

CAPITAL ALLOWANCES – artificial turf for football pitch – whether the relevant item of plant is the pitch or the turf – the turf – whether the turf is used in the trade or the setting for the trade – used in the trade

THE SPECIAL COMMISSIONERS

**ANCHOR INTERNATIONAL LIMITED - Appellant
- and -
THE COMMISSIONERS OF INLAND REVENUE - Respondent**

Special Commissioner: DR JOHN F AVERY JONES CBE

Sitting in public in Edinburgh on 15 and 16 January 2003

Julian Ghosh instructed by KPMG for the Appellant

Jane Paterson instructed by the Solicitor of Inland Revenue for the Respondents

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DECISION

1. This is an appeal by Anchor International Limited against assessments to corporation tax for the accounting periods ended 30 April 1995 to 1998. The Appellant was represented by Mr Julian Ghosh, and the Commissioners of Inland Revenue by Miss Jane Paterson.
2. The issue is whether capital expenditure incurred by the Appellant in respect of the construction of five-a-side football pitches on the excavation, infilling, draining, terram and synthetic grass is expenditure on the provision of plant and machinery.
3. I heard evidence from Mr William Pomfret, contracts manager of G Thornton (Contractors) Limited who has over fifteen years experience of the synthetic sports carpet industry, and Mr William Buchanan, financial controller and then financial director of the Appellant until 1999. I also had the benefit of seeing the Appellant's pitches at Sighthill in Edinburgh.
4. There was an agreed statement of facts as follows:

The Appellant and the nature of the trade

1. The appellant company is Anchor International Limited ("the Appellant"). The Appellant was incorporated in Scotland in February 1987 with company registration number SC103260. The Company commenced trading on 15 June 1988.
2. The Appellant was established with widely drawn objectives which are described in the Memorandum of Association. Since the commencement of trading the actual trading activity carried on by the Appellant assessable to corporation tax under Schedule D Case

I has comprised the provision of leisure facilities at various sites throughout the UK. As at 30 April 1998 the Appellant provided both outdoor and indoor leisure facilities at five sites in Scotland and four sites in England.

3. As at 30 April 1998 the outdoor facilities comprised between 8 and 12 pitches specifically designed for five-a-side football matches. There was also a clubhouse building on each site providing all or a combination of indoor facilities, including shower and changing rooms, snooker and pool tables, coin-operated gaming machines, function rooms and bars. These facilities are available to persons using the pitches.
4. In view of the popularity of the football facilities the Appellant operates an advance booking system for the five-a-side pitches. Block bookings are made by clubs which form together and play each other on pre-arranged dates as part of regular five-a-side football leagues. Clubs enter into formal block booking agreements for a series of at least 10 bookings. Under these agreements the Appellant reserves pitches for the relevant dates and times and the club undertakes to pay the appropriate charges for the use of the pitches on each occasion during the booking period.
5. In the four accounting periods up to 30 April 1998 the Appellant's turnover may be analysed as follows:

Accounting period	<u>1995</u>		<u>1996</u>		<u>1997</u>		
ended 30 April							
Pitch and ball hire	2,987,707	70.4%	3,203,373	70.7%	3,639,158	71.3%	3,930,000
Booking cards	18,642	0.4%	19,810	0.4%	19,852	0.4%	23,000
Locker income	56,721	1.3%	46,105	1.0%	46,933	0.9%	46,100
Bar and food	970,290	22.8%	1,037,115	22.9%	1,190,272	23.3%	1,250,000
Amusement machine	66,216	1.6%	69,444	1.5%	86,085	1.7%	102,000
Other income	147,360	3.5%	157,788	3.5%	124,037	2.4%	211,000
	£4,246,936		£4,533,635		£5,106,337		£5,500,000

6. **The nature of each five-a-side football pitch**
7. At all the sites operated by the Appellant the game of five-a-side football involves the use of rebound boards on all four sides. Hard

