Neutral Citation: [2024] UKFTT 00866 (TC)

Case Number: TC09296

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House, London EC1

Appeal reference: TC/2022/02573

CORPORATION TAX – additional relief for expenditure on R&D – SMEs: additional deduction under s1044 CTA 2009 – Factual findings: company was in early stages of an entrepreneurial, technology-based business idea – on the evidence, no meaningful work was done for the appellant company by an individual whom the appellant company claimed had undertaken contracted out R&D – Going through the requirements of s1044: Was the company carrying on trade during the period? – Yes, due to "sideline" consulting work done by the appellant company in the period – Was the expenditure associated with the individual allowable for the purposes of that trade? – No – it was not for the purposes of that trade – Conclusion: requirements of s1044 not met – appeal dismissed

Heard on: 23-25 July 2024
(with a post-hearing application by the appellant on 26 July 2024 and submissions from the respondents on 1 August 2024)
Judgment date: 20 September 2024

Before

TRIBUNAL JUDGE ZACHARY CITRON

Between

STRICTLY MONEY LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Stephen Ashurst, director of the appellant company, and Sabbir Patwary of Shahidullah & Co, accountants

For the Respondents: Martin Priestley, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

THE APPEAL

1. This is an appeal against HMRC's amendments (in a final closure notice) to the appellant company's tax return for the accounting period (the "**period**") 1 June 2016 to 31 May 2017.

2. References in what follows to "**section**" or to "**s**" are to sections of Corporation Tax Act 2009, unless otherwise indicated.

3. The appellant company's tax return, prior to HMRC's amendments, had shown a trading loss for the period of £2,050,958: this was

   (1) the loss for the year as shown in the appellant company's audited accounts, augmented by

   (2) an additional deduction (in calculating profits of a trade) claimed under s1044 of £1,772,955; the latter figure was derived by multiplying £1,325,350 by 130%.

4. The figure of £1,325,350 (held out by the appellant company to be its *qualifying expenditure on contracted out research and development* per s1051(b)) was itself derived applying 65% (per s1136, the "qualifying element" of what the appellant company held out to be *sub-contractor payments* under s1133) to £2,039,000, being the sum of the following "expenditures", said to be constituent parts of the appellant company's overall trading loss:

   (1) £1.4 million to EGJ (Jorgen) Falk for consulting services in the period July 2014 to January 2017

   (2) £500,000 to three other, unnamed consultants

   (3) £100,000 for "concept development services"

   (4) £39,000 to Burderop Bridge Limited for financial technology systems design and development between October 2016 and 31 May 2017.

5. Based on its obtaining an additional deduction under s1044, the appellant company's tax return went on to claim an *R&D tax credit* under s1054 (being 14.5% of its *Chapter 2 surrenderable loss* (in this case, the whole of its trading loss, as augmented by s1044) for the period, per s1058). This came to £442,004.23.

6. HMRC's amendments disallowed expenditure of £2,039,000 (the sum of the claimed *sub-contractor payments* set out above) and removed the associated claim under s1044; this had the effect of removing the entirety of the *R&D tax credit* claim.

7. During the course of the hearing, the appellant company conceded that HMRC's amendments to the tax return were right as regards the second and third of the claimed *sub-contractor payments* as set out above (totalling £600,000); the appeal therefore related to HMRC's amendments as regards the first and fourth of the claimed *sub-contractor payments* (only), totalling £1,439,000.

WHAT IS NEEDED TO GET AN ADDITIONAL DEDUCTION UNDER S1044

8. The relevant (and disputed) requirements, to obtain the "additional deduction" under s1044, applied to the facts of this case, are:

   (1) the appellant company must have been carrying on a trade in the period;

   (2) the £1,439,000 expenditure must have been *qualifying expenditure on contracted out research and development*; and

(3) that expenditure must have been allowable as a deduction in calculating the profits of the appellant company's trade.

