



**TC02097**

**Appeal number: TC/2011/06246**

*CAPITAL ALLOWANCES; Annual Investment Tax; Requirements of  
qualifying claim; Claim disallowed by HMRC; Appeal dismissed.*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HOARDWHEEL FARM PARTNERSHIP**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE & CUSTOMS**

**Respondents**

**TRIBUNAL: JUDGE GRETTA PRITCHARD, BL,  
MBA, WS  
PETER SHEPPARD, FCIS, FCIB, ATII**

**Sitting in public at George House, Edinburgh on 16 May 2012**

**Mr Mark McLeman for the Appellant**

**Mr William Kelly, instructed by the General Counsel and Solicitor to HM  
Revenue and Customs, for the Respondents**

## DECISION

### Background

5 1. This is an appeal by Hoardweel Farm Partnership (“Hoardweel”) against a decision by HMRC to disallow a claim for Annual Investment Allowance (“AIA”) under the Capital Allowances Act 2001 introduced in the Finance Act 2008. The claim was made in respect of plant and machinery purchased in the farm’s trading year 2007-08 and submitted for the tax year 2008-09.

10 2. The purpose of the provision in the Finance Act 2008 was to assist taxpayers with capital expenditure reliefs by allowing the whole capital relief in one tax year instead of the existing writing down calculations required each year by taxpayers up till then. However the taxpayers who were partnerships permitted to use AIA were restricted. HMRC believed the restriction applied to Hoardweel whereas Hoardweel did not.

### 15 The Hearing

3. This hearing had no oral evidence from Hoardweel or HMRC. Hoardweel was represented by Mark McLeman of J H Greenwood & Company, Chartered Accountants, Berwick-on-Tweed. HMRC was represented by William Kelly, one of their officers. The written evidence was contained in an agreed bundle sections 1-10  
20 with each section separately paginated. Where reference is made to any section/page it shall be treated as repeated here.

#### 4. Non-contentious legislation

- (1) Taxes Management Act 1970, Sections 12AA, 12AB, 12AC, 28B(4).
- (2) Finance Act 2008, Schedules 18(1) and 36(1).
- 25 (3) Partnership Act 1890, Sections 20 & 24.
- (4) Case law – *Jackson (HM Inspector of Taxes) v Laskers Home Furnishers Ltd* [1956] All ER 891.

#### 5. Contentious legislation

Capital Allowances Act 2001, Section 38A which states:

30 38A. AIA qualifying expenditure

- (1) An annual investment allowance is not available unless the qualifying expenditure is AIA qualifying expenditure.
- (2) Expenditure is AIA qualifying expenditure if –
  - (a) it is incurred by a qualifying person on or after the relevant date, and

(b) .....

(3) “Qualifying person” means –

(a) .....

(b) a partnership of which all the members are individuals, or

5 (c) .....”.

(4) ....

(5) “The relevant date” means –

(a) ...

(b) for income tax purposes, 6 April 2008.

10 **6. Findings in Fact**

From the evidence the Tribunal finds:-

15 (1) Mr David John Stebbings, his wife Mrs Elaine Stebbings and a company R Stebbings (Plumbing and Heating) Engineers Ltd are the proprietors of Hoardweel farm in Berwickshire. Mr David John Stebbings and Mrs Elaine Stebbings are the only directors of R Stebbings (Plumbing and Heating) Engineers Ltd (hereinafter referred to as the company).

(2) There is no formal partnership between the parties.

20 (3) Hoardweel Farm is a working farm whose financial accounts for the year ended 31 July 2008 disclose cattle, sheep, pigs and crops as their trading stock. The net profit shown in these accounts is divided equally between Mr and Mrs Stebbings. The capital account shows assets for Mr and Mrs Stebbings as a joint figure of £578,709 and assets for the company as £232,805.

25 (4) The tax return for the tax year to 5 April 2009 was completed using the information from Hoardweel’s financial accounts to 31 July 2008 its annual accounting date. An excerpt from that return at Section 6 P1 shows the declaration of the company as a partner in Hoardweel.

30 (5) The Annual Investment Allowance claim is shown in the Financial Accounts to 31 July 2008 (Section 4) under Capital Allowances in the sum of £16,027.00 as a deduction against net profits.

(6) On 7 July 2010 HMRC wrote to Mr Stebbings instigating an enquiry into the Hoardweel tax return for the tax year to 5 April 2009, which used the Financial Accounts to 31 July 2008 as its basis.