- nets are mounted along the top of these boards behind each set of goals. Wire mesh fencing is mounted along the top of these boards at both ends of the outside perimeter of the pitches. Soft nets are hung above the rebound boards at the sides between individual pitches and are also hung above the hard nets and the wire mesh fencing. In addition each pitch has separately dedicated floodlights.
8. In order that the pitches might be used for 364 days each year the Appellant provides a playing surface of a sand-filled synthetic grass "carpet". This synthetic grass carpet is laid on top of a semi-permeable terram which overlays a loose stone drainage system. This playing surface provides good bounce and also both spring and slide for the players. The synthetic grass carpet is laid in strips which can be lifted by a specialist contractor and replaced when they become worn out.
 9. The standard dimensions of each five-a-side football pitch are approximately 32.1m x 23.1m.

The capital expenditure

10. It is agreed that the cost of construction of the clubhouse building is not eligible for capital allowances.
11. It is also agreed that the cost of the land underlying the five-a-side pitches is not eligible for capital allowances.
12. The capital expenditure on the construction of the actual five-a-side pitches has been analysed into separately identified elements as shown in Appendix A. This analysis relates to the expenditure at Sighthill, Edinburgh. The Sighthill premises were largely constructed during the accounting periods ended 30 April 1996 and 1997. It is believed that the Sighthill premises are broadly typical of the locations constructed by the Appellant in the four accounting periods to 30 April 1998. It is further agreed that the decision of the Special Commissioners in relation to the capital expenditure at Sighthill, as referred to in paragraph 4(12) will be applied to any identical capital expenditure incurred by the Appellant at other locations during the four accounting periods through to 30 April 1998. The decision of the Special Commissioners, subject to any appeal, will also be applicable to any identical capital expenditure incurred by the Appellant in subsequent accounting periods, provided that there is no material change in the law as regards such capital expenditure.
13. The first category of expenditure relates to the football pitches. The Inspector of Taxes agreed claims for capital allowances in respect of similar expenditure for periods up to 30 April 1994. A subsequent Inspector of Taxes formed a different view on the application of the law for later periods. It is the view of the Inland Revenue that the original decision to grant allowances was incorrect but that it is precluded from re-opening the assessments for those periods by virtue of the decision in *Scorer v. Olin Energy Systems Ltd* [58 TC 592].
14. It is agreed that the second category of expenditure comprising the goal posts, rebound boards and floodlights is all expenditure on the provision of plant which is eligible for capital allowances.

Description of qualifying expenditure under appeal

Preliminary and investigative works

15. In order for the design of the five-a-side pitches to be finalised it is necessary to undertake some preliminary investigative research into the site. This will usually involve two separate studies. A ground investigation report will be required to establish the soil conditions, nature and depth of topsoil, water-table level, the stability of the ground and make up of the formation the pitch base will be laid upon. A topographical survey is required to establish levels over the site to determine the extent of any cut and fill exercise required. In addition this may determine the design of the pitch drainage to utilise any natural fall in the site levels.

Excavation works

16. The ground investigation report will highlight the expected extent of excavation but it is likely that a vegetation and topsoil strip reducing levels by approx 200-300mm will be required to expose the formation. Depending on how uneven the site is a cut and fill exercise may be required to bring the pitch area to a maximum gradient of 1:100. The eventual gradient of the pitch area will determine the drainage design and at this point a series of lateral stone filled drainage trenches will be cut into the formation. Once the formation has been trimmed and proof rolled the pitch build up process can begin.

Pitch build up

17. First, the prepared and rolled formation will have a layer of terram geotextile laid upon it. This is to prevent the stone pitch base from being contaminated by the formation and keep the stone base clean whilst allowing it to drain freely. A layer of stone will be laid upon the terram. The thickness of the stone layer will be dictated by the ground conditions and the stability of the formation. Between 200mm and 300mm of stone is usual for most conditions. The stone to be used must satisfy a very tight specification. M.O.T. Type 1 with a limited amount of fines and which is not frost susceptible must be used. Certificates must be provided to ensure that all loads supplied comply with the specification. The stone base is laid in layers of no more than 100mm, rolled and compacted to give a firm but porous base. The final layer is laid by a laser controlled paving machine to ensure that the base is within the tolerances required for playing surfaces. Low spots are levelled with a blinding layer of 6mm to dust Type 1 material with the same limited amount of fines to ensure porosity. Once the stone base has been prepared, rolled and levelled it receives a further layer of terram geotextile material. This is used to provide a porous barrier over the stone, to protect the underside of the synthetic grass carpet and to keep it clean. The formation of all of the pitches at Sighthill was built up as one single section prior to the installation of the synthetic grass carpet on each of the ten separate pitches.

