

DO PAINTINGS USED IN HOUSE OPENINGS QUALIFY AS PLANT

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An extremely interesting case has come before the First-tier Tribunal (FTT) – The Executors of Lord Howard of Henderskelfe (deceased) [2011] (TC 1340).

The facts

The taxpayers were the executors of Lord Howard of Henderskelfe who died in November 1984. Lord Howard had lived at Castle Howard, which was owned by the Castle Howard Estate Ltd. He had owned many works of art that the company were allowed to use for exhibition in the part of the house open to the public. Under an agreement, the company paid for the costs of insurance, restoration and security.

During 2001/02, the executors sold a painting used by the company for £9.4 million. The gain was included on the taxpayers' trust and estate tax return as a chargeable gain. The painting was clearly not employed in a trade, profession or vocation carried on by the executors.

The executors later tried to amend the return to state the gain on the painting was exempt from capital gains tax by virtue of TCGA 1992, s 45. The executors claimed it was a gain on the disposal of tangible moveable property, which was plant and therefore a wasting asset under s 44(1)(c). HMRC disagreed, so the taxpayers appealed to the FTT.

Sadly some questions were not asked:

(i) whether the painting would have qualified as plant in the trade of "house opening" was not looked at, ie, the review of the construction of TCGA 1992 s 44(1)(c) would lead to the conclusion that the owner has to employ the painting in a trade, profession or vocation carried on by him.

(ii) whether the painting was part of the setting and therefore was not eligible to qualify as plant under the function test.

The outcome

The FTT decided that the painting had been loaned to the company on an informal basis and could be removed by the taxpayers at any time. The painting was not hired by the company. There was no reason to describe the painting as a wasting asset. The executors did not have a business, and for the painting to be considered plant it would have to be owned by a business or held on a formal lease.

It was decided that the painting was not exempt from capital gains tax. The taxpayers' appeal was dismissed.

Conclusion

There are many who feel that a close examination of certain definitions is reviewed such as "house opening business" and the question of what is a setting/premises and what is "plant". For example, in *Shove v Lingfield Park 1991 Ltd [2004] STC 805* the Court of Appeal held that an artificial all-weather race track was not plant.



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