

INCOME TAX - partnership - whether a loss was incurred in the year ending on 31 December 1991 – no - whether the disposal value of machinery and plant destroyed by fire in 1991 exceeded the capital expenditure incurred in the provision of that machinery and plant – no - whether there was a disposal value of machinery and plant transferred on the discontinuance of the trade in 1994 where no payment was received – yes - whether the capital allowances basis periods applied on the discontinuance of the trade in 1994 – yes - appeal dismissed - ICTA 1988 s385; CAA 1990 s26 and 160(3)(b) Catchwords: use right arrow to move to starting point after this box

**THE SPECIAL COMMISSIONERS SpC
00291**

H B PARMAR, B PARMAR, K B PARMAR AND Y B PARMAR

trading as

ACE KNITWEAR

Appellants

and –

KATE WOODS

(HM INSPECTOR OF TAXES)

Respondent

SPECIAL COMMISSIONER : DR NUALA BRICE

Sitting in London on 14 August 2001

***Mr Vijay Saujani, of Messrs John Whitehouse & Co,
for the Appellants***

***Mr Philip Cross, HM Inspector of Taxes, for the
Respondent***

DECISION

The appeal

1. *Mrs H B Parmar, Mr B Parmar, Mr K B Parmar and Mr Y B Parmar (the Appellants), who traded in partnership as Ace Knitwear, appealed against assessments for the years 1992/93, 1993/94, and 1994/95.*

The issues

2. *The issues for determination were:*

(1) whether there was a loss of stock by theft and/or fire in the year ending on 31 December 1991 and, if so, the amount of such loss;

(2) whether, for the purposes of computing capital allowances, the disposal value of machinery destroyed by fire in 1991 exceeded the capital expenditure incurred on the provision of that machinery within the meaning of section 26(2) of the Capital Allowances Act 1990 (the 1990 Act) (which was the legislation in force at the relevant time);

(3) whether, for the purposes of computing capital allowances on the discontinuance of the trade in 1994, there was a disposal value for the machinery which was transferred to a company formed by two of the Appellants and in respect of which no payment was received by the Appellants; and

(4) whether, on the discontinuance of the trade in 1994, the capital allowances basis period legislation in section 160(3)(b) of the 1990 Act applied.

The evidence

3. *A bundle of documents was produced on behalf of the Appellants and another bundle was produced on behalf of the Inland Revenue. There was also a statement of agreed facts. No witnesses were called to give oral evidence.*

Throughout the hearing the Appellants' representative made a number of assertions on behalf of the Appellants which were not substantiated by any evidence. He was reminded that the burden of proof in the appeal was on the Appellants to satisfy the Special Commissioners of the facts upon which they sought to rely and that the standard of proof was the balance of probabilities.

The facts

4. From the evidence before me I find the following facts.

5. Between 1979 and 31 December 1994 the Appellants traded in partnership as Ace Knitwear and designed and made fashion knitwear. Mr B Parmar and Mrs H B Parmar are the parents of Mr K B Parmar and Mr Y B Parmar.

6. Initially the Appellants traded from premises in Willow Street, Leicester. In April 1988 there was a fire (the first fire) at the Appellants' premises which destroyed the building, machinery and stock. An insurance claim was made and a sum in the region of £97,000 was received. The business then re-commenced at rented premises on Knighton Junction Road, Leicester and more machinery was purchased, some new and some used. The cost of the machinery purchased after the first fire, as shown in the partnership accounts, was:

Additions Sales Balance

1988 £150,292 £150,292

1989 £ 90,492 £53,500 £ 36,992

1990 £ 20,905 £ 2,500 £ 18,405

£205,689

7. The Appellants' balance sheet for the year ending on 31 December 1990 showed machinery and plant of £212,688.

8. On 21 February 1991 a machine was purchased for the sum of £34,000 and on 23 July 1991 another machine was purchased for the sum of £40,000. Thus the amount of £74,000 (at least) was expended in 1991 on machinery. The total expenditure on machinery, therefore, from 1988 to July 1991 inclusive was £279,689, calculated by totalling all the additions, or £286,688 calculated by adding to the balance sheet figure the value of purchases in 1991.