- (7) A number of issues were raised which were resolved easily and without contention.
- (8) The main contentious issue which finally came to the Tribunal was HMRC's contention that the claim for Capital Allowance which included the Annual Investment Allowance of £16,027.00 could not be allowed because Hoardweel was not a "qualifying person" as all the partners were not individuals.
- (9) On 24 August 2010 Mr McLeman set out his reason for believing that the AIA claim was allowable. He had given some consideration to what he referred to as "mixed partnerships". He considered the S38A(3)(b) restriction on "Qualifying person" should not apply. He contended that the company was dormant. He advised it had "never been involved in the partnership trading activities and does not share in the profits or losses of the business. It is our opinion the company is not actually a partner but is part owner of the land and buildings at Hoardweel Farm, with a 25% share ... the Company has historically been named in the Accounts because the Bank had requested that the Land and Buildings be shown in the Partnership Balance Sheet".
- (10) Over time the discussion continued with reference to a capital disposal noted in the accounts and adjustment of the partners' capital assets in the 31 July 2008 accounts. HMRC had pointed out the company partner had claimed partnership losses in the tax year 5 April 1999.
- (11) The Tribunal finds that the company had had trading losses allocated in the financial year to 31 July 1998. Following that there was a period when the company remained a partner without participating in the profits. For the tax year to 5 April 2009 a company tax return was required in respect of the capital adjustment due to the sale of part of the land and buildings by the Hoardweel partnership.
- (12) It was claimed the "farm" was not a partnership asset but that claim was not substantiated by the evidence. The "farm" is the land and buildings. These are used for agricultural purposes by the owners who are the declared partners in the tax return namely Mr and Mrs Stebbings and the company. It was also claimed that the company has acted merely as a landlord but no tenancy was proved.
- (13) The Tribunal finds that the claim that the company was not a partner in the farming enterprise cannot be sustained in light of the Financial Accounts to 31 July 2008 and the information in the tax return.

### **Submissions**

7. For HMRC Mr Kelly submitted that in the absence of a partnership agreement the Partnership Act 1890 prevailed. Since the partnership declared in the tax return that one partner was a company it could not consist of individuals as required by

Section 38 of the Capital Allowances Act 2001. It was not relevant that one partner played no part or that the company was treated as dormant for some time. He relied on *Jackson (HM Inspector of Taxes) v Laskers Home Furnishers Ltd* [1956] 3 All ER 891. Mr Kelly was not relying on the facts which were not at all similar but on a reference in the decision to a comment in *Henrickson (HM Inspector of Taxes) v Grafton Hotel Ltd* by Lord Graeme who in response to an argument, presented to him, came to the conclusion that “It frequently happens in tax cases that the same result in a business sense can be secured by two different legal transactions, one of which may attract tax and the other not. This is not to say that a taxpayer who has adopted the method which attracts tax is to be treated as though he had chosen the method which does not, or vice versa.”

8. He suggested that Mr and Mrs Stebbings might have wished for the ownership and partnership to be differently structured but that only arose out of a change in the law in 2008. In any event they would still be entitled to writing down under the still existing alternative method for non qualifying investors.

9. He moved for the appeal to be refused.

10. For Hoardweel Mr McLeman sustained his argument that the company was not a partner in the Hoardweel Farm Partnership. It did not trade. It had capital assets. It was misleading for HMRC that it required to be declared on the tax return but that was an inconvenient historic situation demanded by the Bank for security. He was satisfied on the information provided the Tribunal should allow the AIA claim for 2009.

### **Decision**

11. The appeal is refused.

### **Reasons for decision**

12. The Tribunal was not convinced that the company could be treated as some separate entity with no interest in the farming enterprise. Mr and Mrs Stebbings are its only two directors. Profits are allocated to them as individuals. The ownership by the company of part of the land is apparently a historic matter as various family ancestors and siblings were previously involved. However, now the only persons are Mr and Mrs Stebbings in two capacities, one as individuals and one as directors of the company. They are Hoardweel Farm partnership. The company may have technically been dormant for a number of years but it is required to make tax returns when in receipt of taxable income or capital and a tax return was required for it in the tax year to 5 April 2009 due to the chargeable gain on a sale of part of the property. In addition the accounts were not prepared as showing Mr and Mrs Stebbings as the only partners. The accounts show the company as using a partnership capital account. The Tribunal regretted not having sight of the titles, and informed Mr McLeman of this. He did not request an adjournment as he had tried to source them. A simple search of the Registers of Scotland could have sufficed as a sale had occurred in 2008. The Tribunal drew no conclusions from this but could not find in Hoardweel’s favour

when the land and buildings were in the partnership's Financial Accounts as assets. That was claimed as a Bank requirement. Whilst the accounts do show bank borrowing, no proof was brought to show the security methodology. The Tribunal can accept some submissions but only if it can be shown that they are substantiated by facts which support them.

13. In all the circumstances given our findings the Tribunal had no hesitation in finding that Hoardweel's claim for AIA for the tax year ending 5 April 2009 could not be allowed.

14. 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.

**GRETTA PRITCHARD**  
**TRIBUNAL JUDGE**

**RELEASE DATE: 21 June 2012**