

INHERITANCE TAX -Exempt transfers and relief - Business property - Relevant business property - Shares held by Deceased in two companies - Whether the business carried on by the companies was excluded from business property relief as consisting wholly or mainly of one or more of dealing in securities, stocks or shares, land or buildings or making or holding investments - Whether the relevant companies were, with one or more other companies members of a group - Whether the business of the company or either of them was carried on otherwise than for gain - Inheritance Tax Act 1984 Sections 103, 104, 105, 111 and 112

THE SPECIAL COMMISSIONERS

PAUL WILLIAM SANCROFT GRIMWOOD-TAYLOR Appellants

AND MICHAEL ANTHONY BASIL MALLENDER

(as Executors of the Will of Robin Richard

Mallender, Deceased)

- and -

THE COMMISSIONERS OF INLAND REVENUE Respondents

Special Commissioner: MR T H K EVERETT

Sitting in London on 25 October 1999

Mr Michael A B Mallender, Solicitor, appeared in person and on behalf of his co-executor

Mr Peter R Twiddy, Assistant Director, Capital Taxes Office, for the Respondents

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DECISION

Paul William Sancroft Grimwood-Taylor ("Mr Grimwood-Taylor") and Michael Anthony Basil Mallender ("Mr Mallender") (together referred to as "the Executors") as the Executors of the Will of Robin Richard Mallender ("the Deceased") appeal against Notices of Determination dated 8 July 1996 served on the Executors by the Commissioners of Inland Revenue.

Those notices stated as follows:

"The Commissioners of Inland Revenue have determined - in relation to - the deemed transfer of value on the death of Robin Richard Mallender (the Deceased) on 8 September 1986. That - the shareholdings of the Deceased in Nafisa Investments and in Barton Blount Estates Company were not, at the date of the death of the Deceased, relevant business property for the purposes of relief under Chapter I Part V Inheritance Tax Act 1984."

"Business Property Relief" is a relief from Inheritance Tax chargeable on a transfer of value. It is available in respect of "relevant business property" which

includes "shares in or securities of a company which (either by themselves or together with other such shares or securities owned by the transferor) gave the transferor control of the company immediately before the transfer" (see ss.104 and 105(1)(b) of the Inheritance Tax Act 1984 ("the 1984 Act")). Section 105(3) excludes certain securities from the category of relevant business property. The section in full reads as follows:

"A business or interest in a business, or shares in or securities of a company, are not relevant business property if the business or, as the case may be, the business carried on by the company consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments."

The evidence before me consisted of a bundle of documents in seventeen parts, provided by Mr Mallender together with a draft statement of facts which had not been agreed prior to the hearing, also provided by Mr Mallender. In presenting his case he gave further oral evidence which was not challenged, nor were the contents of his draft statement of facts.

From the evidence before me I find the following relevant facts:

1. At his death on 8 September 1986 the Deceased owned the following shareholdings:

(a) 646,420 £1 ordinary shares (being the entire issued capital) in Nafisa Investments, an unlimited company incorporated in the Republic of Ireland.

(b) 77,289 £1 ordinary shares (being 28.99% of the issued share capital) of Barton Blount Estates Company, an unlimited company incorporated in England and resident in Jersey.

(c) 100 £1 ordinary shares (being the entire issued share capital) of Nether Hesleden Farms Ltd, a limited company incorporated in England.

(d) 100 £1 ordinary shares (being the entire issued share capital) of Clayview Ltd, a limited company incorporated in England.

2. The reports of the Directors in the accounts of Nafisa Investments for the years ended 5 April 1980 to 5 April 1982 inclusive stated that the company was principally active as an agricultural farm. The Director's report for the year ended 5 April 1983 stated that the Company had not traded during the year.

3. The Directors' reports of Barton Blount Estates Company for the years ended 5 April 1982 and 5 April 1983 stated that the principal activities of the Company were the holding and management of property estates.

4. The Directors' reports of Nether Hesleden Farms Ltd (formerly Groveport Transport Ltd) for the years ended 31 December 1981 to 31 December 1986 inclusive stated in the earlier reports that the Company was principally active as an agricultural farm and in the later reports that the Company's principal activity was the business of farming.

5. The Directors' reports of Clayview Ltd for the years ended 31 December 1981 to 31 December 1986 inclusive stated in the earlier reports that the Company was principally active as investment advisers. In their report for the year ended 31 December 1984 the report stated that the Company operated as an Investment Company and on 1 March 1984 it terminated its administrative activities. That statement was repeated in the Directors' report for the year ended 31 December 1985. The Directors' report for the year ended 31 December 1986 stated merely that the Company operated as an Investment Company.

