

NCN: [2020] UKFTT 0286 (TC)



TC07770

Appeal number: TC/2018/04905

*CORPORATION TAX – whether expenditure was capital or revenue –
whether asset replaced – no – whether increased function – no – appeal
allowed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

STEADFAST MANUFACTURING & STORAGE LIMITED Appellant

- and -

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

TRIBUNAL: JUDGE ANNE FAIRPO

Sitting in public at Bradford on 23 July 2019

Mr Doodney for the Appellant

Ms Chaumoo, litigator, for the Respondents

DECISION

Introduction

1. This is an appeal against a closure notice issued on 9 March 2018 with a revenue amendment of £13,428.20 for the accounting period ending 31 October 2015. The appellants also appealed a consequential amendment of £1,489.80 for the accounting period ended 31 October 2014. In the hearing, HMRC accepted that the consequential amendment was incorrectly raised and should have been a discovery assessment. The amendment had been withdrawn.

2. The amounts were disallowed as a deduction on the basis that HMRC considered that they related to expenses which were capital in nature.

3. The issue to be resolved by this tribunal is whether that expenditure, incurred in respect of a yard used by vehicles, was a replacement of the yard and so a capital expense which is not deductible as a revenue expense, or a repair of the yard, which is deductible as a revenue expense.

Facts

4. The tribunal was provided with a bundle of documents, including correspondence between the parties incorporating a builder's estimate for the work done and photographs of the site before and after the work was undertaken, and heard evidence from Stephen Greenwood, director and shareholder of the appellant. On the basis of this evidence, I make the following findings of fact:

(1) The entire site, including the factory and the yard was acquired in 2004 by Mr and Mrs Greenwood and leased to the appellant. It was agreed between the parties that the factory and the yard together formed the entirety of the relevant asset;

(2) The cost of the works was approximately £74,000. The cost to replace the entire site would be approximately £6,500,000.

(3) Before and after the relevant expenditure, the whole of the yard was used to unload articulated lorries, to move those lorries, and to provide trailer storage.

(4) Prior to the expenditure, the yard had not been resurfaced since some time before the site was acquired, and the surface was in poor condition, being made up of a mixture of tarmac, concrete, cobbles and loose plainings. In some areas of the yard, the surface had broken up substantially. These areas were unstable and unsuitable for use by forklift trucks, although they were used when necessary to turn the trailers for articulated lorries. As these areas were used less often than other areas of the yard, weeds grew through the surface area such that in overhead photographs the areas appear green rather than paved.

(5) Prior to the expenditure being incurred, the yard was repaired twice a year by patching with gravel. The forklift trucks in particular would quickly dig into

this material with their tyres. As this patching was becoming less effective it gave rise to health and safety concerns and the appellant concluded that the yard should be resurfaced.

(6) The work was undertaken as a single project over the summer in order to minimise disruption to the business.

(7) The work undertaken was as follows:

(a) Remove surface area of 1675m²;

(b) Level sub-surface to accommodate run-off for top water and infill as necessary. The levelling allowed water on the yard to run off to a grass bank at the side of the yard rather than to the back of the property as before;

(c) Re-surface an area of 1675m² with reinforced concrete;

(d) Lay 40m² of cobbles, which the appellant had available from another project, next to one of the factory buildings.

(e) Add a drainage channel between the factory and the re-surfaced area to stop water from running across the yard, and to allow an expansion joint for the concrete. The cost of this was £740.

(8) There was no increase in size of the useable area and no increase in the loadbearing capacity of the yard.

Submissions

5. HMRC accepted that the cost of repairing an asset is normally an allowable revenue expense but that the cost of replacing the asset as a whole is normally capital expenditure, which is not allowable as a deduction.

6. HMRC submitted that the size and importance of the yard to the site meant that, although the work done related only to part of the whole asset, the work undertaken could be regarded as being of sufficient scale and importance to be capital expenditure in accordance with *Phillips v Whieldon Sanitary Potteries Ltd* ((1952) 33 TC 213), where Donovan J had stated that “there can be cases where the work done may result in no improvement, but merely reinstatement, and yet be work involving capital expenditure on account of its size and importance”.