The synthetic grass carpet

18. A photocopy of a brochure issued by the manufacturer who supplied the synthetic grass carpet which is installed at Sighthill was available to the Tribunal (not reproduced).

Installation of the synthetic grass carpet

19. The synthetic grass carpet is laid onto the terram layer. It is laid in strips of varying widths of up to approximately 3-4 metres wide. The strips are joined in a similar method to the way domestic carpets are joined. The two edges of each strip are butted together and then folded back. A piece of backing material is laid underneath the join to which adhesive is applied. The edges are then folded back onto the backing material to form the joint. The sand in-fill used on this type of synthetic grass carpet serves two purposes. First, the weight of the sand anchors the synthetic grass carpet to the base and stops it from moving. Secondly, the sand fills the spaces between the tufts of the synthetic grass carpet to keep the pile upright giving the surface its durability and playing characteristics. The depth of the synthetic grass carpet is 25mm. Approximately 25kg to 30kg of sand is applied per square metre, depending on sand type and grade.

Life expectancy and replacement of the synthetic grass carpet

20. The life expectancy of a newly installed surface will be determined mainly by the level of use. Experience has shown that the most intensively used pitches will require replacement after approximately five to six years whilst lesser used pitches can last up to eight or nine years. The manufacturers provide a guarantee for a period of seven years. The nature of five-a-side football dictates that the strip of turf up the centre of each playing area is subject to more use and wear than those up the sides of each pitch. It is often possible when a pitch is completely resurfaced to salvage the turf from the sides to replace worn turf up the centre of other pitches showing signs of wear. In addition this material can be used to patch and repair areas of turf which are damaged.

The capital allowances under appeal

21. The aggregate amount of the expenditure which is claimed as eligible for writing down capital allowances at Sighthill is set out in Appendix A. The aggregate amount of capital expenditure on the Sighthill pitches on which capital allowances is claimed aggregates to £297,863. The qualifying expenditure under appeal on the excavation, infilling, drainage, the terram and the synthetic grass carpet included in this amount is £195,456.
22. The appeals relate to the four accounting periods up to and including the year ended 30 April 1998. Similar amounts of capital expenditure have been incurred at other locations in the succeeding accounting periods.

Appendix A

Accounting period ended 30 April	Total	[Para 4(12)]	[Para 4(13)]
		Excavation, infilling, drainage, terram and	Goal posts, rebound boards and

		carpet	floodlights
	£	£	£
1996	13,361	13,361	-
1997	271,396	168,989	102,407
1998	13,106	13,106	-
	297,863	195,456	102,407

5. From the oral evidence I find that when the carpet wears out it is either rolled up in strips or cut into squares with the sand on it. If some of it is to be re-used the sand can be sucked out of the carpet and the original strips would be cut into two for taking up. Re-carpeting would take 5 days weather permitting of which 2 days would be spent taking up the old carpet and three days laying the new one. It is common to re-use part of the carpet as used carpet fits in better with the existing carpet than new carpet. It is possible to purchase replacement carpet from a different contractor.
6. It is possible to play all the time on the artificial carpet so that bookings can be made in advance. With real turf the maximum use would be one game per evening in the summer or one game per week in the winter which would not be economic. The use of the carpet is not restricted to five-a-side football; it would be possible to play other sports.