9. Some time in 1991 the Appellants made another claim

against their insurance company, this time for £30,659. This was in respect of an alleged theft on 31 July 1991 of stocks of yarn at their premises. The claim was handled by Messrs Touche Ross on behalf of the insurance company. Messrs Touche Ross called one day at the factory and valued the stock they saw. They deducted this value from the figure for opening stock (as disclosed in the accounts for the year ending on 31 December 1990). They then added purchases made in the period and deducted materials used in making the garments which had been sold. (For this purpose most of the purchase invoices were sent to Messrs Touche Ross). The claim for the £30,659 was not met by the insurers and very shortly thereafter the second fire occurred.

10. On 13 October 1991 there was another fire (the second fire) at the Appellant's premises which destroyed the machinery which had been purchased after the first fire in 1988. Another insurance claim was made and the Appellants instructed Messrs Henry Butcher & Co, International Property and Plant Consultants, (Henry Butcher) to negotiate with their insurers.

11. On 30 January 1992 Henry Butcher produced a report which stated that to replace the machinery lost in the fire would cost £387,513. This figure was calculated on the basis that some new machinery would replace some of the used items destroyed in the fire. The Henry Butcher report listed about fifty machines of which the values of five were relied upon by the Appellants. The descriptions of those five machines, and their values as stated in the Henry Butcher report were:

Estimated replacement cost

"A "Bentley" RTCE Circular Knitting

Machine, 33" Dia 7 Gauge, Fully

Jacquard, Electric 90,000*

Ditto 90,000*

Ditto 90,000*

A "Bentley" RDC 8 MD 22" Dia,

3 Gauge Circular Cardomatic

Knitting Machine with Meccatape 8,000

A "Bierrebi" TA103 Simplecut

Machine 32,000*"

12 The Henry Butcher report stated that the estimated replacement cost represented replacement with second-hand articles but with new items where second-hand replacements were unlikely to be available. New equipment was marked with an asterisk.

13. The Appellants' claims for loss of stock by fire amounting to £100,281 and loss of profits as a result of the fire were disputed by the insurance company and were not met. Ultimately the whole claim was settled for the sum of £283,000 which was received and paid on 6 March 1992. After negotiation costs the net proceeds were £270,505.

14. The sums received from the insurance company were used to purchase more machinery and plant and production re-commenced in 1992.

15 The closing stock figures shown in the Appellants' accounts were:

Year ending Stock

31.12.87 £97,300

31.12.88 £15,955

31.12.89 £20,375

31.12.90 £15,375

31.12.91 [no accounts available]

31.21.92 £17,290

31.12.93 £18,985

31.12.94 £23,224

16. Towards the end of 1994 Mrs H B Parmar and Mr B Parmar decided to retire from the business. Their two sons wished to continue and formed a limited company, Ace Knitwear Limited (the company), which they owned and controlled. The assets of the partnership, including the stock and machinery, were transferred to the company. The following is an extract from the directors' account with the company:

"Opening balance Stock t/over 23,224

Assets t/over m/v [motor vehicles] 8,040

P/m [plant and machinery] 175,948

F/F [fixtures and fittings] 11,969

Total 291,577"

17. The company commenced trading on 1 January 1995 and in that year made profits of £33,000. In 1996 profits fell to £5,000. In 1997 the company made substantial losses and the directors decided that it could not continue to trade. Accordingly on 21 May 1998 the company went into voluntary liquidation. Messrs Ernst & Young were appointed as liquidators and the company was wound up with debts of £444,000. The company had not paid the Appellants for the stock and assets taken over from the business.