The requirements of *qualifying expenditure on contracted out research and development*

9. One of the conditions for expenditure to be *qualifying expenditure on contracted out research and development* is that the expenditure is attributable to relevant research and development undertaken on behalf of the company (s1053(2)).

10. Another requirement for *qualifying expenditure on contracted out research and development* is that it is expenditure incurred by the company in making the qualifying element of a *sub-contractor payment* (s1053(1)(a)); and a sub-contractor payment is a payment made by a company to another person in respect of research and development contracted out by the company to that person (s1133).

11. Activities that are research and development are as set out in the Department for Business, Innovation & Skills' *Guidelines on the Meaning of Research and Development for Tax Purposes*. These guidelines say (amongst other things) that

(1) R&D for tax purposes takes place when a *project* seeks to achieve an *advance in science or technology*;

(2) The activities which directly contribute to achieving this advance in science or technology through the resolution of *scientific or technological uncertainty* are R&D;

(3) A *project* consists of a number of activities conducted to a method or plan in order to achieve an advance in science or technology;

(4) Even if the advance in science or technology sought by a project is not achieved or not fully realised, R&D still takes place;

(5) *Scientific or technological uncertainty* exists when knowledge of whether something is scientifically possible or technologically feasible, or how to achieve it in practice, is not readily available or deducible by a competent professional working in the field. This includes *system uncertainty*. Scientific or technological uncertainty will often arise from turning something that has already been established as scientifically feasible into a cost-effective, reliable and reproducible process, material, device, product or service;

(6) *System uncertainty* is scientific or technological uncertainty that results from the complexity of a system rather than uncertainty about how its individual components behave.

BASIC FINDINGS ABOUT THE APPELLANT COMPANY DURING THE PERIOD

12. During the period, the appellant company was a small company whose sole director and shareholder was Mary Prendergast. I find that Ms Prendergast was the controlling mind of the appellant company during the period.

13. During the period, and as reflected in the statement of comprehensive income in its audited accounts, the appellant company

(1) received income (turnover) of about £30,000; and

(2) incurred administrative expenses of just over £2 million

It thus made an accounting loss of a little over £2 million.

14. Its balance sheet at the end of the period showed net liabilities of just under £624,000.

15. It had two wholly owned subsidiaries, Strictly Money Software Ltd and Strictly Money Wealth Management Ltd.

16. The business review in the audited accounts (which were signed in April 2018) said this:

> The Company continues to build on our research & development work and with the market-leading innovation that we have carried out over the past accounting period. We are satisfied that our combination of technology and product will continue to appeal to our marketplace of Traders and Trackers.

17. The appellant company had no bank account during the period (Mr Ashurst's evidence was that the appellant company had tried to open a bank account, but banks were reluctant to provide this service because the appellant company's business plan involving matters connected with blockchain); a bank account was opened after the end of the period, in 2018.

THE EVIDENCE BEFORE THE TRIBUNAL ON RELEVANT FACTUAL MATTERS

18. The relevant factual matters in this appeal, expressed in non-technical language, are

(1) what business activities was the appellant company engaged in during the period; and

(2) what work was done for the appellant company during the period by Mr Falk and by Burderop Bridge Ltd?

19. The key evidence before the Tribunal in respect of these matters was:

(1) the audited accounts of the appellant company for the period;

(2) a number of invoices issued during the period:

(a) one (for £30,000) issued by the appellant company to Stockmarket Casino Plc in respect of "online platform and brand development consulting services" during May to December 2016 (invoiced 31 December 2016);

(b) a number issued to the appellant company by third parties:

(i) HS Business Management Limited: six months' "consultancy fees" invoiced on 10 January 2017 and again on 28 June 2017;

(ii) Burderop Bridge Limited in respect of "consultancy" (drafting "business requirements", "RFP" ["Request for Proposal"] and "technical planning documents"), invoiced on 21 November 2016 and 9 January 2017; and in respect of consultancy re: "Strictly Money Prototype App on back-end API", invoiced on 10 February 2017, 7 April 2017 and 4 May 2017; and in respect of advisory board meeting, invoiced on 31 March 2017 and 4 May 2017;

