DEDUCTIONS for purposes of calculating liability to Schedule D case I and II tax — research business — whether expenses in fact paid by other businesses run by appellant— whether expenses wholly or exclusively laid out for purposes of business — appeal dismissed

SCIENTIFIC RESEARCH ALLOWANCE — whether expenses incurred for purposes of appellant's trade of publishing — appeal dismissed

THE SPECIAL COMMISSIONERS SpC 00293

DR ROBERT BARRY SALT Appellants

- and -

MR STEPHEN BUCKLEY

(HM INSPECTOR OF TAXES) Respondents

SPECIAL COMMISSIONER: J D DEMACK

Sitting in public in London Tuesday, 4th September 2001

The Appellant in person

Mr J G Scott, Inspector of Taxes, appeared on behalf of the Respondents

DECISION

1. Since 1994/95 the Inland Revenue have accepted that the Appellant, Dr Robert Barry Salt, has carried on three businesses: those of the professions of

author (which he styles Salt Author) and of carrying out research into the characteristics of commercial films and television (styled Salt Research), and the trade of publishing (styled Starword).

2. He appeals against an amended assessment to income tax of £454 raised on 6 November 2000 to deny claims made in his 1997/1998 self-assessment return for (i) expenses wholly or exclusively laid out to Salt Research for the purposes of the respective businesses of Salt Author (for "services") and Starword (for "research expenses"), in each case of £2200, and (ii) an allowance for capital expenditure on scientific research by Starword. The Commissioners of Inland Revenue were not satisfied that payment of the expenses at (i) had in fact been made, or that the expenses had been wholly or exclusively laid out for the purposes of the professions of Salt Author and Starword: nor were they satisfied that, even if Starword had carried on the trade of publishing, it had undertaken any scientific research related to that trade.
3. The law applicable to the claims made by Dr Salt is to be found in two Acts of Parliament. That relating to claims for expenses of a trade or profession to be allowed is contained in s. 74 of the Income and Corporation Taxes Act 1988, and provides that:

". . .in computing the amount of the profits to be charged under Case I or Case II of Schedule D, no sum shall be deducted in respect of –

a. any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation . . ."

1. And that relating to a claim for a scientific research allowance, in selectively comminuted form, is contained in s. 137 of the Capital Allowances Act 1990. It reads thus:

"(1) Subject to the provisions of this section . . ., where a person –

a. while carrying on a trade, incurs expenditure of a capital nature on research and development related to that trade and directly undertaken by him or on his behalf, . . .
b. . . .

a deduction equal to the whole of the expenditure shall be allowed in taxing the trade for the [chargeable period in which the expenditure was incurred]"

1. With one exception, in these days it matters not for

income tax purposes whether a person is taxed under Case I or II of Schedule D on the annual profits or gains arising from trades, professions or vocations. (Case I taxes any trade carried on in the United Kingdom or elsewhere: Case II taxes any profession or vocation not contained in any other Schedule). The exception is the scientific research allowance, which is restricted solely to persons carrying on a trade.

2. Dr Salt, who appeared in person, submitted that there was a direct relationship between research he had conducted through Salt Research and the publishing activities of Starword, which was demonstrated by the way in which the results of the research were included in the products of Starword; and, because an "agreement" of 7 March 1997 (the contents of which are set out in paragraph 12 below) provided for the results of his research to be included in the products of Starword, he claimed that he had satisfied the requirements of s. 137 of the 1990 Act for a scientific research allowance. Alternatively, he claimed that Salt Research had acted as agent for Starword, so that again Starword had satisfied the conditions for the s. 137 allowance.

7. In relation to his claims for the two payments of £2200 to be allowed as incurred wholly or exclusively for the purposes of the paying businesses, Dr Salt submitted that, if Starword were eligible for a the scientific research allowance, then the payment by Starword to Salt Research was also allowable "because s. 137 of the 1990 Act says it is", adding that in any event the payments by Starword and Salt Author were both allowable because they had been necessary to Starword and Salt Author which could not have continued to operate without data from Salt Research.

