



TC03449

Appeal number: TC/2012/10857

CORPORATION TAX – Capital Allowances – Whether Car Valeting Bay plant? – No on facts – Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ROGATE SERVICES LIMITED

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE ADRIAN SHIPWRIGHT
MR CHRISTOPHER JENKINS**

**Sitting in public at Southampton Appeals Service, 83-85 London Road, Southampton,
SO15 2SH on 11 September 2013**

Geoffrey Hicks, Accountant, of Wood, Hicks & Co for the Appellant

Paul Shea of HM Revenue and Customs, for the Respondents

DECISION

Introduction

- 5 1. This is an appeal by Rogate Services Limited ("the Taxpayer") against the disallowance of plant or machinery allowances in respect of what the Taxpayer described as "a valeting bay" ("the Building").
2. The disallowance was notified by letter dated 29 June 2012. A Closure Notice was issued on 5 July 2012 and reissued on 20 July 2012. This was confirmed to the Taxpayer by letter
- 10 dated 22 August 2012.

The Issue

3. In essence, the issue in this case was whether or not the cost of construction of the Building qualified for plant or machinery allowances as plant.
4. It was accepted that there is a qualifying activity here.
- 15 5. Only a small amount of expenditure in connection with the Building relating to the accounting period ending 31 October 2008 and some for 2010 was before us. We only have jurisdiction to deal with the matters under appeal and so confine ourselves to them. This decision only relates to the expenditure disallowed. As a matter of law it does not decide any other matters.

The Law

Statute

- 20 6. The statute law is found in the Capital Allowances Act 2001 ("CAA") and in particular sections 21-23. Section 28 makes special provision for the cost of Thermal Insulation of Buildings. References to sections in this decision are to sections of the CAA unless the
- 25 context otherwise requires.
7. Section 21 is headed "Buildings" and provides:
- "(1) For the purposes of this Act, expenditure on the provision of plant or machinery does not include expenditure on the provision of a building.
- (2) The provision of a building includes its construction or acquisition.
- 30 (3) In this section, "building" includes an asset which—
- (a) is incorporated in the building,
- (b) although not incorporated in the building (whether because the asset is moveable or for any other reason), is in the building and is of a kind normally incorporated in a building, or
- 35 (c) is in, or connected with, the building and is in list A.

LIST A

Assets treated as buildings

1. Walls, floors, ceilings, doors, gates, shutters, windows and stairs.
2. Mains services, and systems, for water, electricity and gas.
- 40 3. Waste disposal systems.
4. Sewerage and drainage systems.
5. Shafts or other structures in which lifts, hoists, escalators and moving walkways are installed.
6. Fire safety systems.

(4) This section is subject to section 23".

8. Section 22 is headed "Structures, assets and works". It provides:

"(1) For the purposes of this Act, expenditure on the provision of plant or machinery does not include expenditure on—

- (a) the provision of a structure or other asset in list B, or
- (b) any works involving the alteration of land.

LIST B

Excluded structures and other assets

- 1. A tunnel, bridge, viaduct, aqueduct, embankment or cutting.
- 2. A way, hard standing (such as a pavement), road, railway, tramway, a park for vehicles or containers, or an airstrip or runway.
- 3. An inland navigation, including a canal or basin or a navigable river.
- 4. A dam, reservoir or barrage, including any sluices, gates, generators and other equipment associated with the dam, reservoir or barrage.
- 5. A dock, harbour, wharf, pier, marina or jetty or any other structure in or at which vessels may be kept, or merchandise or passengers may be shipped or unshipped.
- 6. A dike, sea wall, weir or drainage ditch.
- 7. Any structure not within items 1 to 6 other than—
 - (a) a structure (but not a building) within Chapter 2 of Part 3 (meaning of "industrial building"),
 - (b) a structure in use for the purposes of an undertaking for the extraction, production, processing or distribution of gas, and
 - (c) a structure in use for the purposes of a trade which consists in the provision of telecommunication, television or radio services.
- (2) The provision of a structure or other asset includes its construction or acquisition.
- (3) In this section—
 - (a) "structure" means a fixed structure of any kind, other than a building (as defined by section 21(3)), and
 - (b) "land" does not include buildings or other structures, but otherwise has the meaning given in Schedule 1 to the Interpretation Act 1978.
- (4) This section is subject to section 23.

9. Section 23 is headed "Expenditure unaffected by sections 21 and 22". It provides:

"(1) Sections 21 and 22 do not apply to any expenditure to which any of the provisions listed in subsection (2) applies.

(2) The provisions are—

- section 28 (thermal insulation of industrial buildings);
- section 29 (fire safety);
- section 30 (safety at designated sports grounds);
- section 31 (safety at regulated stands at sports grounds);
- section 32 (safety at other sports grounds);
- section 33 (personal security);
- section 71 (software and rights to software);

section 40D of F (No.2) A 1992 (election relating to tax treatment of films expenditure).
(3) Sections 21 and 22 also do not affect the question whether expenditure on any item described in list C is, for the purposes of this Act, expenditure on the provision of plant or machinery.