(iii) Jo Kotas Creative Director in respect of consultation/expenses, invoiced on 19 April 2017 and 27 May 2017;

(3) legal documents executed by the appellant company and Mr Falk in respect of

(a) two convertible loan agreements (from Mr Falk to the appellant company), effective date 20 February 2017 (but signed on 2 February 2017), one for £900,000, the other for £1.1 million; the terms of the loans were one year (or earlier, on demand); the "preamble" to both agreements states:

> "The [appellant company] and [Mr Falk] have entered into an Asset Purchase Agreement with an effective date of 20th February 2017.

> Pursuant to that Agreement the [appellant company] has agreed to enter into a Loan Agreement the terms of which are stated hereunder"

(b) a resolution by Ms Prendergast as sole director of the appellant company to convert the £1.1 million loan to shares, made on 2 February 2017;

(c) Mr Falk's "renunciation" of the new £1.1 million nominal value new shares, in favour of Ms Prendergast, dated 3 February 2017;

(d) Mr Falk's "renunciation" of some £302,324 nominal value new shares, in favour of Ms Prendergast, dated 20 February 2017;

(e) Mr Falk's "renunciation" of some £27,000 nominal value new shares, in favour of Ms Prendergast, dated 21 February 2017;

(4) a declaration of trust over 1.1 million shares of 1p each in the appellant company, executed by Ms Prendergast in favour of Mr Falk, dated 18 December 2022, and expressed to be the position since February 2017; Mr Ashurst's skeleton argument stated that Ms Prendergast originally offered to hold Mr Falk's shares in the appellant company as nominee due to Mr Falk's ill health;

(5) a 40 page "Request for Proposal" document, marked as version 1.1, and dated 8 January 2017 (i.e. during the period):

(a) it describes the appellant company as "a well-funded start-up business founded and operated by financial technology, investment and retail industry executives";

(b) it says that the appellant company "is to be established and domiciled in the Isle of Man"; it says that the appellant company was "yet to secure" its "IoM regulatory status" and was "pre-revenue". It says the "group" was "newly founded (and in some cases, yet-to-be-founded)" but that it was a "well-capitalised start-up business" in the "design and development phase";

(c) it says that the purpose of the appellant company was "to *'…democratise and digitalise wealth and asset management by making and publishing to ordinary investors the strategies and track records of some of the very best traders' performance*' ": and that the appellant company would "achieve this by providing a compelling, cost-effective and easy-to-use digital investment service for consumers and professionals on a massive scale";

(d) it also says the following:

> Strictly Money is a group of companies to be made up of the holding company, SM itself, plus a set of wholly owned subsidiaries that are domiciled (and operate) in different international territories according to their target marketplaces. Strictly Money Limited will be the IoM-registered top company that owns all intellectual property of the group. There are to be established two London-registered private companies whose 100% shareholder is SM: Strictly Money Management Limited (SMML) and Strictly Money Software Limited (SMSL). These businesses are to be based in the UK for the purposes of regulated financial advice and business development (SMML) and software development and innovation that will qualify for UK tax authority (HMRC) research and development tax relief SMSL). In the future a third company, a Luxembourg-registered open-ended UCITS-compliant SICAV fund management company, Dividend King, will also be established. Dividend King will appoint its own investment managers.