8. Most of the facts upon which I must base my decision are contained in the following extract from an statement of agreed facts produced by the parties:

"2. Nature of Activities

Dr Salt has over a period of years conducted research into the characteristics of commercial film and television. This has involved the examination of numerous films and television shows, measuring such things as shot length and type of shot. From the data so obtained he compiles and manipulates statistics and draws conclusions from the results. He wrote a book entitled Film Style and Technology: History and Analysis, which he published and distributed himself. A second edition was produced in 1993.

Dr Salt has also published the text of a lecture delivered many years ago by the late Bronson Howard, on the topic of play construction.

He has also received payments for consultancy work and for articles written for Microsoft Encarta.

3. Structure of Business

In 1995 Dr Salt organised his activities into three businesses, Salt Research, Starword (his publishing activity) and his professional activities as an author.

Starword pays Dr Salt (in his role as author) a royalty of 10% of the gross sales of Film Style and Technology: History and Analysis."

(The Commissioners accept that the royalties so paid are taxable in the hands of Salt Author, the amount thereof not being arbitrary since they are based on 10 per cent of the gross sales of his book).

9. To those facts, there are others I find. They are to be found throughout the remainder of my decision.

10. In his oral evidence, which I took informally, Dr Salt said, and I accept, that he collects and retains only the most basic financial information and documents, and none which distinguishes between his three separate businesses. Indeed, I conclude and find that he maintains for his businesses no papers justifying the description records, but relies on receipts and similar papers to prepare his tax returns. It is against that background that he invited me to accept his word that the "payments" said to have been made by Starword and Salt Author to Salt Research had in fact been made. In the absence of any documentary record showing the transfer of money between the businesses concerned, I find that payment was not made.

11. Dr Salt was unable to explain how he had decided that Starword and Salt Author should each pay Salt Research £2200, in the former case for "research expenses" and in the latter for "services", but simply accused the Commissioners of behaving irrationally in refusing to accept the sums as reasonable when they were prepared to accept that Starword received 10 per cent of his gross sales of his book as royalties. If the payments are to be allowed, they must be "wholly and exclusively" made for the purpose of the payer. As Dr Salt adduced no evidence to show that they were so made, I find that they were not.

12. In so finding, I take into account an "agreement" dated 7 March 1997 which Dr Salt had signed three times, once for Salt Author, once for Salt Research and once for Starword. It reads as follows:

"This document formalises the recent informal agreement in which Starword agreed to pay such sums as may be thought appropriate from time to time to compensate Salt Research for its expenditures on research used and

contained in the books published by Starword in the past and in the future, and in particular to pay for all the expenditure on computer machinery by Salt Research. This agreement shall have effect from and including the Tax Year 1997/98."

13. I regard that "agreement" as having no legal effect, for it is plain to me, and I find, that Dr Salt's three businesses did not in 1997/98 trade at arm's length with each other. The agreement is merely a means of enabling Dr Salt to claim that he has transferred between his various businesses such arbitrarily chosen sums as may justify his making whatever claims for tax allowances suit his convenience. Consequently, I ignore the agreement in reaching my decision.

14. A further consequence of my finding that Dr Salt's three businesses did not trade at arm's length with each other is that none of them acted as agent for any other. In my judgment, only had the businesses dealt at arm's length with each other would a claim for agency arrangements to exist have had any justification: but that is not to say that it would have been successful.

15. It follows that I hold that neither Salt Author nor Starword is entitled to deduct as expenses wholly or exclusively laid out a sum of £2200 each claims to have paid to Salt Research.

16, I then turn to deal with Dr Salt's claim that Starword was entitled to a scientific research allowance in 1997/98.

17. From Dr Salt's oral evidence, and in the absence of any documentary evidence whatsoever, I am not satisfied that Starword made any sales of copies of Mr Howard's lecture in 1997/98: and it certainly published no new work in the year other than that (if any) written by Dr Salt himself. Consequently, had not the Commissioners accepted that Starword traded during the year, I should have found that it did not. In the events which occurred, I find that all sales attributed to Starword were of books, etc. written by Dr Salt himself, and case law clearly shows that the publication by an author of his own work is part of his profession of author, and does not constitute a separate trade of publishing. In one of the few cases on the point, CIR v Maxse 12 TC 41, Swinfen Eady MR said at p. 58:

"In my opinion, Maxse is carrying on the profession of a journalist, author, or man of letters by writing numerous articles, which are published monthly, and also by editing the magazine, from which he derives pecuniary profit. An author would not cease to be such if he published, or procured to be published, his own works at his own expense, and looked only for his remuneration to the sake of that commodity (to wit, his books) in the open market. The truth is that Mr Maxse is a journalist and editor, and is

also carrying on the business of publishing a magazine, but the fact that he is a publisher does not prevent him from also exercising the profession of a journalist."