Whether the item of plant is the pitch or the carpet, and whether it is a structure

7. The Revenue's main contention is that the expenditure is excluded from capital allowances for plant and machinery by Schedule AA1, introduced by the Finance Act 1994. Although logically one should first decide whether the expenditure qualified as expenditure on machinery or plant it is convenient to deal with this aspect first as if the expenditure is excluded it is unnecessary to decide whether it would have qualified. That schedule deals first with buildings, which are not relevant, and then with "Structures, assets and works." Paragraph 2 is as follows:

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

(a) the provision of structures or other assets to which this paragraph applies, or

(b) any works involving the alteration of land.

(2) This paragraph applies to any structure or other asset which falls within column I of the following Table ("Table 2").

(3) Sub-paragraph (1) above does not affect the question whether—

(a) any expenditure falling within column 2 of Table 2, or

(b) any expenditure on the provision of any asset of a description within any of the items in column 2 of Table 1,

is for the purposes of this Act expenditure on the provision of machinery or plant.

(4) Table 2 is to be read subject to the notes following it.

TABLE 2

(1)

(2)

Structures and assets

*Expenditure which is unaffected by the
Schedule*

A Any tunnel, bridge, viaduct, aqueduct, embankment or cutting.

1 Expenditure on the alteration of land for the purpose only of installing machinery or plant.

2 Expenditure on the provision of dry docks.

B Any way or hard standing, such as a pavement, road, railway or tramway, a park for vehicles or containers, or an airstrip or runway.

3 Expenditure on the provision of any jetty or similar structure provided mainly to carry machinery or plant.

C Any inland navigation, including a canal or basin or a navigable river.

4 Expenditure on the provision of pipelines or underground ducts or tunnels with a primary purpose of

carrying utility conduits.

D Any dam, reservoir or barrage (including any sluices, gates, generators and other equipment associated with it).

5 Expenditure on the provision of towers provided to support floodlights.

E Any dock.

6 Expenditure on the provision of any reservoir incorporated into a water treatment works or on the provision of any service reservoir of treated water for supply within any housing estate or other particular locality.

F Any dike, sea wall, weir or drainage ditch.

7 Expenditure on the provision of silos provided for temporary storage or on the provision of storage tanks.

G Any structure not within any other item in this column.

8 Expenditure on the provision of slurry pits or silage clamps.

9 Expenditure on the provision of fish tanks or fish ponds.

10 Expenditure on the provision of rails, sleepers and ballast for a railway or tramway.

11 Expenditure on the provision of structures and other assets for providing the setting for any ride at an amusement park or exhibition.

12 Expenditure on the provision of fixed zoo cages."

[Notes to table not reproduced]

8. The first column of Table 2 excludes from allowances on plant and machinery expenditure on structures and assets. Structures are defined in

paragraph 5: "'structure' means a fixed structure of any kind, other than a building...". The reference to assets in the heading of column 1 is presumably to the words in brackets in item D. Although the heading of paragraph 2 also refers to works which is not repeated in the heading of the table, some of the items, particularly item C, might be described as works rather than structures. Column 2 then prevents the exclusion from applying to certain listed and extremely diverse items which are presumably the subject of previous decisions, such as *IRC v Barclay Curle* 45 TC 221 (item 2), *Schofield v R&R Hall* 49 TC 538 (item 7).

9. Mr Ghosh for the Appellant formulates his claim as being for allowances on the carpet, which is not fixed and is not a structure and so is not affected by Table 2. The expenditure on the site described above as "excavation works" and "pitch build-up" is covered by item 1 of column 2. In support of this approach he cited *Wimpey International Ltd v Warland* 61 TC 51:

"Mr Moses, for the Revenue, argues that before you even get to apply any test, whether the functional test or any other test, you must first determine the subject-matter of the enquiry.... Where there are two entities, as in *Jarrold v John Good* 40 TC 681, namely, the premises and the partitions (it was conceded that the partitions were not "part of" the premises) you apply the test to the partitions as a separate entity. But where there is only one entity whether it be a dry dock or a silo or a laboratory, you apply the test to that entity as a whole." (*per* Lloyd LJ at p109A)

Mr Ghosh contends that the carpet is an asset in its own right being replaceable without affecting the pitch as a whole.