> The group's software platform is designed to provide access to services and products for its customers in relation to the investment strategies and "copy trading" track-record of 100 of the group's most successful investment traders in the foreign exchange (FX), contracts-for-difference (CFD), exchange-traded funds (ETF) and futures & options markets. The group's customers may be either 'Traders' (who participate in market transactions) or 'Trackers' who follow these Traders' transactions as part of the SM's institutional trading account. For Trackers, it is SM that is responsible for aggregation & disaggregation of the Trackers' positions and also via a number of 3rd-party manufactured and regulated retail investment products such as individual savings accounts (ISAs, where permitted), self-invested personal pensions (SIPPs) and investment bonds (in the UK).
>
> Milestones to date include Strictly Money's written and approved high-level requirements for its proposed platform. SM's investors have approved & funded our 12-month plan to design, build, test and (Beta) launch the initial version of the proposition in a specific test territory.
>
> SM is therefore now issuing this informal Request for Proposal (RFP) to potential UK-based third-party outsourced suppliers (TPOS) that may wish to provide services and products to SM in respect of the outsourced underlying investment system.

(e) this was a "first draft" document that was never progressed or finalised. It described the appellant company in ways that did not reflect reality at the time it was written (for example, that it was "well-funded", and that it would be based in the Isle of Man); it was in significant part "aspirational", reflecting what was hoped or planned to be at the time of writing, as much as (or more than) what actually existed;

(6) a 20-page "executive summary" presentation with the appellant company's logo on it – it is undated, but the timeline in it suggests it was produced during the period, probably shortly before April 2017. It uses similar language to the "Request for Proposal" document in describing the appellant company's mission to "democratise" wealth management. It describes the appellant company's business model in these terms:

> Central to the SM model is a best in class securities trading platform where experienced successful traders can trade on their own account and can also opt to become a SM Top Trader The traders trade against the market in weekly cycles on their own account in selected liquid instruments i.e. FX, Indices, Commodities, CFDs etc. The traders are ranked via a leaderboard system based on trading performance during the weekly cycle. The leaderboard system produces the 100 Top Traders Leaderboard /Index with Trader rankings updated in real time. Each Top Trader must achieve a minimum performance of 1.5% per week or they become relegated to the "runner up list" and the top performers from the "runner up" list move up to the 100 Top Trader list.
>
> SM will set-up and launch 100 Top Trader Leaderboards for the major world financial centres. ….
>
> …
>
> SM will develop and build its platform using best in class technology solutions that will include live streaming data via a 24/7 API feed to provide live benchmark and index data from raw trading data. Also the SM platform

> will be designed from the ground up to be blockchain-ready (not the Bitcoin blockchain). Blockchain is the technology for the new generation of transactional applications that establishes trust, accountability and transparency while streamlining business processes.

(7) the evidence of Mr Ashurst (in a witness statement and oral evidence at the hearing, as well as a note prepared by Mr Ashurst for HMRC (answering their questions) on 10 June 2019); this included:

(a) that Mr Ashurst was an experienced "software and business architect"; he had published books about blockchain and artificial intelligence; he was the "chief architect" at the appellant company and responsible for its research and development activities; earlier in his career he had been a professional coder/software engineer;

(b) Borderup Bridge Ltd was Mr Ashurst's company, through which he provided consulting services to the appellant company during the period; Mr Ashurst then became a director of the appellant company a few months after the end of the period, in October 2017:

(c) Mr Ashurst's evidence was that Ms Prendergast had "confirmed" to him that in 2014 the appellant company instructed Mr Falk to carry out "a design-based innovative research and development project and to provide research and development services on new peer-review financial markets trading algorithm, the securitisation/tokenisation of that and associated technological innovations" on the appellant company's behalf;

(d) Mr Ashurst's evidence was that Mr Falk's work for the appellant company had been communicated orally to Ms Prendergast, who in turn communicated it orally to Mr Ashurst;

(e) Mr Ashurst's evidence was that, after he became a director of the appellant company, he "extended" Mr Falk's work for the appellant company "significantly"; and that Mr Falk did very little work for the appellant company after Mr Ashurst became a director. Mr Ashurst referred to his work, and Mr Falk's, combined, as a single project whose scope included the following "advances":

(i) creating an innovative design for a unique Top 100 'page rank' algorithm for "copy trading" in underlying retail investments (Mr Ashurst said that this was achieved "in 2016"); and