7. In addition, it was submitted that the works meant that the appellant gained an enduring advantage because there would be no need for further repairs for potentially twenty years although the yard could instead have continued to be repaired with gravel as in the past.

8. HMRC submitted that the extent and permanence of the works completed were such that they created an enduring advantage upon preserving part of the fixed capital of the business, being essential to enable the trade to continue, and so should be considered to be capital.

9. In the alternative, HMRC submitted that the works amounted to an improvement of the yard. The builder’s estimate described the works as “a new car park and wagon

turn around area” such that the works changed the character of the yard, even if it was not used as described.

10. The works also produced an increased usability of the area, as the useable area of the yard increased as a result of concreting over large patches of grass so that the whole area could be used by all vehicles. It was submitted that this was similar to the position in *Conn v Robins Bros Ltd* ((1966) 43 TC 266).

11. In addition, the use of reinforced concrete and the drainage amounted to an improvement of the yard. HMRC submitted that this was demonstrated by the fact that forklift trucks could now use the area safely, such that the load bearing area was increased. It was submitted that this was similar to the position in *Auckland Gas Co Ltd* ([2000] STC 527) where the use of newer materials in repairs resulted in increased functionality and so amounted to capital expenditure. HMRC also submitted that the works would not have been carried out if there was no improvement.

12. For the appellant, it was submitted that there had been no increase in useable area, and no increase in load bearing capacity. The works resulted in the restoration of a surface which had become uneven and unstable. The use of modern materials did not change the function or capacity of the yard. The asset had simply been returned to its previous standard and had not, in contrast with *Auckland Gas Co Ltd*, resulted in increased functionality.

13. Further, the works did not replace the yard in its entirety as the sub-surface was not replaced. This could therefore be distinguished from the position in *Phillips v Whieldon*, where the entire barrier was replaced.

Discussion

14. In my view, the position in this case is different to that in the case law cited, particularly *Phillips v Whieldon*: in that case, an old brick and earth embankment was entirely replaced with a new iron and concrete barrier. In this case, there was not, in my view, a renewal or reinstatement of the entirety of the yard in this case as the sub-surface was not replaced. HMRC noted that the builder’s estimate described the works as providing a “new car park and wagon turning area” but I do not consider that this is conclusive as to the nature of the works.

15. The appellant’s evidence is clear that the grassy areas, which HMRC considered meant that the useable area had increased, were the result of the deterioration of the original surface, rather than a previously unsurfaced area which was now being surfaced and brought into use. The appellant’s evidence is also that the levelling of the subsurface for drainage purposes simply redirected the water to run off to a different area, rather than being a new drainage system. I do not consider that the use of existing cobbles in a very small area of the yard alters the nature of the works such as to make them capital.

16. Accordingly, I consider that there was no improvement in the yard compared to its original condition, and that the works only returned the yard to its previous standard.

There was no increase in the useable area compared to the original. There also was no evidence of any increase in the load bearing capacity of the yard. Indeed, the reviewing officer for HMRC noted in his review conclusion letter that “I do not think, on the balance of probabilities, that the new surface does anything more than the previous surface did, except so far as it may not require repairs as often as before”.

17. The reduced need for repairs does not of itself make the expenditure capital – in this case, it would be an inevitable result of repairing the yard properly, rather than in patches. In order to be capital, the reduced need for repairs would have to result from the bringing into existence of something new that had an enduring benefit to the business. In my view, the works restored the yard to its original state and did not bring something new into existence.

18. The additional drainage channel does not, in my view, alter this. It was a minor addition to the works and there was no evidence that it makes a substantial difference to the yard or the factory.

Decision

19. For the reasons given above, the appeal is allowed.

20. 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.

ANNE FAIRPO

TRIBUNAL JUDGE

RELEASE DATE: 6 JULY 2020