



TC03067

Appeal number: EDN/2008/00104

Expenses – certification of witness as expert – MTIC case – limited evidence led – appeal abandoned by taxpayer – Award made.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

RAPTOR COMMERCE LTD

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE KENNETH MURE, QC
SCOTT A RAE, LLB, WS
PETER R SHEPPARD, FCIS, FCIB, CTA**

**Sitting in Edinburgh at George House, 126 George Street, Edinburgh on 31
October 2013**

Appellant: not represented

**Respondents: Mr I Mowat, Solicitor, Office of the Advocate General for
Scotland**

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DECISION

1. The Respondents, HMRC, seek an award of expenses in this appeal and also certification of Mr John Fletcher, CA, as an expert witness.
- 5 2. The hearing was set down for 10.00am. Mr Shakoor, the sole director of the appellant company did not appear by 10.30am. Both he and the appellant company had been separately notified of the date and time of the hearing. Accordingly we invited Mr Mowat to address us.
- 10 3. This appeal relates to an alleged Missing Trader Intra Community (“MTIC”) fraud. The procedural rules governing the appeal are the Value Added Tax Tribunals Rules 1986/590. (In that regard we refer to the Note appended to this Tribunal’s Direction dated 27 March 2013.) The appeal has a lengthy history. It was lodged in 2008. There have been many Case Management Hearings since then and various procedural delays. At an early stage the appellant was professionally represented by a
15 tax specialist agent and, thereafter, on a limited basis by a solicitor. Mr Shakoor represented his company at the more recent hearings. He explained that there were problems of funding professional representation and stressed the disadvantages which he was experiencing as a lay representative. In fairness HMRC, at the suggestion of the Tribunal, were sympathetic in simplifying the presentation of their case in various
20 ways.
4. Notwithstanding, Mr Shakoor complained that HMRC at various stages “changed” their case against the appellant. Certainly Witness Statements were updated by reference to a limited number of extra documents produced, and certain witnesses (HMRC officials) were replaced by others on the occasion of staff
25 retirements. We did not consider that there was substance in Mr Shakoor’s complaints. There was nothing irregular or sinister in HMRC’s conduct of the appeal, and we make no criticisms of it.
5. We encouraged Mr Shakoor to focus on those aspects of the appeal which were in dispute and to negotiate an appropriate Joint Minute of Admissions. This would
30 have the advantage of abbreviating the hearing and concentrating on the aspects in dispute. Essentially Mr Shakoor claimed that he (and his company) had no reason to believe that the company’s dealings were fraudulent (the *Kittel* test). Although a draft was sent to him by HMRC, Mr Shakoor did not make any efforts to negotiate this further. Had he done so, it may well be that a proof, limited to the contentious issues,
35 could have been concluded. In the event the Tribunal heard evidence from only HMRC’s first witness, Mr Stone, and thereafter the appeal was abandoned by the appellant.
6. Under the 1986 Rules expenses may follow success. In the circumstances of the present case we consider that an award of expenses is entirely appropriate,
40 particularly in view of the manner in which the case was conducted on behalf of the appellant.

7. We consider also that the second motion in the Respondents' application should be granted. We have considered a copy of Mr Fletcher's Witness Statement. He is a chartered accountant with specialist experience in the telecoms industry. While he has given somewhat similar evidence in other MTIC cases, he did consider the circumstances of this appeal on an individual basis. We are conscious that Mr Shakoor on behalf of the appellant would have an opportunity to make representations to the Auditor of Court in relation to the assessment of expenses arising from his involvement and, indeed, the other elements of expenses sought.

8. In the circumstances we grant both craves in the Respondents' Application of 24 April 2013.

9. 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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KENNETH MURE, QC
TRIBUNAL JUDGE

RELEASE DATE: 19 November 2013