



**TC01630**

**Appeal number: TC/2011/1656**

*INCOME TAX – gift aid – whether donations received? – no – assessments to recover gift aid relief upheld – corporation tax relief on income from other charities – whether Appellant’s expenditure for charitable purposes – no – relief refused and assessments upheld.*

**FIRST-TIER TRIBUNAL**

**TAX**

**SIRI LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: Mrs B Mosedale (TRIBUNAL JUDGE)  
Ms A Redston (TRIBUNAL MEMBER)  
Mrs S Cheesman (TRIBUNAL MEMBER)**

**Sitting in public at 45 Bedford Square, London WC1 on 25 October and at Victory House, Kingsway, London on 9 November 2011**

**Mr P Mgbeojikwe and Dr T Ogefere, officers of the Appellant for the Appellant**

**Mr T Johnson, HMRC officer, for the Respondents**

## DECISION

5 1. Siri Ltd (“Siri”) was a charity which we were told was set up to help mental health service users of African or Caribbean origin. Siri was registered by the Charity Commission on 5 August 1997.

2. It appeals against assessments to tax:

- 10 • various income tax assessments issued between 2 December 2010 and 10 January 2011 totalling £246,453.38 comprising income tax of £212,087.73 and interest of £34,365.65 made by HMRC to recover what they alleged to be incorrect gift aid reclaims made in 2005-2008;
- 15 • amendments to its corporation tax returns for the years ending 31 December 2006, 2007 and 2008 totalling £40,374.13 (£6,047 for year to end 2006; £13,223.93 for year to end 2007 and £21,102.48 for the year to end 2008) which were made on 25 February 2011 (issued 28 February 2011) plus interest;

3. Mr Patrick Mgbeojikwe was the Chair of Trustees of Siri and he signed the various gift aid claim forms (R68s) that led to the income tax assessments. Dr Tony Ogefere was company secretary and a trustee of Siri. He signed the corporation tax returns which were later amended by HMRC.

### 20 **Appeal out of time**

4. The appeal to the Tribunal was slightly out of time as, by mistake, Siri sent the appeal form to HMRC rather than the Tribunal. HMRC made no objection to the late appeal being admitted, so we admitted it.

### **Law**

25 5. Although the legislation changed slightly during the period covered by the assessments, so far as this appeal is concerned in substance it did not change. We cite here the version extant at 6 April 2007.

6. Section 25 of the Finance Act 1990 provided that gift aid payments to charitable companies would be treated as paid under deduction of tax:

30 “(10) The receipt by a charitable company of a gift which is a qualifying donation for the purposes of Chapter 2 of Part 8 of the Income Tax Act 2007 (gift aid) shall be treated for the purposes of the Corporation Tax Acts, in their application to the charitable company, as the receipt, under deduction of income tax at the basic rate for the  
35 relevant year of assessment, of an annual payment of an amount equal to the grossed up amount of the gift.”

7. Section 505(1) Income and Corporation Act 1988 (“ICTA”) provided that certain payments to a charitable company will in certain circumstances be exempt from tax:

“505 Charitable companies: general

(1) Subject to subsections (2) and (3) below, the following exemptions shall be granted on a claim in that behalf to the Board—

.....

(c) exemption—

5 (ii) from tax under Case III of Schedule D ...

.....

10 where the income in question forms part of the income of a charitable company, or is, according to rules or regulations established by Act of Parliament, charter, decree, deed of trust or will, applicable to charitable purposes only, and so far as it is applied to charitable purposes only;...”

8. The effect of these provisions is that gift aid payments made to charities are treated as net of basic rate tax and that, because under s505(1), as they are deemed to be annual payments (which fall under Case III of Schedule D) the charity is not subject to tax on them, the basic rate tax is “repaid” to the charity by HMRC.

9. It was HMRC’s case that the donations claimed by Siri to be made to it were not in fact made to it and that therefore the basic rate tax repayments were not owed by HMRC to Siri, and Siri should repay them. Siri’s case was that the donations were made to it, albeit held on its behalf by its accountant and fundraiser, Davidson & Co, and that it was the victim of misappropriation of these funds by Davidson & Co.

10. We note here that Siri’s contact at Davidson & Co (JED) Ltd was a person known variously as Mr Japhet Davidson, Mr E J Uwakwe and (by ACCA) as Mr E J Uwakwe-Davidson FCCA . We refer to him in this decision notice as Mr Davidson. There was some dispute whether the firm was incorporated. It was clear the firm used the trading name of Davidson & Co but was incorporated under the name Davidson & Co (JED) Ltd.