10. Miss Paterson for the Revenue looks at the whole expenditure on the pitch and contends that it is excluded from being plant by item G in the first column as a structure. Miss Paterson contends that the cases show that the item must be looked at as a whole and not artificially dissected. It had been the Crown's contention in *Barclay Curle* that the excavation expenditure should be looked at separately but the majority in the House of Lords did not agree:

"It is unrealistic, in my view, to consider the concrete work in isolation from the rest of the dry dock. It is the level of the bottom of the basin in conjunction with the river level which enables the function of dry docking to be performed by the use of dock gates, valves and pumps. To effect this purpose excavation and concrete work were necessary." (Lord Guest at page 245)

"Furthermore, I regard the 'piecemeal' approach as unreal. The dry dock ought, I think, for present purposes to be regarded as a whole, with all its appurtenances of operating machinery, power installations, keel blocks, tubular side shores, and so on." (Lord Donovan at page 249G)

The same approach was adopted to the expenditure on the whole silo in *Schofield v R&H Hall Limited* 49 TC 538 and the pools (including lavatories, showers, shops, laundries, children's playground, amusement hall, licensed bars) in *Cook v Beach Station Caravans Limited* 49 TC 514. Here the pitch had been built as a single unit; the carpet could not function without the works underneath it; the carpet was not readily movable; it remained until it was replaced and could not be moved as a whole, or even in the same strips in which it was laid; it had to be

scrapped by cutting it up; the carpet had 22 tons of sand resting on it. The item was the pitch as a whole, not the carpet.

11. She contended that here the pitch was something that had been constructed and was a structure. She cited *IRC v Smyth* [1914] 3 KB 406, a case on land value duty:

"I think a structure is something artificially erected, constructed, put together, of a certain degree of size and permanence, which is still maintained as an artificial erection, or which, though not so maintained, has not become indistinguishable in bounds from the natural earth surrounding." (page 421-2)

She also cited *South Wales Aluminium Co Ltd v Neath Assessment Committee* [1943] 2 All ER Annotated 587:

"As used in its ordinary sense I suppose it [structure] means something which is constructed in the way of being built up as is a building; it is in the nature of a building." (page 592H)

12. Mr Ghosh replied that the issue was whether the carpet retained its separate identity, not whether it was usable without the works underneath. The cases cited dealt with examples where the components did not retain their separate identity.
13. Miss Paterson also referred to Hansard, to which Mr Ghosh did not object; but he contended that the conditions laid down in *Pepper v Hart* [1993] AC 593 for reading Hansard, that the legislation was ambiguous or obscure, and that the difficulty can be resolved by a clear statement directed to the matter in issue (*per* Lord Oliver at page 620D), were not satisfied.
14. On the meaning of "fixed" in the definition of "structure" both parties contended that this was not to be understood as a technical term of land law. Mr Ghosh said that as a matter of fact the carpet was not fixed; it was resting on the prepared base weighed down by sand without any connection to what was underneath. Miss Paterson said that the pitch as a whole as clearly fixed and even if one looked at the carpet alone as a realistic matter it was fixed; it was weighed down by 22 metric tons of sand and could not be taken up as a whole and used elsewhere.

Reasons for the decision

15. The parties approach this question from different ends: Mr Ghosh from the point of view of the carpet alone (with the works to the site being treated as the alteration of land for the purpose only of installing the plant, to quote the words of item 1 of column 2 of Table 2); and Miss Paterson from the point of view of the pitch as a whole, because it is constructed as an entity, the carpet on its own being no use for playing football on without the works underneath it. The approach is critical to the questions whether something is fixed or is a structure. The pitch is fixed and accordingly could be a structure; the carpet is not fixed and is certainly not a structure.
16. I prefer Mr Ghosh's approach. It seems to me that the carpet has a separate identity; it will wear out in five to six years with frequent use, or eight or nine years with less use. If part of the carpet wears out before then, that part can be patched. When it is completely worn out, the works underneath are retained and merely rolled and filled in if there has been subsidence and another carpet is laid on top. A different supplier might

supply the replacement carpet. This seems to me analogous to a heavy machine standing on a concrete base. The machine cannot be used without the base but the machine can be replaced and a new one put on the same base. The relevant item of plant is the machine which retains its separate identity. Here it is the carpet, not the pitch, even though the carpet cannot be used without the preparatory works to the ground on which the carpet is laid, just as the machine cannot be used without the base.