18. That view was confirmed by Lord Keith of Avonholm in his speech in Carson v Cheyney's Executors 38 TC 240 (at pp 267-268).

19. This is not the first occasion Dr Salt has appealed to the Special Commissioners against a decision of the Commissioners denying him a scientific research allowance: it is in fact the third. On both the earlier occasions, the Special Commissioner confirmed the Commissioners' decision

20. On the first occasion he appealed, (see Salt v Golding (Inspector of Taxes) [1996] STC (SCD) 269) the late Mr D Shirley held that, even if Dr Salt had been carrying on the trade of publishing, he had undertaken no scientific research related to that trade.

21. In Dr Salt's second appeal, see Salt v Young (Inspector of Taxes) [1999] STC (SCD) 249) the Special Commissioner, Mr P W deVoil, had this to say of his claim:

"The facts, which are not disputed, maybe put very simply: the Appellant uses computer equipment for the study and analysis of film style and technique. He then publishes the results of his research. The research is clearly related to the Appellant's professions of author and of researcher and consultant; it is also related to his trade of publisher? The Appellant contends that at the hearing before Mr Shirley the Inspector attempted to mislead him by using the words 'research into' rather than 'research related to'; I can find nothing to suggest that, even if such an attempt had been made, it had any effect whatever on the decision. The Appellant's main contention, however, is that without the research there would have been no book, and without the book there would have been no publishing; if A is related to B and B is related to C, A must be related to C. This is altogether too simplistic and takes the chain of causality too far back; it is hardly necessary to spell out the absurd consequences to which such an approach would lead. I cannot accept that the Appellant's research is 'related to' his trade of publishing within the meaning of ss. 137 and 139 of the Capital Allowances Act 1990."

22. Except for the existence of the "agreement" of 7 March 1997 – with which I have already dealt – the facts upon which I am required to make my decision differ not from those before Mr deVoil. And for the same reasons he gave, I too cannot accept that any research carried out by Dr Salt related to his trade of publishing within the meaning of ss 137 and 139 of the Capital Allowances Act 1990. But I go further, and in the absence of any evidence of capital expenditure on research and development related to

Starword in 1997/98, find that Dr Salt undertook no research related to the trade of publishing. I dismiss his appeal to be entitled to a scientific research allowance

23. I earlier mentioned that this was Dr Salt's third claim for scientific research allowances to be appealed to the Special Commissioners, but that is not the full extent of his appeals to them. In the past seven years he has made no less than six appeals - most of them to my mind completely unjustified. Mr deVoil described the Revenue as adopting a "reasonable approach" to points raised by Dr Salt in his 1999 appeal, adding that they had maintained that approach "throughout in the face of intolerable provocation by the Appellant, who has been a thorn in their side for years". Mr deVoil went on to consider whether he should make an award of costs against Dr Salt on the basis that he had behaved wholly unreasonably, but eventually decided against it.

24. I should have been minded to make such an award had the Commissioners previously indicated their intention to apply for costs, and had pursued the application before me. Dr Salt should consider himself lucky that they did not do so.

25. Dr Salt referred me to a number of cases. Having considered each of them in context, I find none of them relevant. But, for the sake of completeness, I list them here:

Morgan v Tate & Lyle, Ltd 35 TC 367

Vallambrosa Rubber Co Ltd v Farmer 5 TC 529

Harrods (Buenos Aires) Ltd v Taylor-Gooby 41 TC 450

Duple Motor Bodies Ltd v Ostime 39 TC 537

Gaspet Ltd (formerly Saga Petroleum (UK) Ltd) v Elliss 60 TC 91

J P Hancock v General Reversionary and Investment Co Ltd 7 TC 372

J D DEMACK

SPECIAL COMMISSIONER

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