11. Siri claimed exemption from tax. S505(2) ICTA provides:

“(2) Any payment which

- 30 (a) is received by a charitable company from another charity; and  
(b) is not made for full consideration in money or money’s worth;  
and  
(c) is not chargeable to corporation tax apart from this subsection;  
and  
35 (d) is not, apart from this subsection, of a description which (on a claim) would be eligible for relief from tax by virtue of any provision of subsection (1) above;

40 shall be chargeable to corporation tax under the charge to corporation tax on income but shall be eligible for relief from tax under subsection (1)(c) above as if it were an annual payment.”

12. The effect of this provision is that a gift from another charity to Siri would be eligible for tax relief but only if the conditions set out above in paragraph 7 were met (ie the conditions in s 505(1)(c)). Those conditions included one that the income was applied for charitable purposes.

5 13. Further, this relief was further restricted by the provisions of s 505(4) which provided:

10 “If a charitable company incurs .... non-charitable expenditure in an accounting period, relief shall be disallowed in respect of such amount of relievable income and gains as equals the amount of the non-charitable expenditure.”

14. In other words, irrespective of what the charity did with the actual gifts from other charities, the tax relief on those gifts could be restricted by an amount equal to its non-charitable expenditure.

15 15. It was Siri’s case that Siri was a non-trading, not for profit organisation and by right exempt from tax. Dr Ogefere stated that charities are only liable to tax if they trade. This is a misunderstanding of the law. More than just trading receipts are liable to tax: as set out above receipts of donations from other charities are liable to tax *unless* used for charitable purposes and in any event s505(4) creates a restriction on relief where the charity has *any* non-charitable expenditure irrespective of what it did with the donations in question. It is for Siri to satisfy this Tribunal that its receipts from other charities were used for charitable purposes and that all its expenditure was for charitable purposes.

### **The facts**

25 16. Siri was registered with the Charity Commission on 5 August 1997 (charity reference 1063799).

17. Between October 2004 and 31 July 2008 Siri made 15 gift aid claims on Form R68 which in total claimed £220,285.75 repayment of tax from HMRC and which HMRC paid.

30 18. HMRC wrote to Siri on 11 September 2008 enquiring into its gift aid reclaim for 15-31 December 2007 requesting sight of the documents supporting this its 13<sup>th</sup> gift aid claim form in respect of which HMRC had paid £31,277.51 in tax rebate to the charity on 25 January 2008.

35 19. The information provided in a letter signed by Mr Patrick Mgbeojikwe and dated 22 September 2008 was that the sum donated was comprised of gifts made by only seven donors. The smallest donation was of £7,100 and the largest donation was of £30,700. The claimed donations totalled £110,893.

20. Siri also provided HMRC with a cash book which showed that these same 7 donors in total had made gifts between 25 November 2005 and 31 July 2008 of £348,515.78 to Siri.

21. In their letter, HMRC had also asked for evidence of the donations being banked. Only one bank statement was provided by Siri. This covered the period 1-31 January 2008 and (apart from the gift aid repayment) only showed two deposits totalling £115.55. In the same period the cash book showed some £23,868 had been donated to Siri, but it was Siri's case that these donations were paid to its accountant and fundraiser (Mr Davidson) and held by him on behalf of Siri, which was its explanation why the donations did not appear in its bank account.
22. With his letter of 22 September 2008, Mr Mgbeojikwe also provided HMRC four invoices. It was Siri's case that some of the donations were used to pay these invoices which were for a refurbishment of an old disused portakabin at their address as Siri needed the accommodation. The total of the invoices were £96,378.61 and cover the period 31 December 2007- 13 March 2008. Dr Ogefere accepted that these invoices were not paid from Siri's bank account. Siri claimed Mr Davidson discharged them from the donations collected and held on behalf of Siri. No receipts were produced to HMRC or the Tribunal.
23. It is Siri's case that all the information provided to HMRC with Mr Mgbeojikwe's letter of 22 September 2008 was provided to them by Mr Davidson who was still acting for Siri at that time.
24. Following Mr Mgbeojikwe's reply of 22 September 2008 to Miss Murphy of HMRC, Siri heard nothing further from HMRC until a Miss Atkinson of HMRC wrote to them on 13 October 2009 (over a year later) requesting further information such as the private addresses of the seven donors shown on the gift aid claim into which HMRC had opened the enquiry. We were informed that in the meantime Mr Davidson had died so at this point Siri no longer had an adviser. Some letters were exchanged between Siri and HMRC and a meeting was held on 12 May 2010 between trustees of Siri and officers of HMRC.
25. At some point HMRC were provided with copies of minutes of a meeting of the trustees of Siri on 28 July 2005 during which Mr Davidson was appointed as the charity's fundraiser. The minutes record that Mr Davidson was to be paid out of funds raised and should only account for the funds to the charity as and when required.
26. After being issued with a notice to file, Siri filed its corporation tax returns on 14 June 2010 for years to 31 December 2006, 2007 and 2008. It also submitted its accounts for these years.
27. The accounts of Siri to the year ended 31 December 2006 were signed by Mr Mgbeojikwe in February 2007 and audited by Davidson & Co (JED) Ltd. They showed income of £82,183. Some £2,240 was shown as "other incoming resources" and was not specified as donations. Of the donated income, some £12,500 was donated from other charities (the Baily Thomas Charitable Fund and the Goldsmith Company).
28. The accounts of Siri to the year ended 31 December 2007 were signed by Mr Mgbeojikwe and audited by Davidson & Co (JED) Ltd on 4 March 2008. They show