18. The Inland Revenue commenced an investigation into the Appellants' affairs on 2 November 1996. In July 1997 returns were submitted. By 11 September 1997 the accounts for the years 1992, 1993 and 1994 were still in draft and there were no capital allowances computations. There were no draft accounts for 1991. There were a number of hearings before the General Commissioners and on 2 March 1998 computations were submitted. On 23 July 1998 the trading and profit and loss account for the year ending on 31 December 1991 was submitted claiming a loss of £102,780.

19. On 19 June 2000 the Case II partnership profits before capital allowances were agreed as:

31.12.92 £ 79,261

31.12.93 £121,631

31.12.94 £172,858

Reasons for decision

20. I consider separately each of the issues for determination in the appeal.

(1) Was there a loss in 1991?

21. The first issue is whether there was a trading loss in the year ending on 31 December 1991 and, if so, the amount of such loss. If there were a loss then the Inland Revenue agreed that it could be carried forward and deducted from profits of subsequent years under the provisions of section 385 of the Income and Corporation Taxes Act 1988 (the 1988 Act).

22. The relevant part of section 385 of the 1988 Act provides:

"(1) Where a person has, in any trade, profession or

vocation carried on by him either alone or in partnership, sustained a loss ... in respect of which relief has not been wholly given ... he may make a claim requiring that any portion of the loss for which relief has not been so given shall be carried forward and, as far as may be, deducted from or set off against the amount of profits or gains on which he is assessed to income tax under Schedule D in respect of that trade, profession or vocation for subsequent years of assessment."

23. For the Appellants Mr Saujani argued that the Appellants had losses of £158,306 in 1991. The sum of £158,306 was made up of losses on sales after October 1991 of £27,366 and stock claims not met by the insurers after the theft of £30,659 and after the fire of £100,281. He argued that the fire damage on 31 October 1991 occurred when stocks were at their highest and that meant that there could be no sales of garments in stock or made from yarn in stock which was destroyed. He explained that all the Appellants' records had been destroyed in the 1991 fire, including the original cheque book, and it was very difficult to produce accounts. However, there were some of the working papers of Messrs Touche Ross for the theft and these included summary sheets. Also, the accounts for 1988, 1989 and 1990 were available. Gross profits for 1987 were 16.09%; for 1988 were 26.4%; for 1989 were 18.91%; and for 1990 were 25.16%. He had prepared a trading and profit and loss account for 1991 using the accounts for 1990 and taking the appropriate portion from January to October. If a deduction were given for loss of stock of £130,940 and if a loss on sales of £27,366 were assumed then the total loss claimed was £158,306.

24. In support of his argument Mr Saujani stated that in each fashion season the Appellants would design a range of knitwear and then show it to their wholesale and retail customers after which the customers would place orders. The Appellants would then order the yarn and make up the garments which had been ordered. The main business season ran from October to mid-December in each year when the garments produced were more expensive. Stock levels were highest at September or mid-October when the bulk of the yarn had been delivered and lowest at the end of December when all the garments for that season had been sold. Two-thirds of the yearly turnover was achieved during this season when profit margins were about 25%. There was another season from February to April each year when the Appellants made lighter garments which were less expensive. For this season yarn was ordered in February and stocks were highest at mid-March. A lower profit margin of between 8% and 15% was achieved during the first seven months of the year.

25. Mr Saujani produced a calculation of monthly stock variations for the company for the year ending on 31 December 1995. Opening stock was £23,224 and closing

stock was £40,218. At the end of September 1995 and the beginning of October 1995 stock was £26,919 and purchases in October were £82,971. In the month of October sales were £118,475.

26. For the Inland Revenue Mr Cross argued that there was no loss in 1991. The business had been making a profit and was successful and would have made a profit if there had been no theft and no fire. There was no evidence to substantiate the claim that stock of the amount of £130,940 (being £30,659 from theft and £100,281 by fire) had in fact been lost. The accounts for the year ending on 31 December 1990 showed stock of £15,375 and even the previous figures indicated that the Appellants did not carry stock in excess of £24,000. The Inland Revenue had asked for the production of the books and records for the year 1991 and they had not been produced. Various reasons were given, not all consistent. The Appellants had produced no evidence in support of their claim. There was no evidence about the theft and no production of police records.