(ii) reducing the size and complexity of the current technological and logical "stack" typically required in the industry to deploy such an algorithm, from 12 layers to 2, using "distributed ledger" (or blockchain) technology (Mr Ashurst said that this was achieved "in 2017");

(f) Mr Ashurst's 10 June 2019 document, answering questions from HMRC, said, in a similar vein to the summary in Mr Ashurst's witness statement, that the appellant company had

(i) developed a new "design" for a mass-market retail investment-trading platform with less systemic risk, complexity and costs

(ii) designed a new "system" using tokens on distributed ledger software (blockchain) to reduce system complexity, risk and cost

(iii) ‘broken the mould’ by re-designing the “platform” stack using algorithm-driven tokens on blockchain (distributed ledger) technology

(iv) designed a new algorithm-powered token; this involved a new algorithm

(v) that “R&D milestones” had been reached in November 2017 and July/August 2018.

20. I make the following observations about the strengths and weaknesses of the relevant evidence before the Tribunal:

(1) Mr Ashurst had no first-hand knowledge of

(a) the consultancy services which, per certain invoices, were provided by the appellant company to Stockmarket Casino Plc, or

(b) the arrangements between the appellant company and Mr Falk

during the period; his evidence consisted of relaying things which, he said, Ms Prendergast had told him;

(2) Mr Ashurst had met Mr Falk, but did not know him at all well;

(3) there is no mention of Mr Falk or his work in the contemporaneous business documents – the “Request for Proposal” document or the “executive summary” presentation;

(4) there was no evidence given by either Ms Prendergast, or Mr Falk, before the Tribunal. When asked to explain this, Mr Ashurst said, in summary,

(a) that Ms Prendergast was thin and frail, and would have found attendance at the Tribunal stressful; and that the appellant company’s decision was that Mr Ashurst alone represent, and give evidence on behalf of, the appellant company to the Tribunal; and

(b) that Mr Falk had been approached by the appellant company to give evidence, but he had refused; Mr Ashurst said that no particular reason had been given;

(5) given the scarce contemporaneous documentation relating to the relevant factual issues in the appeal (which, Mr Ashurst said, was due to the “creative” nature of the endeavours of a “start-up” business like the appellant company), the absence of witness evidence (without compelling reasons, such as an unexpected emergency, or serious illness, or the like) from Ms Prendergast (the controlling mind) and Mr Falk (the person said by the appellant company to have been undertaking research and development as its subcontractor during the period) significantly weakened the appellant company’s case: little evidential weight can fairly be place on Mr Ashurst’s assertions on matters of which he did not have direct knowledge (unless corroborated by other evidence or inherent likelihood), not because Mr Ashurst was being anything other than straightforward in his evidence to the Tribunal, but because Mr Ashurst “was not there” and was, if not outright speculating, then adopting the views and observations (as he understood them) of Ms Prendergast, conveyed to him orally; this evidence, because it was impossible to test in a fair manner (as Ms Prendergast did not give evidence), and to the extent not corroborated, was inherently weak.

21. The evidence also included statements by three individuals about the appellant company’s work (as described to them by Mr Ashurst), made in July 2019, as follows (with names anonymised):

(1) an email from AS (described as having long experience as a technology consultant) as follows:

> I'm satisfied that there is considerable R&D driven innovation here through the concept and design of the CUDO crypto-asset token providing regulated investor access to professional trading strategies, all operating on a DLT platform that should streamline the end to end process by removing multiple layers of technology and associated expensive processes such as reconciliations. I can also see that there are considerable challenges ahead in terms of implementing this at scale, the governance framework, regulatory challenges etc. However, it looks feasible in principle and if those challenges are overcome and proven at scale, within a regulated environment by Strictly Money then it should be transformative for the industry.