income of some £131,817. Some £964 was shown as “other incoming resources” and was not specified as donations. Of the donated income, some £13,000 was donated from other charities (Hillside Housing Trust and Lloyds TSB Foundation).

5 29. The accounts of Siri to the year ended 31 December 2008 were signed by Mr Mgbeojikwe in January 2009 and audited by Davidson & Co (JED) Ltd on 21 January 2009. They show income of £210,718. Some £3,542 was shown as “other incoming resources” and was not specified as donations. Of the donation income, some £15,000 was donated from other charities (Hillside Housing Trust and Lloyds TSB Foundation).

10 30. With respect to the funds obtained in 2006 by the charity from the Baily Thomas Charitable Fund and Goldsmiths, Dr Ogefere’s evidence was that the funds were for a one year project to provide support for mothers under 18 with learning difficulties to which Brent Council had also contributed. When the money ran out at the end of the year, it was his evidence Siri were able to secure further funding for the project from  
15 the Hillside Housing Trust and Lloyds TSB Foundation, and the same happened the following year.

20 31. The donations declared on the gift aid claim forms R68 exceed the income of Siri as shown in its accounts for the periods covered by the claim forms. For instance, gift aid donations were claimed of £273,988 in the period 1 February 2007 to 31 December 2007 but in the year to 31 December 2007 the charity only showed income of £131,817, only £64,872 which was shown as attributable to donations. It claimed donations of £105,459 in the period 19-4-6 to 22-11-6 (roughly seven months) yet its accounts for the 12 months to 31 December 2006 only show donations of £49,541  
25 (there were other gift aid claims which covered the remaining 5 months of 2006 but these included sums from 2005 and 2007 so it is not possible on the information before us to determine exactly how much Siri claimed was donated to in via gift aid only that it clearly exceeded the donations declared in its accounts). Siri made gift aid claims covering 1-1-8 to 31-7-8 for donations of £232,758 yet its accounts for the year to 31 December 2008 only showed income from donations of £109,026 (and total  
30 income of £210,718).

32. Apart from the information provided with its letter of 22 September 2008, Siri has provided no further documents to HMRC, although a Schedule 36 notice has been served on 8 October 2010 requesting information such as all its bank statements and all its invoices and receipts. Siri’s case is that all the financial information relating to  
35 the charity was held by Mr Davidson, who died, and although they have contacted his continuity practitioner, he has been denied access to Mr Davidson’s business papers and is unable to help them.

33. HMRC attempted to contact the seven donors by letters written on 20 May 2010. We accept the evidence of Mr Keller that he could not trace two out of seven of the  
40 donors. He did trace five of them, wrote to them, and received a reply from four. HMRC put in evidence the four letters. Although each letter was quite individual and varied in degree of indignation, the gist of all four letters was that the writers had not made any donations to Siri. In most cases they said they had not heard of Siri and one

writer was quite adamant that she had never made a charitable donation in her life and no plans to make one in the future.

5 34. Oral evidence given at the hearing by Dr Ogefere was that Siri had, not long after the construction work on the portakabin annex, bought the building (at a price of about £74,000) that it had previously been leasing as its headquarters with the benefit of a mortgage of about £70,000. It had been unable to keep up the payments and the property had been repossessed.

### **Witnesses**

10 35. We heard four witnesses. Mr Mike Keller (HMRC auditor) and Mr Rob Brewer (HMRC investigator) gave evidence for HMRC and Mr Mgbeojikwe and Dr Ogefere gave evidence (as well as making submissions) on behalf of Siri. We considered the reliability of the witnesses' evidence.

