



**TC03036**

**Appeal number: TC/2011/06395**

**VALUE ADDED TAX: *apportionment between taxable and exempt supplies; best judgment where inadequate record of expenditures maintained; whether reasonableness based on personal circumstances can be taken into account – no.***

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**ZYNA LIMITED**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE CHRISTOPHER HACKING  
ROGER FREESTON**

**Sitting in public at Nottingham on 30 April 2013**

**Mr Ragoopathy Kanapathy Naidu, a director of the Appellant appeared on its behalf.**

**Mr Bernard Haley, a Case Presentation Officer of Her Majesty's Commissioners of Revenue and Customs for the Respondents**

## DECISION

- 5 1. This was an appeal against an assessment in respect of Value Added Tax (VAT) in the sum of £6,054 together with accrued interest of £667.45 to be paid by the Appellant. The assessment was raised on 18 May 2011. The Tribunal has no jurisdiction enabling it to review the matter of interest and the Appellant was advised of this fact at the hearing.
- 10 2. Mr Naidu through his company Zyna Limited ran a small mixed groceries and drinks business selling beers, wines and foodstuffs both to individual customers and, latterly, to shops in the area he served in Lincoln.
3. The business was conducted from premises at 72 and 74 Monks Road, Lincoln, which were conjoined terraced houses comprising shop premises downstairs and living accommodation upstairs.
- 15 4. The properties were not in good condition in 2006 when Mr Naidu, who was hard pressed to maintain repayments on his business/property loans at that time, decided to re-finance the business so as to enable him to carry out works of repair and improvement. Some of these works had been ordered by the local authority to be undertaken so as to meet acceptable standards of habitation.
- 20 5. The work was put in hand in 2006 and by April 2007 that part of the work which related to 74 Monks Road had been brought to a state at which Mr Naidu might have considered recommencing use of the property even though some work still remained to be completed.
- 25 6. In fact Mr Naidu felt it was essential to address the increasingly urgent financial problems he faced so he decided to let the shop portion of no. 74 to another trader in the same field of business. By doing this he achieved a rental income of £1,000 a month. Subsequently he also let out the 3 bedrooms above the properties to residential tenants continuing his trading activities from no 72. During the works on no. 74 Mr Naidu had continued to use part of the premises for storage of stock.
- 30 7. Mr Naidu claimed repayment of the VAT element of the contractor's bills for work done and for materials used in the refurbishment of the properties. This was discovered at a routine VAT inspection visit in 2009. In his VAT returns Mr Naidu had not sought to distinguish between his trading and property businesses, the former entitling him to repayment of related VAT inputs but the latter being in the nature of  
35 an exempt supply which did not so entitle him.
- 40 8. It was suggested to Mr Naidu that he provide HMRC with evidence which would enable it to apportion the VAT inputs between these two elements but he was unable to do so. Mr Naidu explained to the Tribunal that he was only in business in a small way and it seemed clear to the Tribunal that his accounts were fairly rough and ready so that any such exercise could not easily be undertaken

9. It was in these circumstances that HMRC raised its assessment making the best judgment it could on the basis of the available evidence and applying the standard method of apportionment of VAT between the two businesses. The apportionment took as its starting point the value of the Appellant's trading sales and divided this by the total income received which included the rental income. The percentage figure which this calculation produced was then applied to the input tax declared.
10. An issue which arose during the course of the enquiry into this matter by HMRC and at the hearing, concerned VAT repayable in respect of motor car expenses. In this respect an amount claimed for the Appellant's Honda Jazz car which was not used full time for the business was the subject of a scale assessment as the running costs for this had been charged to the Appellant company.
11. Mr Naidu did not seek to dispute the factual basis upon which HMRC had raised the assessment. He sought the exercise of discretion by the Tribunal given the difficult personal and business circumstances he had faced and, to a degree, continued to face.
12. At the time the works were being carried out at his premises Mr Naidu's wife was seriously ill and much of his time had to be devoted to her. He was also under a great deal of strain as a result of his financial difficulties. These were, Mr Naidu felt, matters which it was reasonable for the Tribunal to take into account in considering the assessment raised.
13. The Tribunal explained to Mr Naidu that it did not have such discretion as he sought. It has been clearly established that the First-tier Tax Tribunal may not seek to exercise a judicial review function which might enable it to give consideration to wider issues of fairness. (See *The Commissioners for Her Majesty's Revenue and Customs and HOK* [2012] UKUT 363 (TCC)). Its responsibility was to examine the basis on which the assessment had been raised and to confirm it if it was correct and in accordance with the law. It might be set aside only if there had been some error whether of fact or law. There was no suggestion in this appeal that HMRC had done other than to act strictly according to law exercising its best judgment based on the facts known to it. Mr Naidu had not produced any evidence to suggest otherwise.
14. The Revenue had in fact exercised a degree of discretion in favour of the Appellant in that it had waived penalties of £628 which had originally been levied against the company in respect of the mis-declaration of its VAT liability. The Tribunal had no power to do other than to confirm the assessment the subject of this appeal.
15. Accordingly the appeal was dismissed.

**CHRISTOPHER S HACKING  
TRIBUNAL JUDGE**

**RELEASE DATE: 29 July 2013**