- 5 (4) But items 1 to 16 of list C do not include any asset whose principal purpose is to insulate or enclose the interior of a building or to provide an interior wall, floor or ceiling which (in each case) is intended to remain permanently in place.

LIST C

Expenditure unaffected by sections 21 and 22

1. Machinery (including devices for providing motive power) not within any other item in this list.
2. Electrical systems (including lighting systems) and cold water, gas and sewerage systems provided mainly—
 - (a) to meet the particular requirements of the qualifying activity, or
 - (b) to serve particular plant or machinery used for the purposes of the qualifying activity.
-
4. Manufacturing or processing equipment; storage equipment (including cold rooms); display equipment; and counters, checkouts and similar equipment. ...
22. The alteration of land for the purpose only of installing plant or machinery.
23. The provision of dry docks".

10 Case Law

10. We were provided with copies of the following cases which we have carefully considered.

- (1) *IRC vs Barclay, Curle & Co* (1969) 45 TC 221
- (2) *Cook vs Beach Station Caravans Limited* (1974) 49 TC 514
- 15 (3) *Bentsen vs Yard Arm Club Limited* (1979) 53 TC 67
- (4) *Attwood vs. Panda Car Wash Limited* [1997] BTC 454
- (5) *IRC vs. Anchor International Limited* (2004) 44 TC 38

Evidence

11. We were provided with a bundle of documents. No objection was taken to any of them and they were all admitted in evidence.

12. We heard oral evidence from Mr Iain Stannard, who, at the time, was an Inspector working in the Local Compliance enquiry team in Portsmouth. A witness statement was produced for him. He was questioned by Mr. Hicks on behalf of the Taxpayer.

13. We also allowed Mr Luff, a director of the Taxpayer, to give evidence notwithstanding the directions. HMRC raised no objection. He was cross examined on behalf of HMRC.

14. No photographs were produced of the building. We were told that HMRC had suggested some should be produced but the Taxpayer had not wished to do so. As there was no agreement, no photographs were produced. This meant we had to rely on the documents and the evidence of Mr Stannard.

15. We did not have the benefit of a site visit.

Facts

16. From the evidence we make the following findings fact.

Rogate's Business

17. The Taxpayer carried on business in the motor trade. In particular, the Taxpayer supplied Renault cars. It operated a Renault franchise.

18. The Director's Report stated that "the company's principal activity remains that of new and second-hand motor dealers and related motor service".

19. This required it to have the capability of applying glasscoat finishes to the cars to be supplied to customers. This was a Renault requirement for its dealers. This had to meet the Renault quality standards.

20. There was a statement of fact not in dispute which read:

(1) "The appellant is an independent garage that operates a Renault franchise.

(2) It offers the normal services associated with a garage ranging from new and second-hand car sales through to after sales care, including servicing, parts and repairs.

(3) Amongst the activities is the need to valet cars, including the specialist's [sic] activity of applying wax to new cars. These activities have to meet the strict quality standards laid down by Renault".

21. Before the Building was available, the Taxpayer had used the old valeting bay for this process.

22. This process requires application of one or other of the two products specified by Renault at specified temperatures.

23. The application of the product had to be made at a temperature of between 60 and 70 degrees Fahrenheit. This is so the worker can apply the product to the vehicle effectively.

24. Equipment was used to apply the product but this was essentially hand held buffing equipment.

The Building

25. Mr Stannard had the benefit of a site visit which we did not. His evidence was not challenged on factual matters and we accept it in full.

26. Mr Stannard said "In basic appearance the structure resembled a conventional garage, being of brick construction with a concrete floor raised a few inches above ground level. The interior, which was fully visible to me because of the absence of the door, appeared to have no remarkable features..."

27. This description fits in with what is said in the planning documents produced. The design and access statement referred to "Proposed Double Garage". These emphasise that the building will not harm the character or appearance of this rural landscape and would be of matching brick.

28. The permission given was for the "Erection of double garage and retaining brick wall". It was to be used as "a private domestic garage and parking area".

29. Mr Stannard was told that the walls had insulation material in them and the floor was raised as part of the design to assist in keeping the internal temperature above the ambient temperature. We accept that this is the case here.

30. Mr Stannard considered that what was involved here were "... walls, a floor, a ceiling and subsequently a door..." and presumably a roof (although not as relevant for the specific legislative purposes).

31. The Building had not been fully completed at the times in question. In particular, the heat retaining doors had not been installed. Instead, a wooden board or screen was put across the opening to retain the heat.

32. The Building had six wall fixed heaters powered by electricity to provide the heat necessary to attain the optimal temperatures.

33. The Building was kept clean and used solely for the application of glasscoat.

34. Nothing was drawn to our attention that showed that there was "anything so unique" about the Building that it could only be used for the application of the glasscoat product.