#### *Mr Mike Keller*

15 36. Mr Keller gave evidence about the investigation he and his colleague Mr Brewer had conducted into the gift aid claims made by Siri. His evidence was consistent and credible. He was criticised by Mr Mgbeojikwe for not contacting Davidson & Co (JED) Ltd after Mr Keller met with the trustees in the Spring of 2010 but we accept his evidence that HMRC had, with what little information they held, attempted to contact a former company secretary but were unsuccessful. Mr Keller was also  
20 criticised for failing to assist the charity in recovering the funds Mr Mgbeojikwe says are still owed to Siri by Mr Davidson: on the contrary, we find Mr Keller's actions entirely reasonable. HMRC's role is to collect tax that is due and not to assist charity trustees do the job the trustees were appointed to do to look after the charity's funds: in any event Mr Keller had good reason to suppose the funds did not exist. So we do  
25 not accept that the criticisms of Mr Keller were justified and we accept him as a good witness.

#### *Mr Rob Brewer*

30 37. Mr Brewer was criticised for referring to Davidson & Co as a company rather than a partnership: this is a minor matter but in any event it is clear that the governing body (ACCA) regarded it as a company (Davidson & Co (JED) Ltd) so we find Mr Brewer was right on this. He was criticised for not accepting an offer made at the May 2010 meeting to be driven to the offices of Mr Davidson. Mr Brewer's reply was that HMRC accepted Dr Ogefere's statements that he had tried unsuccessfully on many occasions to contact Davidson & Co (JED) Ltd and Mr Brewer did not expect  
35 any more luck this time and so refused the offer. We consider this was reasonable.

38. Mr Brewer accepted that although he had investigated Davidson & Co (JED) Ltd he had not informed Siri that his investigations were unsuccessful in locating anyone. This seems to us a minor matter bearing in mind he would be unable to disclose the name of the person he attempted to trace using HMRC's confidential records and it  
40 does not affect his credibility as a witness.

39. Mr Mgbeojikwe also alleged Mr Brewer was guilty of malicious conduct towards Siri and the basis of this allegation was that Dr Ogefere and Mr Mgbeojikwe say

they believe HMRC ought to have done more to chase Davidson & Co (JED) Ltd. It is for the charity trustees, not HMRC, to safeguard the assets and belongings of the charity (including its paperwork). In any event, as Mr Davidson was said to be dead and his continuity practitioner could not gain access to his old offices, it is difficult to see what else HMRC could do. We find no basis whatsoever in the allegation of malicious conduct.

40. We find Mr Brewer to be a reliable witness.

*Dr Tony Ogefere*

41. Dr Ogefere's evidence was not consistent. The case put on the Appellant's behalf was that Mr Davidson had collected monies on behalf of Siri and failed to account for them to the charity. At one point in the hearing Dr Ogefere said he now believed, based on the evidence produced by HMRC, that Mr Davidson had not collected any money on behalf of the Appellant but elsewhere he stated the case that Mr Davidson had collected money for the Appellant (although he did not know how much).

42. His evidence was that Siri signed the gift aid forms relying on Mr Davidson's advice that they should sign them and without understanding that the forms were claiming money had been donated to the trust. He said that up until HMRC contacted Siri in 2008, he had had no idea that gifts totalling nearly £900,000 were supposedly made to Siri and held on behalf of the charity by Mr Davidson; yet it was also his evidence that in 2008 Siri had used some £90,000 of this money to pay construction bills. It was also his evidence that Mr Davidson had been employed as a fund raiser.

43. He was unable to explain why Siri had been able to ask Mr Davidson to use the funds collected on Siri's behalf to pay the invoices from the contractor, but did not use the funds (only a short while later) to make the purchase of the freehold which was funded by a bank mortgage (see paragraph 34).

44. He gave evidence he was "comfortably off" but later said that he relied on the support of his family and state benefits: when asked to elaborate on what support he got from his family he said that he was a King in Nigeria and owner of a rubber plantation run by his siblings who would change the local currency into sterling and have it physically brought into the UK by people travelling here whenever Dr Ogefere asked for funds.

45. Dr Ogefere's evidence that he was comfortably off was given in response to a question why the one bank statement for Siri produced to HMRC showed a payment of £10,000 to him. His explanation was that this was partial reimbursement of expenses, which he had met on his credit card, of sending members of Siri on conferences.

46. It was the Appellant's case that Mr Davidson had misappropriated very large sums owing to Siri, although when asked Dr Ogefere said he had not reported the matter to the police or the charity commission and in fact all he could point to was a letter written to the ACCA on 18 August 2010 asking for ACCA's help in retrieving money held by Mr Davidson on behalf of Siri. ACCA replied giving the details of Mr

Davidson's continuity practitioner. Dr Ogefere then wrote to the continuity practitioner whose reply on 18 November 2010 was that he was unable to assist as Mr Davidson's family had denied him any access to Mr Davidson's office or files. No further steps were taken by Dr Ogefere to trace funds held by Mr Davidson which on his case would amount to about £800,000.

