



TC02996

Appeal number: TC/2013/02598

*VAT – appeal against refusal of input tax claim and de-registration for
VAT –has appellant established that it is engaged in business activities – no
– is the appellant entitled to recover input tax – no – appeal dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

WOSEM COMMUNITIES DEVELOPMENT LIMITED Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE ALISON MCKENNA
ANTHONY HUGHES**

Sitting in public at Bedford Square on 1 October 2013

Andrew Adekun, director of the Appellant company for the Appellant

Chris Jacobs of HMRC for the Respondents

DECISION

1. The matters under appeal are two-fold. Firstly, there is the matter of the Respondent's decision to disallow the Appellant's input tax claims for the VAT periods 10/11, 1/12 and 4/12. In each case the amount claimed was reduced to nil. Secondly, the Respondent's decision dated 29 May 2013 to de-register the Appellant for VAT and issue an assessment disallowing the outstanding input tax claim for the period 7/11 is appealed.

2. The Tribunal heard from Mr Adelekun that he is a director of Wosem Communities Development Limited ("WCDL"). He described himself as the "outgoing" director because he said that the company is being wound up. He told the Tribunal that WCDL is the "trading arm" of Christ Apostolic Church registered charity number 1014992 ("the charity"), although he described its method of operating as one of re-investing its profits in community projects, rather than the usual arrangement of transferring its profits by gift aid to its parent charity. It is a company limited by guarantee (so the charity is not a shareholder and its legal relationship with WCDL is unclear). Mr Adelekun also described it as a social enterprise company and its printed note paper describes it as a "community based business".

3. It was apparent from Mr Adelekun's evidence and from much of the documentary evidence before the Tribunal that there was an imprecise line between the activities of the charity and of WCDL and that the relationship between the two entities was not clearly delineated. Mr Adelekun referred to the shared religious ethos and mission of the two organisations, however they are in law separate entities and we would strongly suggest for the future that the charity takes advice from the Charity Commission about the permissible business arrangements between a charity and its trading subsidiary.

4. Mr Adelekun submitted that WCDL had at all material times been carrying out business activities for VAT purposes. As Mr Jacobs correctly submitted on behalf of the Respondents, the onus of proof is on the Appellant to satisfy the Tribunal on the balance of probabilities that it is a business making taxable supplies. Mr Adelekun told the Tribunal that it planned to act as the commercial landlord of a property which the charity intended to transfer to it and that it would also provide management, repair and maintenance for the property. Also that it proposed to be part-owner of a nursery run from the property and that it would provide training and development services. Mr Adelekun had provided to HMRC a number of documents to support WCDL's appeal and these were available to the Tribunal in the hearing bundle. The majority of these were invoices addressed to "Christ Apostolic Church" and some bills were addressed to Mr Adelekun personally. Other documents were addressed to "Greenhold Properties Limited". Clearly none of these could be accepted as evidence of the activities of WCDL, which is a separate legal entity. Documents clearly mentioning WCDL included bank statements and an extract from WCDL's own business plan. The Tribunal also saw some invoices issued by WCDL to overseas companies for "professional services provided". We note that WCDL's financial accounts for the year ended 2011 describe its principal activity as "the provision of

logistical services for foreign visitors and entities” although we saw no contracts for the supply of such services or any other documents describing what this work entailed. Mr Adelekun explained that some documents had been destroyed in a fire at the premises in March 2012.

5 5. Mr Adelekun also produced for the Tribunal a report from a building surveyor
in respect of the property which it was intended that the charity would transfer to
WCDL. This appears to have been commissioned in connection with a loan
application by WCDL in respect of the property which it did not yet own. The
invoice for this work is addressed to WCDL. We gained the impression that there
10 was a reasonably mature plan for the property to be transferred to WCDL and for it to
undertake business activities as a commercial landlord from that address. We saw a
draft lease with a commercial tenant. However, we are aware that the transfer of a
property from a charity to its trading subsidiary is a “connected persons” transaction
for the purposes of section 117 of the Charities Act 2011 and so the charity would
15 need the prior consent of the Charity Commission to make the transfer. Accordingly,
there can be no certainty that the property would have been transferred to WCDL or
that the proposed business activity as a commercial landlord would have ever taken
place. Due to the fire at the premises, the plan was abandoned in any event.

20 6. Mr Jacobs for HMRC relied upon a witness statement from Mr King, who had
now retired but had previously been the officer in this matter. He submitted that the
Appellant had produced no evidence on which the Tribunal could rely to support its
appeal. He argued that the Tribunal could not rely upon documents addressed to
separate legal entities to support the Appellant’s case, and that the Appellant had had
plenty of opportunity to produce copies of documents lost in the fire some eighteen
25 months ago. Where invoices had been produced by WCDL, he argued that the lack of
information as to the nature of the supply prevented HMRC and the Tribunal from
applying the business test as set out in *Morrison’s Academy Boarding Houses and
Associations* [1978] STC 1.

30 7. Having considered all the evidence and submissions we concluded that both
appeals (against de-registration for VAT purposes and the refusal of the input tax
claim) should be refused. The Appellant has not produced evidence of a nature and
quality to satisfy the Tribunal that it was engaged in business activity and making
taxable supplies at the relevant times. Accordingly, we uphold HMRC’s decision to
refuse the input tax and its decision to de-register WCDL for VAT purposes.

35 8. 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
40 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

**ALISON MCKENNA
TRIBUNAL JUDGE**

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RELEASE DATE: 25 October 2013