35. It was accepted that the Building could be used for other purposes such as storage. It was useable space which the Taxpayer emphasised was essentially used for the application of glasscoat.

36. We find that the Building consisted of :

- (1) A concrete floor;
- (2) Walls of standard concrete block construction;
- (3) A flat roof set on wooden beams.

It seems to be no more than a garage as the planning application suggested.

37. We find that the Building:

- (1) Was a building for the purposes of section 21; and
- (2) If not a building a structure within Item 7 of List B in section 22 as "... a structure not within Items 1-6 ..." of List B in section 22. It does not fall within any of the exclusions from Item 7.

Expenditure

38. The expenditure in question included £875 in the Taxpayer's 2008 accounts described as "expenditure on planning and topographical surveys".

39. This was not the total cost of the Building.

Submissions

Taxpayer's submissions in outline

40. The taxpayer in essence submitted that the Building was plant and so entitled to plant and machinery allowances in respect of the expenditure in question.

41. In more detail, the Taxpayer argued that the Building was a necessary part of the process which enabled the glasscoat to be applied. It was a tool of the trade.

42. The legislation had to be interpreted to reflect and give effect to this.

43. One should not start with section 21 etc. and decide whether there was a building or structure. Rather one should consider whether or not there was expenditure on plant which was clearly the case here. This was because it performed a function in the trade. The Building was a tool of the trade. As a tool of the trade the Building is plant and so was entitled to the allowances. The case law supported this.

44. The *Andruff* case is not a guide to deciding this case. Here, as it is a tool of the trade, the allowances must be given

HMRC

45. In essence HMRC submitted that the Building was a building for the purposes of section 21 and/ or a structure for the purposes of section 22 and not within any of the exceptions and so the expenditure could not be expenditure on plant.

46. Accordingly, no plant or machinery allowances were available.

47. Consequently, the appeal must be dismissed as the allowances were not available.

Discussion

48. In our view, this appeal requires us to consider (inter alia):

- (1) Whether the Building is plant as a matter of general law?
- (2) If the Building could be plant are the allowances denied because of sections 21 and 22? This is essentially the question whether the building is a building or structure?

Is the building plant?

49. On the general approach to whether something amounts to "plant" we consider that the Building is not plant on general principles.

50. The Building does not perform a function like the dry dock in the *Barclay Curle* case of raising and lowering ships.

51. The *Beach Station Caravans* case provides the most potential help to the Taxpayer. However, there Megarry J considered that the pool was an active component of the business. He also said "... to some extent the matter must be one of impression". Here there is something not for clients to disport themselves but a workshop designed to allow glasscoat to be applied advantageously. The Building keeps out the elements and some dust and similar matters and is like an office or workshop in the sense of being a place where people work. It is not a tool of the trade. It is a place of work which does not amount to plant.

52. To the further extent possible we find as a matter of fact we find that the Building is not plant but a place where people work.

53. As a matter of impression and otherwise we find that the Building is not plant. As a matter of law it does not amount to plant here and we so find.

54. This would be sufficient to dispose of the appeal. However, in case it was decided that this was wrong we go on to consider whether statute excludes the Building from being plant even if the Building were plant on general principles contrary to our view.

*Is the Building excluded from being plant by sections 21 and 22?
to a building or structure*

55. We have found that building consists of a concrete floor, standard concrete block wall and a flat roof and is akin to a garage.

56. The question then is "Does this amount to a building for the purposes of section 21?"

57. We consider that as a matter of ordinary language what is described in findings set out above this amounts to a building.

58. Item 1 in List A in section 21 says a building includes "Walls, floors, ceilings ..."

59. We note the word "includes" here and consider that it is not exhaustive in this context.

60. We find that the Building is a building for the purposes of section 21.

61. Section 22 excludes structures which are not buildings (as defined in the statute) from being plant.

62. If the Building is not a building for this purpose we consider that it is a structure. We consider Item 7 of list B in section 22 if it is not a building as a structure. We consider that the Building does not fall within any of the exclusions from Item 7.

63. We consider that the Building, if it could otherwise be plant, is excluded from being plant by the statutory provisions.

64. We find that the Building is a building or structure for the purposes of sections 21 and 22.

65. Accordingly, it is not plant and so cannot qualify for plant or machinery allowances.

66. Section 28

Conclusion

67. We have found that:

(1) the Building is not plant on general principles;

(2) Even if this is wrong the Building is a building or structure for the purposes of sections 21 and 22.

68. We do not accept the Taxpayer's argument that this is based on a wrong construction of the legislation. We consider the construction applied here gives the legislation its ordinary meaning. We consider the Taxpayer's construction to be a strained construction designed to produce a particular conclusion.

69. As the Building is not plant the appeal cannot succeed. Accordingly, the appeal is discussed.

70. 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.

5

10

**ADRIAN SHIPWRIGHT
TRIBUNAL JUDGE**

15

RELEASE DATE: 25 March 2014