47. He gave evidence that Siri had no paid employees after 2003 and relied entirely on volunteers. Yet the single statement provided for January 2008 shows wages of £500 paid to Catherine Miller. Dr Ogefere's answer was that she was not a direct employee of Siri.

48. The bank statement also showed £550 paid for a wedding dress and £745 for drinks. Dr Ogefere's evidence was that the dress and drinks were for the wedding of a member of Siri called Valerie Macpherson, that he had attended the wedding as had some 30 other members of Siri, and that he considered it to be a proper use of the charity's funds as the "relief of poverty". We note that Valerie Macpherson was a trustee of Siri during the time that Dr Ogefere said the charity had paid for her wedding dress and wedding breakfast drinks.

49. In conclusion, many of his statements were inconsistent with each other or inconsistent with other evidence. In particular, he said he had not originally understood the gift aid claims meant that large sums of money had been given to Siri: yet at the same time it was his case Siri had used this money to fund the construction work to the portakabin. It was also his case that later he had understood from HMRC that the gift aid forms meant that large sums had been donated to Siri but held by Mr Davidson, yet his conduct was not consistent with someone who really believed this as apart from writing two letters, Siri took no steps at all to recover the money. Further, he admitted to what was in effect a misuse of charity funds (paying for a wedding dress and wedding drinks). His stock answer was that we should ask Mr Davidson who was the only person who knew the truth, and he did not recognise his own responsibilities as trustee. We find that Dr Ogefere was not a reliable witness.

*Mr Patrick Mgebeojikwe*

50. Mr Mgebeojikwe's evidence (given first) was not entirely consistent with Dr Ogefere's evidence. Mr Mgebeojikwe's evidence was that he knew at the time he signed them that the gift aid forms claimed receipt of donations from individuals he did not know. He said Dr Ogefere and Mr Davidson advised him to sign the forms without question and he had (from his time some years earlier as an employee with HM Customs & Excise) learnt not to question what an accountant said and therefore he signed them without question. He said he had asked Mr Davidson if they were real people and been told they were. He also told the Tribunal that he knew at the time he signed them that there was "no physical money on the table". His evidence was also "there was no money, just the claims". He agreed that with hindsight he should not have signed the forms.

51. We also find he signed the accounts for 2006, 2007 and 2008 which did not include the donations shown on the forms he signed for the gift aid claims. When

asked to explain this to the tribunal why he had done this, his reply was that the Tribunal should ask Mr Davidson who had prepared the accounts.

52. With respect to the construction invoices, at first he indicated he had not seen them before the hearing and had not sent them to HMRC. Later he agreed he signed the letter (at Dr Ogefere's request) which was sent to HMRC with the invoices but indicated Dr Ogefere was responsible for the contents of it.

53. He denied knowing how Siri had funded the £90,000 to pay for the construction works. He could not explain why the expenditure was not shown in the accounts and repeated that he had not been aware of the invoices.

54. He said he believed and still believed that Mr Davidson had money belonging to the charity. Nevertheless, as mentioned, the only steps taken by Siri to recover this money was the letter to ACCA and the continuity practitioner.

55. He asked us to bear in mind that he was scarcely ever at the charity and didn't see much: nevertheless we find from his evidence he clearly attended meetings, signed forms, and went to the premises regularly.

56. On the charity's website he is stated to be a chartered accountant but at the hearing he agreed that he was not a chartered accountant and his answer to the question of why he should be described as a chartered account on the website was evasive. He said: "It's just a statement, it could be right and it could be wrong."

57. In conclusion we find Mr Mgbeojikwe contradicted himself such as saying he believed that Mr Davidson had kept the donations reported on the gift aid forms but at the time he had failed to institute or even investigate taking action against Mr Davidson's estate. He admitted to actions that were not that of a responsible trustee, such as signing gift aid forms knowing that there was no money on the table. He also said he signed where he was told to sign without question. We also find he signed accounts which were inconsistent with the donations claimed to have been received by the charity on the gift aid forms signed by himself and inconsistent with the invoices for construction work which he sent to HMRC. We find Mr Mgbeojikwe was not a reliable witness.

### 30 **Submissions on behalf of the Appellant**

58. Dr Ogefere complained that the investigation by HMRC had led to Siri being forced to cease operations: previously it had been able to secure funding but after the investigation opened they found that potential funders who had sounded positive came back with a negative response. This is not a concern for this Tribunal: even if HMRC's decision to investigate Siri were unjustified it would be a matter for judicial review and not this Tribunal: as can be seen from our conclusions in this case we do not consider the investigation unjustified.

