

# KEY CASES

## CASE REFERENCE : SSE GENERATION LIMITED v HMRC [2018] UKFIT 416 (TC)



### KEY POINTS

**What is the issue?**

The definition of “plant” is still not clear cut and HMRC guidance or opinions should not always be taken at face value.

**Who does it affect?**

Anyone making capital allowances claims.

**What does it mean for you?**

This shows that obtaining good capital allowances advice can ensure the value of your claim is not undermined by HMRC.

**How can I apply this to me?**

Always ensure you involve a capital allowance expert that has experience in your building sector.

This case gave us a bit of a fright, when reading that HMRC were challenging a hydroelectric claim and reducing the value to just over 10%, when typically we have been submitting claims for between 80-90%.

However, this case shows that the definition of what is and what isn't “plant” is very far from clear and each case should be reviewed on its own merits and HMRC guidance shouldn't be taken at face value, especially where large amounts of expenditure have been incurred.

## THE FACTS OF THE CASE

The appellant's business was an energy enterprise involved in generating, transmitting, distributing and supplying electricity. Their claim was made in relation to the first large-scale hydroelectric scheme in the last 50 years and capable of producing 100 MW of power, it was completed in 2008 and operational by 2009. However, shortly after opening rectification and remedial works were necessary. The appeal considered expenditure incurred in relation to the new build and remedial works.

The cost of the construction project was approximately £300 million with capital allowances having been claimed on £260 million, around 87% of the expenditure. HMRC accepted £34 million of that, around only 11% of expenditure, leaving £226 million in dispute.

For this case, the parties only sought decisions in principle on the various disputed items, with a decision on the values only being sought at a later date by the Tribunal, if no agreement could be sought by the parties.

A hydroelectric scheme consists of a number of different elements, and for nearly every element there was disagreement about the treatment for capital allowances purposes. The elements considered were water intakes, conduits, reservoir and dam, main intake, headrace, power cavern (aka power house), transformer cavern (aka transformer house) tailrace, and access tunnels. However, there was no dispute over the P&M installed within the caverns.

For those that have interest, the case describes in detail the function of each of these elements and aides in determining the understanding of whether they are plant or not.

## THE ARGUMENTS

The appellant argued that all items in dispute should be considered plant as interpreted by case law, and as such were allowable unless specifically disallowed by section 21 or 22 CAA 2001 and if disallowed they could not be saved by section 23 CAA. He gave reasons as to why they were plant at common law, why they fell into section 21 and 22 and if they did, why they were saved by section 23 by item 22 or item 25.

HMRC took the opposite view, and there was no point in looking at whether items were plant at common law, if the item was excluded by sections 21 and 22.

It was considered that the appellant's view point was the correct approach.

The parties had also agreed that the scheme should not be considered as a whole but on a piecemeal process. However, it had not been considered as to how, the scheme should be broken down into constituent parts. HMRC had not given this point much consideration at all, as they believed it did not matter how they were considered, as they were all excluded by sections 21 and 22.

Therefore, the judicial review systematically looked at each of the separate elements in turn, considering what each element's purpose was and whether it could be considered plant at common law, then if it was excluded by sections 21 and 22, and, if it was, could it be saved by section 23.

In summary, by using this method of reviewing whether an item is plant or not the FTT considered the water intakes and associated headponds, conduits (except in-situ concrete), headrace, tailrace, turbine outflow tunnel, drainage and de-watering tunnels, transformer cable tunnel were all considered to be plant.

In the case of the caverns, they themselves were considered to be premises, but once created expenditure installing plant would qualify **BUT** not enough detailed of this was provided to make a decision on these items.

## SUMMARY

This decision brought a great wave of relief as our approach to what is plant within hydroelectric schemes has somewhat been confirmed, and shows a back to “first principles” approach should always be taken when assessing what is or isn’t plant. It shows that HMRC may not always be right or justified in excluding items from claims, especially when they seek to apply very limited definitions to words.

This was noted before by the House of Lords case of Scottish & Newcastle Breweries Ltd, which included the judicial comment that:

"Much difficulty is caused by seeking to place limitative interpretations on the simple word ‘plant’: I do not think that the classic definition propounded in *Yarmouth v France* suggests that it is a word which is other than of comprehensive meaning."

However, as this is only an FTT case, HMRC will probably appeal the decision with such large sums at stake We will have to watch that space.....

## ABOUT US

At Cavetta Consulting our directors have considerable experience advising businesses, property investors, landlords and occupiers on all capital allowances implications that impact their business.

Our fee structure is tailored to take account of the tax status of the individual or business and is designed to add value to your business.

We offer free advice to businesses at the pre-planning stage of their business to make them aware of the benefits the tax system allows and a no obligation review of completed or potential schemes in order to determine whether a viable claim for property.

## Key Contacts



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