal to the UT from the FTT is limited: considering arguable errors of law in the FTT Decision. The application for permission to appeal is not an opportunity for me to reconsider his case and all the evidence afresh.

67. Permission to appeal to the Upper Tribunal is refused on all grounds of appeal as they do not hold realistic prospects and do not raise arguable errors of law in the FTT Decision.

Signed:	**Date: 16 September 2026**
JUDGE RUPERT JONES	
JUDGE OF THE UPPER TRIBUNAL	