27. In this appeal matters of disputed fact must be decided in the light of the evidence adduced at the hearing of the appeal and the burden of bringing forward evidence to support their claims is on the Appellants; mere assertions and calculations are not sufficient.

28. The losses now claimed by the Appellants consist of two elements. The first is the stock losses of £130,940 in the theft and the second fire and the second consists of assumed losses of £27,366 arising from a loss of sales from the period of the fire to the end of 1991.

29. Dealing first with the claim for lost stock there was no evidence before me that stock of the value claimed had been lost. There were no documents or reports about the insurance investigations of the theft and the second fire and no compelling explanations about why the insurance claims had been refused. I prefer the arguments of the Inland Revenue that the accounts which were available did not support the view that stock of that value had been held. I have noted the explanation about differing stock levels put forward on behalf of the Appellants but these were assertions and there was no evidence to support them. The only evidence produced was the figures for the company in 1995 which do not assist in deciding the position for 1991.

30. Turning to the assumed loss of profits on sales, again there was no explanation as to why these had not been met by the insurance company. In any event, the accounts for the year 1991 will deal with actual profits for the time the Appellants were trading and so a deduction for assumed loss of profits does not appear appropriate.

31. The burden of proof is on the Appellants to satisfy the Special Commissioners of the facts upon which they seek to rely and the standard of proof is the balance of probabilities. On the evidence before me I am not satisfied that the Appellants incurred the loss that they claimed.

(2) Did the disposal value in 1991 exceed the capital expenditure?

32. The second issue in the appeal is whether, for the purposes of computing capital allowances in respect of the insurance proceeds in 1991, the disposal value exceeded the capital expenditure within the meaning of section 26(2) of the 1990 Act.

33. Section 24(1) of the 1990 Act provided that, where a person carrying on a trade incurred capital expenditure on the provision of machinery or plant wholly and exclusively for the purposes of the trade, allowances were made to him and charges were made on him. Section 24(2) provided that allowances were made for any chargeable period for which a person had qualifying expenditure which exceeded any disposal value. Section 24(5) provided that, for any chargeable period for which a person's qualifying expenditure was less than the disposal value, a balancing charge was made and the charge was of an amount equal to the difference. Section 26 defined the disposal value and the relevant parts of section 26 provided:

"26. The disposal value

(1) Subject to subsection (2) below, for the purposes of section 24 the disposal value of any machinery or plant depends upon the event by reason of which it falls to be taken into account and- ...

(a) unless paragraph (b) below applies, if that event is a sale of the machinery or plant, equals the net proceeds to the person in question of the sale, together with any insurance moneys received by him in respect of the machinery or plant by reason of any event affecting the price obtainable on the sale and, so far as it consists of capital sums, any other compensation of any description so received,

(b) if that event is the sale of the machinery or plant at a price lower than that which it would have fetched if sold in the open market $\frac{1}{4}$.. equals the price which the machinery or plant would have fetched if sold in the open market,

(c) if that event is the demolition or destruction of the machinery or plant, equals the net amount received by the person in question for the remains of the machinery or plant, together with any insurance moneys received by him in respect of the demolition or destruction and, so far as it consists of capital sums, any other compensation of any

description so received, $\frac{1}{4}$

(f) in the case of any other event, equals the price which the machinery or plant would have fetched if sold in the open market at the time of the event.

(2) The disposal value of any machinery or plant shall in no case exceed the capital expenditure incurred by the person in question on the provision of the machinery or plant for the purposes of the trade"

34. For the Appellants Mr Saujani relied upon section 26(2) and argued that, on the disposal in 1991, the value for capital allowances could not exceed the cost of the machinery. Only capital allowances actually given could be withdrawn. He argued that there had been a gain of £96,500 made on the machinery because, in respect of five machines, the compensation paid by the insurance company exceeded the price of their acquisition. He argued that that gain could not now be taxed as it was time-barred. He also argued that the Appellants were prejudiced because the evidence of the purchase of the machines between 1988 and 1991 was difficult to adduce as none of the suppliers now existed and so could not give independent confirmation. The documents had been lost in the fire.