6. For the years ended 5 April 1980 to 5 April 1982 inclusive Nafisa Investments Ltd made substantial losses and, as stated above, in the year ended 5 April 1983 the Company did not trade.

7. For the years ended 5 April 1982 and 5 April 1983 Barton Blount Estates Company also made substantial losses and as at 5 April 1983 its accumulated deficit carried forward amounted to £150,297.

8. Nether Hesleden Farms Ltd also operated at a loss and at 31 December 1986 the Directors' report shows that the accumulated deficit on the profit and loss account exceeded the Company's share capital by £236,057. The Company received financial support from Nafisa Investments and from the Deceased's executors.

9. Clayview Ltd also operated at a loss and the Directors' report for the year ended 31 December 1986 stated that the accumulated deficit on the profit and loss accounts exceeded the Company's share capital by £54,871. It further stated the Company's freehold land and buildings were being held for sale but that the proceeds were not anticipated to be sufficient to meet all the Company's liabilities.

10. Barton Blount Estates Company was incorporated in 1935, having been set up by ancestors of the Deceased. It owned land around Barton Hall in Derbyshire which had been the family home for many years.

11. In the early 1970s the Deceased's parents, Richard Arthur Mallender and Beatrice Valerie Mallender, were living in the Republic of Ireland whilst Barton Hall was occupied by the Deceased's grandmother, Mrs E R Mallender. The Deceased and his wife resided at Covert Farm on the Barton Blount Estate where he managed the farm on behalf of Barton Blount Estates Company.

12. In 1973 the Deceased's grandmother, Mrs E R Mallender, died and the Deceased's parents returned to England permanently owing to anti-British feeling in the Republic of Ireland. The Deceased and his family moved into Barton Hall in 1974 where the Deceased continued managing the Company's farming operations. The Deceased's parents eventually took up residence in a house which Mrs B V Mallender built on land which she purchased from Barton Blount Estates Company. She also built stable buildings and established a stud called Parkswood Stud.

13. In the Spring of 1979 Barton Blount Estates Company was restructured. As part of this, on 4 April 1979 the Deceased's father purchased 68.92 acres of let farm land from Barton Blount Estates Company and his mother purchased part of the Front Park to Barton Hall amounting to 28.96 acres, which she had used for grazing her horses. The 307.5 acres which Barton Blount Estates Company used for its farm together with the live and dead stock, plant and machinery and tenant right was transferred to a subsidiary company known as Nafisa

Investments the shares in which were appointed to the Deceased. The shares in Barton Blount Estates Company having had the value of Nafisa Investments stripped out from it were transferred as to 28.99% to the Deceased and 71.01% to a settlement for the benefit of his children at age 25.

14. In 1980 difficulties arose in the relationship between the Deceased and his wife. They were eventually reconciled but the Deceased's wife insisted that they should move away entirely from Barton Hall.

15. The Directors of Barton Blount Estates Company (officers of Chase Bank in Jersey) agreed that with none of the beneficial owners of the Company living at Barton Hall it would be appropriate to put the estate up for sale and jointly with Nafisa Investments and Clayview Ltd (both owned by the Deceased) and the bank as trustees of the settlement for the benefit of the Deceased's children to purchase in September 1981 Nether Hesleden Farm, north of Skipton in the Pennines for the occupation of the Deceased and his family and where he would farm.

16. Parkwood Stud was very close to Barton Hall with which it shared a common drive and also owned part of the Front Park. It would detract from the saleability of the Hall and the remainder of the Estate if the Deceased's mother continued to own it and lived there with her husband. The land which the Deceased's father had acquired was also integral with the estate. The Deceased's parents therefore agreed with the Directors of Barton Blount Estates Company that, although they had no wish to leave, they would be willing to move out as well so that Parkwood Stud and the Deceased's father's land could be included in the overall sale provided that Barton Blount Estates Company purchased a suitable property to be let to them for their occupation and use as a stud. Accordingly Barton Blount Estates Company purchased, in September 1980, Meadowbrook, Weeton to the south of Harrogate which was then let to the Deceased's parents.

17. Covert Farm was sold on 17 November 1980 and the rest of the Barton Blount Estate, including Parkwood Stud and the land owned with it and the land owned by the Deceased's father, was sold on 13 June 1981.

18. From September 1981 until his death on 8 September 1986 Nether Hesleden Farm was occupied for farming purposes by Nether Hesleden Farms Limited (originally known as Groveport Transport Ltd). The company was wholly owned by the Deceased and the farm was managed by the Deceased.

19. Probate of the Will of the Deceased was granted out of the Birmingham District Probate Registry to the Executors on 2 January 1987.

20. The Deceased's farming enterprise at Nether Hesleden Farm proved a disastrous failure from a financial point of view. In addition he became increasingly unwell.