17. Having decided that the relevant item of plant is the carpet I find that it is not fixed. Whatever "fixed" means in the context of the definition of structure, a carpet resting on the ground, however heavily weighed down with sand, is not fixed to anything. The fact that it cannot be moved as a whole or even in the same size rolls in which it was installed does not mean that it is fixed.
18. Looking at the meaning of "structure" in the context of the first column of Table 2 the carpet on its own is clearly not a structure. Having decided that the relevant item of plant is the carpet it is not necessary to decide whether the pitch is a structure but I would have decided that it was not. On the ordinary meaning of language, the pitch is not a "fixed structure of any kind, other than a building." Land has been dug out and filled in with stones and terram sheeting with a carpet resting on top. The examples of structures in column 1 are large civil engineering items, such as tunnels, roads, dams, docks and dikes. The pitch is not like any of them and is not constructed in the way one expects a structure to be constructed. Even roads in item B are much more fixed and constructed. Some of the items excluded by column 2 are smaller, such as fish tanks in item 9 and fixed zoo cages in item 12, which means that they must be caught by column 1, but they require construction in the sense of putting items together. Here the only "construction" is laying stones, terram sheeting and the carpet on the ground and weighing it down with sand. I agree with Mr Ghosh that the conditions for referring to Hansard are not satisfied. The word "structure" is not ambiguous; it is merely that one has to decide whether something is a structure or not. In any case there is no clear statement directed to this issue.
19. Accordingly, the expenditure on the carpet is not excluded by item G and the allowances for expenditure on the land are preserved by item 1 of column 2. I next consider whether the expenditure is on plant.

Whether the carpet is plant or the setting

20. Mr Ghosh contended that the distinction is between an item which plays a specific part in the generation of profits of the taxpayer's trade (which is plant, whether or not it also constitutes premises), and an item which, although used by the taxpayer for trade purposes, is not, itself, exploited to earn profits but performs a general housing function (which is not plant). The distinction is not between the mere description of an item as either outside or within the description of a trader's "premises". The murals in the hotel in *IRC v Scottish & Newcastle Breweries Ltd* 55 TC 252 play an active part in the profit-making apparatus of the hotelier and constitute plant, rather than the setting or premises of the trade:

"If the object has a function in the promotion of the taxpayer's business, be it an active or a passive function, then I think that, *prima facie* in light of the accepted width of construction to be put on the word, such an object may not unfairly or improperly be regarded as part of the taxpayer's 'plant'. It may well be that it is impossible *a priori* to define

precisely a line of demarcation between what is 'plant' and what is 'setting': the two can overlap or coincide, they are not and cannot be mutually exclusive, so that description as part of 'setting' is not of itself fatal to identification of objects as 'plant' at the same time." (*per* Lord Cameron at page 267A)

Similarly the dry dock in *Barclay Curle* was the premises in which the trade was carried on but it was also the item with which it was carried on, since it was used in the process of generating profits. He contended that the observations of the Special Commissioners in *Family Golf Centres Limited v Thorne* [1998] STC (SCD) 106 that items which are integral to the conduct of the trade but which are also part of the trader's premises cannot be plant, were incorrect although not disagreeing with the result. The cases where premises were held not to be plant were those where the premises performed no function, such as the floating ship which was the place which housed the restaurant in *Benson v Yard Arm Club Limited* 53 TC 66:

"The fact that a ship or hulk could be used as plant in many businesses does not enable a taxpayer to claim capital allowances for a ship or hulk which performs no function in the business actually carried on by the taxpayer Company, other than the function of premises providing accommodation for that business." (*per* Lord Templeman at page 89B)