35. For the Inland Revenue Mr Cross argued that the sum of £270,505, being the net proceeds received from the insurance company, was the disposal value to go in the capital allowances computation and he relied upon section 26(1)(c). He agreed that section 26(2) provided that the disposal value should not exceed the capital expenditure incurred but he argued that the disposal value did not exceed the capital expenditure incurred. After the 1988 fire the plant and machinery has been replaced for the sum of £150,292 as was shown in the accounts for that year and the total amount of expenditure incurred between 1988 and 1991 was £279,689. That figure was almost the same as the figure for £212,688 shown in the balance sheet for 1990 with the addition of £74,000 for the two machines purchased in 1991, which made a total of £286,688. He argued that under section 26(1)(c) the disposal value was the net amount of the insurance proceeds. He commented that the Henry Butcher values had not actually been realised and so it was difficult to allocate the amounts received to individual machines.

36. Mr Saujani derived his figures for "gains" of £96,500 in respect of the machinery and plant in the following way. He first took the values in the Henry Butcher report and then adjusted them to take account of the fact that the full amount was not realised. He then deducted what he claimed was the cost of the machines. Thus his calculations were:

Estimated Received Cost "gain"

Replacement

cost

"A "Bentley" RTCE Circular Knitting

Machine, 33" Dia 7 Gauge, Fully

Jacquard, Electric 90,000* 65,000 40,000 25,000

Ditto 90,000* 60,000 20,000 40,000

Ditto 90,000* 60,000 34,000 26,000

A "Bentley" RDC 8 MD 22" Dia,

3 Gauge Circular Cardomatic

Knitting Machine with Meccatape 8,000 8,000 7,500 500

A "Bierrebi" TA103 Simplecut

96,500

37. The accuracy of these calculations depends upon the accuracy not only of the amounts received but also of the cost prices of the particular machines. There was no evidence before me of the prices actually received from the insurance company for the particular machines. The only evidence was that a cheque for £283,000 was received from the insurance company and there was no indication as to how that amount was made up. The sum received was £104,513 (26%) less than the £387,513 calculated by Henry Butcher but there was no evidence as to which items had been reduced nor by how much. The only evidence about the cost of the machines was that obtained from two photocopy invoices. The first was dated 21 February 1991 for the purchase of a used Bentley circular knitting machine serial number 36637 for £34,000 and the second was dated 23 July 1991 for a similar used machine serial number 36618 for £40,000. However, the Henry Butcher report did not cite any serial numbers and so it is not possible to be sure that any of the machines mentioned in their report were the same machines as shown on these invoices. As far as the other three machines were concerned there was no evidence at all of their cost. For these reasons I do not accept the calculations put forward on behalf of the Appellants.

38. I prefer to rely upon the balance sheet for 1990 which showed the sum of £212,688 for plant and machinery; if £74,000 (which was spent in 1991) is added to that then the total expenditure is £286,688. The insurance proceeds

did not exceed that figure.

39. The decision on the second issue in the appeal is that, for the purposes of computing capital allowances in respect of the insurance proceeds in 1991, the disposal value (being the amount received from the insurance company) did not exceed the capital expenditure incurred on the provision of that machinery within the meaning of section 26(2) of the Capital Allowances Act 1990.

(3) Was there a disposal value for the plant and machinery transferred in 1994?

40. The third issue is whether, on the discontinuance of the Appellants' trade in 1994, there was a disposal value for the plant and machinery transferred to the company.

41. For the Appellants Mr Saujani argued that, when the trade was transferred to the company in 1994 there was no disposal within the meaning of section 26 of the 1990 Act as no money was received. He also argued that the amount outstanding for stock of £23,224 should be treated as a bad debt and deducted from profits for the year ending on 31 December 1994 and that the debt for plant and machinery should also be deducted as a bad debt.