59. Dr Ogefere and Mr Mgbeojikwe also said that if HMRC had been more proactive in its enquiries into Siri's tax affairs, and not waited a year after their initial letter, Mr

Davidson would have been able to give them the answers to the questions they sought. We deal with this point below in paragraph 70.

5 60. Siri's case is that it was not careless to rely on a professional accountant and fund raiser such as Mr Davidson, and it is Siri which is the victim as Mr Davidson has not accounted to Siri for the money he collected on its behalf as evidenced by the gift aid forms. We deal with this point in paragraphs 67 & 68 below.

61. Siri want the assessments dismissed for lack of sensitivity, equality and merit. Our answer to this submission is that we will deal with its appeal in accordance with the law.

## 10 **Decision**

*Were the gift aid donations made to Siri?*

15 62. The contents of the four letters from the alleged donors are necessarily hearsay evidence as the writers of the letters were not called by HMRC as witnesses. We considered whether we should accept this evidence. Firstly, we accept that these letters were genuinely in response to letters sent by Mr Keller. We had no reason to doubt the reliability of Mr Keller (see above) and it was Mr Keller's evidence that he actually spoken to the alleged donors on the phone when they rang in response to his letter. He had asked them to make a written response and so we find these letters were genuinely in response to the letters sent by HMRC

20 63. Secondly, we considered whether the content of the letters was likely to be true bearing in mind the authors were not available for cross examination. We took into account that on behalf of the Appellant it had never been suggested to HMRC that the letters were in any way false nor had those representing the Appellant asked for the writers to be called, and they made no such suggestion at the hearing. Secondly, and 25 more importantly, the evidence of the letters is consistent with what the Tribunal heard from the witnesses for Siri which was that they did not know the donors personally and Siri itself had never banked any money from donations made by these individuals and, as Mr Mgebeojikwe said, he knew there was no money on the table. Lastly, we considered that there was no obvious reason why the authors would falsely 30 deny making donations, particularly (bearing in mind the amounts claimed by Siri to be donated) the donors would have to have been wealthy individuals to make the claimed donations and therefore likely to wish to claim higher rate tax relief on any donation they made.

35 64. In conclusion, we accept the veracity of the four letters both as to their origin and their content.

65. We find that none of the donations on gift aid claim number 13 were made. We make this finding because:

- In so far as HMRC were able to trace the would-be donors they have denied making any donations;

- It is inherently improbable that private individuals who have no connection to a small charity would make such large and unrestricted gifts to it;
  - It is improbable that individuals making generous gifts to a charity would pay the money to its fundraiser and not to an account in the name of the charity;
- 5     • At the time of the donations were meant to be occurring, Siri acted as if none were received: it did not include them in its accounts and did not ask its fundraiser to account for the monies. It was Dr Ogefere’s and Mr Mgebeojikwe’s evidence that the charity survived hand to mouth, relying on lots of small donations from its beneficiaries and their relatives to buy tea and coffee and pay utilities bills. It
- 10    took out a nearly 100% mortgage to fund the purchase of its offices. Further, although Dr Ogefere and Mr Mgebeojikwe told this Tribunal that they had believed Mr Davidson had raised large sums for the charity and failed to account for them, nevertheless they took no steps to pursue him or his estate (apart from ineffectual letters to ACCA and his continuity practitioner). They did not report the matter to
- 15    the police, the Charity Commissioners or even take legal advice;
- Siri has never received the money;
  - We do not accept Siri’s case that Mr Davidson used some of the monies donated to Siri and held by him to pay the construction services on the portacabin because we do not accept that this work took place.
- 20    66. Our reasons for this last finding is that we find that the invoices did not include the name of the supplier, contained no VAT number and charged no VAT despite the value of them indicating that the contractor was very likely to be over the registration and there was inconsistency in the numbering of the invoices. Further, we accept that Mr Brewer and Mr Keller attempted unsuccessfully to locate a genuine business
- 25    which might have issued the invoices and we were not satisfied that they were genuine. More significantly, we were not satisfied that work costing anything like the sum invoiced had been carried out. Not only was the evidence of Dr Ogefere and Mr Mgebeojikwe unreliable for the reasons given, it was inconsistent. We were left unclear whether it was a portakabin or a wooden shack and whether it had been
- 30    refurbished or re-constructed; it was not satisfactorily explained to us why Siri would spend £90,000 on an annex to a building which at the time they say was rented; it was not explained to us why Dr Ogefere thought Siri should spend £90,000+ on works when his evidence was that at the time he did not know Mr Davidson had collected any donations at all. We also take into account Mr Mgebeojikwe’s desire at the
- 35    hearing to distance himself from the invoices. We find Siri has not made out its case that the invoices were genuine and genuinely reflected work carried out and genuinely were paid out of funds held by Mr Davidson on behalf of the charity.
- 40    67. The only possible conclusion we can reach on this evidence is that none of the donations claimed on claim form 13 were ever made. The legislation as set out above in paragraph 6 requires “the receipt by a charitable company of a gift”. None of the gifts listed on this form were made and Siri was not in receipt of them (as they did not exist). That makes it inevitable that our finding is that, as Siri did not receive the