The same was true of the football club stand in *Brown v Burnley Football Club* [1980] STC 424:

"The football matches take place and the spectators come to watch within, rather than by means of, the stadium" (page 437h)

and the school buildings housing a gymnasium and chemistry laboratory in *St John's School v Ward* 49 TC 524:

"Education is not carried out with these particular buildings but in these particular buildings; by contrast, the climbing ropes seem to me to be part of the educative machinery." (page 533E)

21. Mr Ghosh contended that if something is plant it does not matter if it also performs a different function. This is the third principle identified by Sir Donald Nicholls V-C in *Carr v Sayer* [1992] STC 396:

"...equipment does not cease to be plant merely because it also discharges an additional function, such as providing the place in which the business is carried out. For example, when a ship is repaired in a dry dock, the dock also provides the place where the repair work is carried out. That is no more than the consequence of the extensive size of a piece of fixed plant." (page 402e)

22. Miss Paterson's primary contention was that the pitches were the premises at which the Appellant carried on its business, not with which it carried it on, with the result that the expenditure failed the premises test.

"The premises, whether an office or a factory or a warehouse or whatever, at which or in which a business is carried on would not normally be

understood as intended to be embraced by the expression 'machinery or plant'." *Carr v Sayer* [1992] STC 396, 402b.

"There can be no doubt, therefore, as to the main principles to be applied, and the short question in this case is whether the partitioning is part of the premises in which the business is carried on, or part of the plant with which the business is carried on." *Jarrold v John Good & Sons Limited* 40 TC 681, 696 *per Pearson LJ*.

It is not necessary that the premises should be a building, as in the case of the tarmac areas used for circulation, queuing and parking for the car wash in *Anduff Carwash Limited v Attwood* 69 TC 575: "In functioning as an area over which cars are driven and parked, the site functioned as premises" (page 6081). The pitch is the setting for the game. It is the pitch that generates the income. Even if the carpet is looked at separately it is part of the setting. She contends that the football is played *on* not *with* the carpet, a distinction with which Mr Buchanan agreed. The carpet itself does not generate any income.

Reasons for the decision

23. It seems to me that one can regard the pitch (if one looks at the whole) or the carpet as both the setting and the means by which the business is carried on. The dual nature is no different from the dry dock in *Barclay Curle*, the swimming pool at the caravan site in *Cook v Beach Station Caravans Limited* 49 TC 513 and the murals in *IRC v Scottish and Newcastle Breweries Limited* 55 TC 252. In these cases the plant was used in the trade and it did not matter that it was also part of the place where the trade was carried on. Here the trade is the provision of synthetic football pitches, which generates 70 per cent of the turnover, and so in one sense the trade is the provision of the setting, but in another sense the pitch and the carpet are the plant with which the trade is carried on. I do not think one can make the distinction that Miss Paterson wants to make between football being played *on*, rather than *with*, the carpet. The fact that there are cases where plant serves both purposes shows that once the plant is used in the trade it does not matter that it is also the setting. I shall therefore follow the third principle identified by Sir Donald Nicholls V-C in *Carr v Sayer* [1992] STC 396:

"...equipment does not cease to be plant merely because it also discharges an additional function, such as providing the place in which the business is carried out."

24. The carpet is the means by which the Appellant generates profits rather than merely the setting, and is accordingly plant.
25. My decision is that the relevant item of plant is the carpet which is not a fixed structure, the works underneath it being the alteration of land for the purpose only of installing plant. It is the means by which the Appellant generates profits rather than merely the setting. I allow the appeal in principle.

SPECIAL COMMISSIONER

SC 3006/02

Authorities referred to in skeletons and not referred to in the decision:

Yarmouth v France [1887] 19 QBD 647

Cole Brothers v Phillips 55 TC 188

Hunt v Henry Quick Ltd 65 TC 108

Broken Hill Pty Co v Comr of Taxation of Australia (1968) 41 ALJR 377