42. For the Inland Revenue Mr Cross argued that the credits made to the directors' loan accounts of the company meant that the directors could draw on the account. They had both been members of the Appellants' partnership. The directors became the creditors of the company. On the liquidation in 1977 the chairman's report had said that the plant and machinery had been sold and so they had some value. There was no bad debt to the partnership as the full amount had been allowed by the directors and paid for by credit to their loan account.

43. My difficulty in dealing with these arguments is that there was no evidence before me as to the arrangements made by the Appellants on the one hand and the company on the other about the transfer of the assets of the business on the discontinuance of the Appellants' trade. In particular, there was no evidence of a sale. The only evidence was a photocopy of the directors' account which is set out above. As far as the machinery is concerned I do not agree that there is no disposal for the purposes of section 26 if no money is received. The scheme of the legislation is that any disposal which is for less than the open market price is treated as a disposal at that price (see section 26(1)(b), section 26(1)(f) and section 152.) There was no argument before me as to which of these provisions should apply. It seems to me that the facts of this appeal may well come within section 152(1) of the 1990 Act. That section provides that, where a person succeeds to a trade which is treated as discontinued, any property which, before the succession took place, was in use for the

discontinued trade and, without being sold, is immediately after the succession in use for the purpose of the new trade, is to be treated as if sold and as if the net proceeds of sale had been the open market price. If, for any reason, section 152(1) does not apply then section 26(1)(f) will apply with the same result.

44. As far as bad debt relief is concerned there was no evidence that a debt relationship existed between the Appellants on the one hand and the company on the other and, in particular, there was no document which indicated that the company was indebted to the Appellants. In any event the items of machinery were capital items.

45. The conclusion on the third issue is that, on the discontinuance of the trade in 1994, there was a disposal value for the plant and machinery transferred to the company and that the bad debt provisions do not apply.

(4) Does the capital allowance basis period apply in 1994?

46. The fourth issue is whether, on the cessation of the trade in 1994, the capital allowances basis period legislation in section 160(3)(b) of the 1990 Act applied.

47. Sections 60 to 63 of the 1988 Act contain the provisions about the basis of assessment. At the relevant time section 60 provided for the normal basis of assessment to be on the preceding year basis; section 61 provided for a special basis at the commencement of a trade; and section 62 provided for a special basis for the early years following commencement. Section 63 contained the provisions to be applied on a discontinuance of a trade and the relevant parts provided:

"63 Special basis on discontinuance

(1) Where in any year of assessment a trade, profession or vocation is permanently discontinued, then notwithstanding anything in sections 60 to 62 -

(a) the person charged or chargeable with income tax in respect thereof shall be charged for that year on the amount of the profits or gains of the period beginning on 6th April in that year and ending on the date of the discontinuance, but subject to any deduction or set-off to which he may be entitled under section 385 in respect of any loss; and

(b) if the aggregate of the profits or gains (if any) of the years ending on the 5th April in each of the two years preceding the year of assessment in which the discontinuance occurs exceeds-

(i) the aggregate of the amounts on which income

tax has been charged for each of those two years; or

(ii) the aggregate of the amounts on which income tax would have been so charged if no deduction or set-off under section 385 had been allowed;

income tax may be charged instead, for each of those two years, but subject to any such deduction or set-off, on the amount of the profits or gains of the year ending on 5th April in that year."

48. The relevant parts of section 160 of the 1990 Act provided:

"160 Meaning of "basis period"

(1) Except as otherwise expressly provided, in this Act as it applies for income tax purposes, "basis period" has the meaning given to it by the following provisions of this section.

(2) In the case of a person to or on whom an allowance or charge falls to be made in taxing his trade, his basis period for any year of assessment is the period on the profits or gains of which income tax for that year falls to be finally computed under Case I of Schedule D in respect of the trade in question or, where, by virtue of any provision of section 60 of the principal Act, the profits or gains of any other period are to be taken to be the profits or gains of that period, that other period.