(2) AS also appeared to consent to the following statement (which had been sent to him by Mr Ashurst, for his consideration):

> I have informally read and reviewed the above comments.
>
> I can confirm that in my professional opinion (as a independent, competent professional working in the field of investment, trading and blockchain technology) the research & development/R&D work carried out by this project in the design stage appears to have overcome technological uncertainty and, on that basis, has therefore made a significant and non-trivial advance in technology.
>
> Based on the approach stated in this document, which I am not able to verify directly (as I was not part of the R&D team) but which I believe to be true, I can also confirm the advances have been made via formal research and development and not through routine discussions nor informal peer review.

(3) an email from SK (described as a fellow of the Blockchain Centre at a leading UK university and an expert data scientist and statistician), as follows:

> At first glance, there are elements which could be considered R&D.
>
> 1) The new pagerank algorithm.
>
> 2) If the structure you propose (in terms of tokenomics) is more complicated than simply replicating existing real-world functionalities through smart contracts, then this can be considered R&D as well.
>
> It wouldn't be R&D if you simply copied an existing model, and re-code it through smart contracts, but this doesn't seem to be the case here.

(4) a statement by PR (a leading businessperson in the same sort of area as the appellant company planned to take part in) in the form provided by Mr Ashurst (see (2) above).

22. None of these individuals attended the Tribunal to give oral evidence.

POST HEARING APPLICATION BY THE APPELLANT COMPANY TO INTRODUCE NEW EVIDENCE

23. At 5:47 pm on Friday 26 July 2024, about 24 hours after the end of the hearing, the Tribunal received an email from Mr Ashurst on behalf of the appellant company asking that two new pieces of evidence (found only that day) be admitted:

(1) an email dated 28 October 2017 from Bjorn Monteine to Mr Ashurst, headed "possible claim for R&D relief"; it began by saying that the appellant company had acquired the "digital asset management concept" in February 2017 and referred to the legal documents executed by the appellant company and Mr Falk then; it said that Mr Falk had spent several years "developing the Strictly Money concept"; some parts of it

were redacted; it said it attached a document "as presented by" Mr Falk at February 2017;

(2) an 155-page document, marked "draft – for internal review only. February 2017", and with the appellant company's logo, entitled "High Level Requirements". Under "working notes", on page 3, it said the "Strictly Money concept" was "a digital wealth management concept developed over 24 months by Jorgen Falk Monaco". The document had 12 sections: introduction and executive summary; market analysis; marketing strategy; key principles and hypotheses; platform scope; portal scope; functions; engineering considerations; data definition and information architecture; contractual relationships; list of key processes; middle office functions; and an appendix on information architecture and operating model swim lanes.

24. The reason given for not adducing this evidence earlier was that

(1) the 28 October 2017 email had come in to Mr Ashurst's Burderop Bridge Ltd email address,

(2) Mr Ashurst had lost access to that email inbox,

(3) Mr Ashurst had therefore been assuming that no email to his Burderop Bridge Ltd email address had "survived"; whereas

(4) in fact Mr Ashurst had forwarded this email to his email address at the appellant company; but

(5) Mr Ashurst had not thought to search his appellant company email inbox for this email, until just after the hearing ended.

25. Mr Ashurst said that the new evidence was intended to help the Tribunal, and would not materially prejudice HMRC.

26. HMRC objected to admission of the evidence or, in the alternative, asked that it be given little weight.

27. I considered this application from the point of view of what was fair and just in the circumstances. I have noted:

(1) there was a fair, and fairly standard, procedure laid down in this case for both parties to adduce the documents on which they wished to rely, well in advance of the hearing. The point of this procedure, in this case as in every other, was to give both parties a fair opportunity to prepare their cases, and to progress the appeal in an orderly and efficient fashion, for the benefit of the parties, and also of the administration of justice more generally (so that the Tribunal's resources were deployed in a fair and efficient manner, for the benefit of all Tribunal users);

(2) the appellant company was not legally represented; but I do not consider this has a material impact on its ability to comply with a fair and orderly process as summarised immediately above;