funds (whether into its own hands or into the hands of Davidson & Co or indeed anyone else's hands), it was not entitled to reclaim the tax on these "donations" (as they did not take place).

5 68. We note that even if we had accepted Siri's case (which we do not) that this was merely a case of misappropriation of charitable funds by Davidson & Co, Siri would still not be entitled to repayment of the basic rate tax: exemption from tax under s505(1) depends (as set out above in paragraphs 7-8) on the income being "applied to charitable purposes only". If the funds had existed and been misappropriated, they would clearly not have been applied for charitable purposes.

10 *Were any other of the claimed gift aid donations made to Siri?*

69. For the same reasons, we do not accept that any of the gift aid donations claimed on the other 14 forms on behalf of Siri were ever made.

15 70. We dismiss the submissions made by Siri's representatives on this. Although for reasons of protection of the revenue, it is regrettable that HMRC let over a year go by from receiving Mr Mgbeojikwe's reply to their initial letter of enquiry before pursuing the matter further, there is nothing in Siri's claim that if HMRC had been more proactive in its enquiries into Siri's tax affairs, Mr Davidson would have been able to give them the answers to the questions they sought. The trustees are responsible for the affairs of the Charity and if they choose to leave all their financial  
20 paperwork with their accountant, that is their responsibility. It is for them to prove their case, and they have failed to do this. In any event, as we are quite certain that the gifts were never made, we do not think Mr Davidson held any evidence that would have advanced Siri's case.

*Were the funds donated by other charities used for charitable purposes?*

25 71. It was Dr Ogefere's case at the hearing that the funds donated by the charities mentioned in paragraphs 27-29 in 2006, 2007 and 2008 were used to fund a charitable project. However, HMRC asked for all receipts and invoices in respect of Siri's expenditure in a letter dated 1 September 2010. Siri's reply was that Mr Davidson had all of Siri's paperwork and the documents could not be provided. A Schedule 36  
30 notice to produce the documents was sent to Siri on 8 October 2010 which also required invoices and receipts to be produced but they were not so produced to HMRC.

72. We find that the only invoices which were produced by Siri were the ones for construction services, which we have found were not carried out.

35 73. The evidence from the single bank statement provided by Siri shows a few unidentified amounts (totalling less than £1,500) paid out but otherwise records payments out of £10,000 to Dr Ogefere (mentioned above in paragraph 45), payments out of other sums to another trustee (Mrs Ayertey) for "services", the wages to C Miller (mentioned above in paragraph 47) and the payment of £1,500 in respect of a  
40 trustee's wedding (already mentioned in paragraph 48) and a withdrawal of £2,000 cash. We were not satisfied that any of this expenditure was for charitable purposes.

74. In particular, we did not accept Mr Mgbeojikwe and Dr Ogefere's evidence as reliable and in the absence of any receipts or invoices we were not satisfied that the expenditure on the project involving young mothers had been made.

5 75. Further, we do not accept that the £10,000 paid to Dr Ogefere was in reimbursement of expenses as we were not satisfied (bearing in mind the contradictory evidence he gave on his personal financial position recorded above) that Dr Ogefere would be in a position financially to meet such large expenses from his own resources, particularly when the accounts record that no reimbursements were paid to trustees. In any event, even if we were satisfied Dr Ogefere was being  
10 reimbursed expenses (which we were not) we were not satisfied that sending members on unspecified conferences was expenditure on the charitable purposes of Siri.

15 76. As already mentioned in paragraph 49, we have found that the purchase of a wedding dress and drinks at the wedding of a trustee was not expenditure for charitable purposes (and we note the accounts are wrong to record that no trustee received any benefit of that kind): even if Dr Ogefere was mistaken in saying it was the wedding of Valerie Macpherson, we are still not satisfied that expenditure on a dress and drinks for a wedding is expenditure on charitable purposes.

20 77. The Appellant has not satisfied us that the payment of wages to C Miller was for charitable purposes: Dr Ogefere said Siri had no paid employees and in any event did not explain to HMRC nor the Tribunal what role C Miller undertook other than it was for an unspecified project.