(3) For the purposes of subsection (2) above, in the case of any trade- ...

(a) where two basis periods overlap, the period common to both shall be deemed to fall in the first basis period only;

(b) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then, unless the second-mentioned year of assessment is the year of the permanent discontinuance of the trade, the interval shall be deemed to be part of the second basis period; and

(c) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade is permanently discontinued and the basis period for the year in which it is permanently discontinued, the interval shall be deemed to form part of the first basis period."

49. For the Appellants Mr Saujani argued that no election

under section 63 of the 1988 Act had been made by the Inland Revenue to assess the profits for the years 1992/93 and 1993/94 on the actual basis and it was now too late to do this. Thus the preceding year basis of assessment applied for those years. If the loss for 1991 were allowed and carried forward it would affect the profits of later years.

50. For the Inland Revenue Mr Cross accepted that, for the assessment of profits, section 63 applied but he argued that different basis periods applied for the purposes of capital allowances and he relied upon section 160 of the 1990 Act. At the cessation of a trade there could be a gap or interval whereby profits escaped tax for the purposes of Schedule D Case I but section 160 provided that there was no gap for the purposes of capital allowances. His calculations had been made on that basis and also excluded one machine which had been claimed twice.

51. At this stage I deal with a dispute of evidence about two invoices which appeared to be for the same machine. On 12 February 1992 a firm called International Textile Machines (UK) issued an invoice to General Guarantee Corporation Ltd, for delivery to the Appellants. The invoice was in respect of three Bentley machines numbers 36780, 36767 and 36636. The total invoice value was £155,100.00. On 26 October 1992 a firm called Moss Knitwear issued an invoice to General Guarantee Corporation in respect of one used Bentley machine number 36780 which had been sold to the Appellants for £49,937.50. As far as these two invoices were concerned Mr Saujani stated that the Appellants could not recall the details of the transactions but thought that one invoice could be for repairs or conversion. All the suppliers had gone out of business five years ago and it was not possible to get confirmation.

52. There was no evidence before me as to why two invoices had been issued for the same machine. Accordingly, I am not satisfied that the two invoices were not for the same machine and accordingly I agree that one should be disallowed.

53. Turning to the application of the basis periods for the purposes of capital allowances I agree with Mr Cross that the provisions of section 160 of the 1990 Act are mandatory.

54. The conclusion on the fourth issue is that, on the cessation of the trade in 1994, the capital allowances basis period legislation in section 160(3(b) of the 1990 Act applied.

Further issue

55. At very late stage in the hearing of the appeal, after the Inland Revenue had put forward their case and he was

replying on behalf of the Appellants, Mr Saujani suggested that there had been a cessation of the trade in 1991. I gave Mr Cross an opportunity of commenting on this suggestion and he argued that a cessation had to be permanent and the trade had continued in February 1992. In the absence of detailed and considered argument on this issue I record that the facts that I have found do not support the conclusion that there was a cessation of the trade in 1991.

Decision

56. My decisions on the issue for determination in the appeal are:

(1) that the evidence does not support the conclusion that there was any loss of stock by theft and/or fire in the year ending on 31 December 1991;

(2) that, for the purposes of computing capital allowances, the disposal value of the machinery destroyed by fire in 1991 did not exceed the capital expenditure incurred on the provision of that machinery within the meaning of section 26(2) of the Capital Allowances Act 1990 (the 1990 Act);

(3) that, for the purposes of computing capital allowances on the discontinuance of the trade in 1994, there was a disposal value for machinery transferred to the company even though no payment was received by the Appellants, and the bad debt provisions do not apply; and

(4) that, on the discontinuance of the trade in 1994, the capital allowances basis period legislation in section 160(3)(b) of the 1990 Act applied.

57. The appeal is, therefore, dismissed.

DR NUALA BRICE

SPECIAL COMMISSIONER

SC 3130/2000