



**TC02284**

**Appeal number: TC/2011/1978**

**INCOME TAX – TRADE PROFITS - DEDUCTIONS – *Whether consultancy fees revenue or capital expenditure? – Revenue – whether entitled to capital allowances on the expenditure? – No – Appeal dismissed – Amendment to self assessment return confirmed***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**GRANT BOWMAN t/a  
THE JANITOR CLEANING COMPANY**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE MICHAEL TILDESLEY OBE  
GILIAN PRATT JP**

**Sitting in public at Phoenix House, Rushton Avenue, Bradford on 19 September  
2012**

**The Appellant did not appear**

**Tony Burke of the Appeals & Review Unit for HMRC**

## DECISION

### The Appeal

1. The Appellant appealed against HMRC's decision dated 6 October 2010 amending his self assessment tax return for the year ended 5 April 2008. The result of the amendment was that the Appellant was required to pay income tax of £4,618.92 instead of £234.08.

2. The issue in dispute is whether the Appellant was entitled to treat a consultancy payment of £11,000 to a Mr Asgari as expenditure incurred wholly and exclusively for the purpose of trade. HMRC asserted that the payment was not revenue but capital in which case the consultancy payment of £11,000 was not an allowable deduction from the Appellant's business income for the year ended 5 April 2008.

3. The Appellant cited two grounds of Appeal in the alternative:

(1) The consultancy payment constituted a revenue expense and, therefore, an allowable deduction against taxable income.

(2) If the payment was capital expenditure, the Appellant was entitled to capital allowances against taxable income.

4. On 13 August 2012 the Appellant informed the Tribunal that he would not be able to attend the hearing. The Appellant gave no reason for his non-attendance. On 19 September 2012 HMRC applied for the Appeal to be heard in the Appellant's absence pursuant to rule 33 of the Tribunal Rules 2009. The Tribunal granted the Application. The Tribunal was satisfied that the Appellant was notified of the hearing, and that it was in the interests of justice to proceed. In respect of the latter the Tribunal finds that

(1) The dispute dates back to 6 October 2010 when HMRC amended the self assessment return for 2007/08.

(2) The Appellant gave no reason for his non-attendance.

(3) The Appellant's case was not compelling.

(4) HMRC was in a position to proceed.

### The Facts

5. The Appellant was a sole proprietor trading under the name of The Janitor Cleaning Company.

6. The disputed payment was made to a Mr A S Asgari who was described as a business consultant with an address in San Diego USA.

7. The payment of £11,000 comprised two elements:

(1) A one off payment of three per cent of total contract value for the assistance given in the negotiation and winning of a three year cleaning contract with SMC. Total value of the contract, £300,000 over three years.

(2) Fee of £2,000 for identifying and then assisting in the negotiations for the business planning and potential purchase of Cleaner Times.

8. According to the Appellant, the nature of Mr Asgari's involvement was to signpost him to potential contract opportunities with the Appellant conducting the contract negotiations. The Appellant stated that the three year cleaning contract with SMC was cancelled after ten months. In respect of the second transaction, the potential purchase of Cleaner Times fell through at the last moment. Cleaner Times decided not to go ahead with the sale which led to the Appellant having a serious fall-out with Mr Asgari.

9. The Appellant has supplied no other details of his arrangements with Mr Asgari. The Appellant provided no information on Cleaner Times and on the identity of SMS. In respect of his alternative argument, the Appellant has failed to explain why the expenditure qualified for capital allowances.

### **Reasons**

10. Section 33 of Income Tax (Trading and Other Income) Act 2005 provides that no deduction is allowed for items of a capital nature when calculating the profits of trade. Capital expenditure is not defined in statute and in practice is the opposite of revenue expenditure which represents the day to day running costs of a business, such as staff wages, purchase of trading stock and rent of business premises. The Courts have used various tests for identifying capital expenditure.

11. In *Atherton v British Insulated and Helsby Cables Ltd* [1926] AC 205 Viscount Cave said:

“When an expenditure is made not only once for all, but with a view to bringing into existence an asset or advantage for the enduring benefit of a trade, I think there is very good reason ..... for treating such an expenditure as properly not to revenue but to capital”.

12. The House of Lords in *Tucker v Granada Motorway Service Limited* [1979] STC 393, however, preferred a different approach of first identifying on what the expenditure is incurred and then establishing the effect of that expenditure. If the effect of that expenditure is to acquire, dispose or modify a capital asset, then the expenditure is capital.

13. The Appellant has the responsibility of proving his case on the balance of probabilities. The evidence adduced by the Appellant was threadbare.

14. On the evidence provided the Tribunal finds that the £11,000 fee comprised two one off payments which had nothing to do with the day to day running of the Appellant's business, The Janitor Cleaning Company. The Tribunal holds that the fee of £2,000 was made in connection with the acquisition of an identifiable asset (The Cleaner Times). The Tribunal is, therefore, satisfied that the £2,000 fee constituted capital expenditure.

15. The fee of £9,000, on the other hand, was spent on securing an introduction to SMC with a view of securing a long term contract, which would have provided the Appellant's business with an annual income of £100,000 well in excess of its 2007/08 turnover of £78,629. The securing of the contract had it remained in force would have secured an enduring benefit for the Appellant's business. The Tribunal agrees with HMRC's analysis of the purpose of the £9,000 payment which was to put the Appellant's business in a position to earn the sizable income from the contract rather than being incurred in the course of earning the income for the business. The Tribunal is, therefore, satisfied that the £9,000 fee constituted capital expenditure.

16. The Capital Allowances Act 2001 defines certain types of capital expenditure which qualify for allowances that rank as deductions against taxable income. The Appellant did not make a claim for capital allowances in his 2007/08 tax return. Further the Appellant has not explained how the payment of £11,000 met the requirement of qualifying capital expenditure under the 2001 Act. In short the Appellant has provided no rationale to justify the application of the 2001 Act to the capital expense of £11,000.

### **Decision**

17. The Tribunal decides that

(1) The payment of £11,000 to Mr Asgari constituted capital expenditure for which no deduction is allowed against the Appellant's business profits for 2007/08.

(2) The Appellant failed to establish on the balance of probabilities that the £11,000 payment qualified for allowances under the Capital Allowances Act 2001.

18. The Tribunal, therefore, dismisses the Appeal and confirms HMRC's amendment to the Appellant's self assessment return for the year ended 5 April 2008.

19. 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.

**MICHAEL TILDESLEY OBE  
TRIBUNAL JUDGE**

**RELEASE DATE: 28 September 2012**