21. In cross-examination Mr Mallender stated that the structure of the land holdings acquired after the sale of the Barton Blount Estate in 1980 and 1981 was put in place on the advice of the Deceased's accountant. He also stated that it was the Deceased's nature to have things complex and that the complicated structure was intended to shelter the value of the land from the trading operations of the farm.

22. Nether Hesleden Farm was purchased for use by the Deceased and his trading company. The farm was not let to him. It was purchased in order to

enable the Deceased to farm there and it was not purchased to provide income. Barton Blount Estates Company and Nafisa Investments made land available to the Deceased in the shape of Nether Hesleden Farm.

23. Meadowbrook was purchased by Barton Blount Estates Company for occupation by the Deceased's parents who paid a rent of £1,500 per annum. Mr Mallender stated that the rent which the Deceased's parents paid was a full market rent as advised by Messrs Cluttons, land and estate agents.

#### Other statutory provisions

Chapter I of Part V of the Inheritance Tax Act 1984 which deals with business property commences with section 103. That provides, where relevant:

"103.-(2) For the purposes of this Chapter a company and all its subsidiaries are members of a group, and "holding company" and "subsidiary" have the meaning given by section 736 of the Companies Act 1985.

(3) In this Chapter "business" includes a business carried on in the exercise of a profession or vocation, but does not include a business carried on otherwise than for gain."

Section 111 and section 112, provide, where relevant:

"111. Where a company is a member of a group and the business of any other company which is a member of the group falls within section 105(3) above, then, unless either -

(a) ...

(b) that business consists wholly or mainly in the holding of land or buildings wholly or mainly occupied by members of the group whose business either does not fall within section 105(3) or falls within both section 105(3) and section 105(4),

the value of shares in or securities of the company shall be taken for the purposes of this Chapter to be what it would be if that other company were not a member of the group."

"112-(2) An asset is an excepted asset in relation to any relevant business property if it was neither -

(a) used wholly or mainly for the purposes of the business concerned throughout the whole or the last two years of the relevant period defined in subsection (5) below, nor

(b) required at the time of the transfer for future use for those purposes;

but where the business concerned is carried on by a company which is a member of a group, the use of an asset for the purposes of a business carried on by another company which at the time of the use and immediately before the transfer was also a member of that group shall be treated as use for the purposes

of the business concerned, unless that other company's membership of the group falls to be disregarded under section 111 above."

## Conclusions

Mr Mallender contends that the shareholdings of the Deceased in Nether Hesleden Farms Ltd, Clayview Ltd and Nafisa Investments (all of which companies were controlled by the Deceased) qualify for business relief under section 104 of the Inheritance Tax Act 1984, being relevant business property as defined by section 105(1)(b).

He contends further that the shareholdings in Nafisa Investments and Clayview Ltd are not disqualified from being relevant business property under section 105(3) as they are not treated as "making or holding investments", as the companies are members of a group together with Nether Hesleden Farms Ltd. Whilst the business of both Clayview Ltd and Nafisa Investments consisted wholly or mainly in the holding of land or buildings these were wholly or mainly occupied by another member of the group, namely Nether Hesleden Farms Ltd whose business of farming did not fall within section 105(3). See section 112(2).

Those submissions depend on Mr Mallender being able to persuade me that Nether Hesleden Farms Ltd, Clayview Ltd and Nafisa Investments are members of a group of companies for the purposes of section 111 and section 112.

"Group" is not defined in the Inheritance Tax Act 1984. Section 103(2) is the nearest we come to a definition in the Act. That states "for the purposes of this Chapter a company and all its subsidiaries are members of a group".

Nafisa Investments was once a subsidiary of Barton Blount Estates Company but that situation came to an end in the Spring of 1979 when Barton Blount Estates Company was restructured. With effect from that date all the shares of Nafisa Investments were owned by the Deceased.

The Deceased owned all the shares in Nether Hesleden Farms Ltd, Clayview Ltd and Nafisa Investments, but in my judgment the ownership of several companies' shares by an individual does not make those companies members of a group for the purposes of sections 111 and 112.

Mr Mallender has referred me to a great many statutory references defining the word "group" but I do not accept that any of his statutory references get him home. His best authority is section 29(3) of the Value Added Tax Act 1983 which states in the version cited to me by Mr Mallender:

"29(3) Two or more bodies corporate are eligible to be treated as members of a group if each of them falls within subsection (3A) below and

(a) ...

(b) one person (whether a body corporate or an individual) controls all of them;  
or

(c) ...

(3A) a body falls within this subsection if it is resident in the United Kingdom or it has an established place of business in the United Kingdom."

Unfortunately, that version was not in force at the date of the Deceased's death in 1986. It was introduced in 1991 by section 16 of the Finance Act 1991, which softened the effect of the original wording of section 29(3). That stated:

"29(3) Two or more bodies corporate resident in the United Kingdom are eligible to be treated as members of a group if -

(a) ...