78. We had no evidence and were not satisfied that any of the other expenditure was for charitable purposes.

25 79. The evidence of Mr Mgbeojikwe and Dr Ogefere is that the charity lived hand to mouth dependent on donations from its members to buy tea and coffee and to pay utilities bills. Yet the charity was in receipt of large repayments of gift aid from HMRC and, we find, expended large sums (it claimed) on attending conferences and other sums for which we were given no explanation. In conclusion, we are not satisfied that the funds donated from the other charities were expended on Siri's  
30 charitable purposes, nor that *any* funds held by Siri were expended on charitable purposes.

80. For both these reasons, we find that HMRC's three corporation tax assessments to disallow the relief on sums donated to Siri from other charities are correct.

*The balance of the assessments*

35 81. The corporation tax assessments also assessed Siri to tax on small amounts of "other incoming resources" the details of which are set out above in paragraphs 27-29. At the hearing no explanation of the income to which this related was given: we were given the stock answer that Mr Davidson would know.

40 82. It is for Siri to satisfy this Tribunal that this income had already been taxed or was subject to a tax exemption. As it was unable to specify the source of this income,

it has failed to do this and we uphold the assessments in respect of these sums too. In conclusion, we uphold all three corporation tax assessments in their full amount subject to the point below about time limits.

*Are HMRC's assessments valid?*

5 83. Paragraph 46 of Schedule 18 of the Finance Act 1998 sets out the time limits for HMRC to make assessments of tax on companies. An amended version of Paragraph 46 came into force on 1 April 2010 and this applied to these assessments because the assessments were made after this date. It provides (as amended):

10 “(1) Subject to any provision of the Taxes Acts allowing a longer period in any particular class of case no assessment may be made more than 4 years after the end of the accounting period to which it relates.

15 (2) An assessment in a case involving a loss of tax brought about carelessly by the company (or a related person) may be made at any time not more than 6 years after the end of the accounting period to which it relates (subject to sub-paragraph (2A) and to any other provision of the Taxes Acts allowing a longer period).”

20 84. Some of the assessments made by HMRC were more than 4 years after the end of the accounting period to which they related: but none of them were more than six years after the end of the accounting period (as HMRC discharged the assessments raised on gift aid claims made in 2004). The question, in so far as the assessments were in respect of accounting periods which ended more than 4 years but less than 6 years before the date of the assessment, was whether the company or a related person had been careless. HMRC did not allege that Siri's conduct was deliberate.

25 85. We consider that the acts of Mr Mgbeojikwe and Dr Ogefere, as directors and trustees of Siri, are the actions of the company. In any event, they were both “related persons” according to the definition in paragraph 46(2b)(a) as they were both “a person acting on behalf of the company”.

30 86. It was Siri's case that they were not careless as it was reasonable to rely on a professional such as Mr Davidson to carry out the fundraising. Their case as they put it was that “the Charity lost revenue as a result of relying on a professional accountant as a professional fundraising manager”.

35 87. However, the point at issue in respect of the gift aid claims for 2005 and 2006, is whether the invalid claims were made carelessly; and in respect of the invalid claim for corporation tax relief on donations from other charities in the year 2006, whether that claim was made carelessly.

40 88. We consider that “carelessly” means that someone has failed to take reasonable care. It is the opinion of the Tribunal that the decision of Mr Mgbeojikwe to sign the gift aid forms knowing that there was (as he put it) no money on the table was at the very least careless. Siri's gift aid claims made in respect of donations that were never made was at the very least careless, as (at the least) it was unreasonable to believe that Mr Davidson had collected and held on to approximately £900,000, without making any attempt to verify this information.

89. With respect to Siri's case that it was reasonable to rely on Mr Davidson, we reject this. Neither Siri nor an officer of Siri can pass on its own obligations to a third person. Mr Davidson prepared gift aid claims forms for donations which did not exist. Siri was not a victim but the beneficiary of these incorrect claims as it received the repayments from HMRC. It cannot blame Mr Davidson: Mr Davidson must have known the claims were false but the officers of Siri also knew or ought to have known this.

90. With respect to the corporation tax relief on donations, claimed by Dr Ogefere in the tax returns, we find that such behaviour is at the very least careless. We have found as a matter of fact that none of the charity's expenditure was for charitable purposes and Dr Ogefere must have or ought to have known that fact as he was a trustee and company secretary of Siri. His actions in claiming relief were therefore (at the least) careless.

91. In summary we uphold all the assessments against Siri in their entirety and dismiss the appeal.

92. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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**Barbara Mosedale**

**TRIBUNAL JUDGE**  
**RELEASE DATE: 6 December 2011**

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