(b) one person (whether a body corporate or an individual) controls all of them;  
or

(c) ..."

Thus, the sole criterion for consideration in 1986 was the place of residence of the company in question. There was no room for consideration as to whether it had an established place of business in the United Kingdom at that time.

However, I will deal first with Mr Mallender's submission on the basis that the 1991 version of section 29(3) was in force in 1986, (as he must have assumed).

The first point to note is that Nafisa Investments is an unlimited company incorporated in the Republic of Ireland. And I have received no evidence as to its place of residence or whether it has an established place of business in the United Kingdom.

Mr Mallender has also contended that Barton Blount Estates Company was also a member of the group referred to above because its share capital was held by the Deceased and by the trustees of the Deceased's infant children, and the directors shared a common purpose with the Deceased in utilising the assets of the Company in the interests of the Deceased and his family as shareholders. It should be remembered that the Deceased owned only 28.99% of the shares in Barton Blount Estates Company.

However, the position with regard to Barton Blount Estates Company is even worse than that relating to Nafisa Investments. Although Barton Blount Estates Company is an unlimited company incorporated in England, it is resident in Jersey outside the United Kingdom and once again I have no evidence that it has an established place of business in the United Kingdom. Decisions affecting its investments were apparently taken by officers of the Chase bank in Jersey who were the directors at the relevant time.

If I were to consider Mr Mallender's submission in the light of the original wording of section 29(3), his position would be worse, as Barton Blount Estates Company is non-resident and cannot therefore take advantage of the provision.

In any event, the context of section 29(3) of the Value Added Tax Act 1983 is far removed from the context of Chapter I of Part V of the Inheritance Tax Act 1984 which contains sections 111 and 112.

Accordingly I hold that Nether Hesleden Farms Ltd, Clayview Ltd, Nafisa Investments and Barton Blount Estates Company were not members of a group for the purposes of sections 111 and 112 Inheritance Tax Act 1984.

Mr Mallender has also argued that despite the contents of the directors' report Nafisa Investments and Barton Blount Estates Company were not "making or holding investments". Nether Hesleden Farm was purchased to enable the Deceased to farm whilst Meadowbrook was purchased for occupation by the Deceased's parents and in order to persuade them to vacate and sell Parkswood Stud.

Although these are unchallenged facts I am not convinced that the purchase of land and buildings for occupation by a member of the family deprives such purchase of its status as an investment, bearing in mind the words contained in the reports of the directors in the various companies' accounts.

Mr Mallender has submitted that I should disregard the contents of the directors' reports in the companies' accounts, citing as his authority the recent case of *Marriott v Lane*, 69 TC 157. But in that case it was manifest that the statements in the directors' reports were incorrect. In my judgment the facts of the present appeals are very different from those in *Marriott v Lane* and accordingly I place considerable reliance on the accuracy of the statements in the directors' reports. I take notice of the fact that the Deceased controlled Nafisa Investments, Nether Hesleden Farms Ltd and

Clayview Ltd. Although he did not control Barton Blount Estates Company and was not a director of that company, he was a major shareholder and would therefore have been able to bring influence to bear on the directors, I have no doubt.

Mr Twiddy's principal contention is that as the lands (namely Nether Hesleden Farm and Meadowbrook) were purchased for occupation by shareholders then the business of each of the companies in question, namely Nafisa Investments and Barton Blount Estates Company, was carried on otherwise than for gain and falls within the exclusion contained in section 103(3).

Unfortunately this contention by Mr Twiddy was hardly addressed at all by Mr Mallender. It appears to me that Mr Twiddy's contention accords with the facts in this appeal.

Nether Hesleden Farm and Meadowbrook were certainly bought for occupation by the Deceased and his parents and the accounts show that losses have mounted in the accounts of both companies for year after year. There is no evidence that the directors were concerned with profits: they were content to allow a loss making situation to continue for many years. No evidence was produced that the companies carried on businesses in pursuit of gain and accordingly the appeals must fail, for I find on the facts that the businesses carried on by Nafisa Investments and Barton Blount Estates Company were carried on otherwise than for gain.

The appeals fail and I uphold the validity of the Notices of Determination served on each of the Executors and dated 8 July 1996.

T H K EVERETT

SPECIAL COMMISSIONER



Date of Release: 23<sup>rd</sup> November 1999

SC 3054/99

Authorities cited but not mentioned in the Decision

Re Power [1947] Ch 572

Re Peczenik's Settlement [1964] 2 AER 339

Re Wragg [1919] 2 Ch 58

Halsbury's Laws Volume 48 paragraph 862 Note 4