(3) the reason given by the appellant for not adducing these documents in conformity with the process as just described was not, in my view, a strong one; in my view, a company in the appellant company's circumstances, acting reasonably, would have searched all the documents in Mr Ashurst's email inbox, and adduced those it found to be relevant to its case; I see no good reason why the appellant company somehow performed some sort of search that managed to overlook the email of 28 October 2017 (and its attachment) which, the appellant company now says, is relevant to its case;

(4) the higher courts and tribunals have consistently emphasised the importance of compliance with directions of the court or of the tribunals; this is to advance fairness and justice not only for the parties to the case in question, but for Tribunal users more generally, by deploying the Tribunal's resources fairly and efficiently;

(5) it seems to me that to adduce a document, not just "late" in terms of the process for adducing evidence prior to a hearing, but in fact *after the hearing has ended*, is closer to the extreme end of the spectrum of non-compliance with the Tribunal's directions.

28. In the light of the above, I have decided that to admit this late evidence would not be fair and just in the circumstances, and I therefore decline to do so.

THE POWERS OF THE TRIBUNAL AND ITS ROLE IN THIS APPEAL

29. Under s50 Taxes Management Act 1970, the Tribunal's role, and power, in this appeal is limited to deciding whether the assessment of the appellant company for the period (as amended by HMRC) either overcharged it, or undercharged it, and then to reduce, or increase, the amount assessed. The Tribunal does this by making relevant factual findings, on the evidence before it (the "standard" of proof being the balance of probabilities), and applying the law to those facts. The burden of proof, where the appellant wishes the Tribunal to conclude that the assessment overcharged it, and so to reduce the amount assessed, is on the appellant.

30. It follows that the way in which HMRC conducted their enquiries (such as, whether there were delays, and whose fault they were) is not something which engages the powers or role of the Tribunal; I do not therefore deal in what follows with the parties' submissions on this matter. Similarly, the fact that in a different period (the one immediately prior to the period in question), HMRC did not challenge the appellant company's R&D tax credit claim (when the facts, the appellant company says, are very similar), has no bearing on the Tribunal's role or powers in this appeal, which is about whether the appellant company's assessment *for the period* overcharged it.

FINDINGS OF FACT ON KEY FACTUAL ISSUES

The appellant company's main business activity during the period

31. The contemporaneous documents, along with Mr Ashurst's evidence and the document he produced in June 2019 to answer HMRC's questions during their enquiries, indicate that, during the period, the appellant company had a technology-based entrepreneurial business idea that it was trying to get off the ground. The idea is summarised in Mr Ashurst's witness statement and in his June 2019 document answering HMRC's questions; a single phrase that captures the business concept might be – a "blockchain-enabled securities trading platform for retail traders and trackers". What is clear is that the business idea did not "take off" (i.e. become a business reality) during the period (or, indeed, after it): this is clearly evident from the fact that it produced no revenues, and the arrangements to bring the idea to fruition (such as having a third party perform the "TPOS" role described in the "Request for Proposal" document) never progressed beyond an initial first draft.

32. None of this in itself surprising or out of the ordinary: it was an ambitious, entrepreneurial idea in a competitive market, and such business ventures are not easy to get off the ground.

Mr Falk's work for the appellant company in the period

33. On the evidence before me, it seems unlikely that Mr Falk did any meaningful (i.e. significant, from a realistic business standpoint) work for the appellant company during the period. I reach this view for the following reasons, cumulatively:

(1) the legal documents executed in February 2017 are the only contemporaneous evidence of Mr Falk's involvement with the appellant company during the period; they describe a series of legal steps (a loan; and its conversion)

(a) resulting from an "asset purchase agreement" of which the appellant company has no copy; and

(b) which culminate in an issuance of shares to Mr Falk which he then immediately renounced (in favour of Ms Prendergast, who held all the other shares). It was only four years later, in response to HMRC's enquiries leading up to this appeal, that Mr Falk and Ms Prendergast "got round to" regularising the position (as they would see it, per the appellant company's evidence in this appeal) by having Ms Prendergast execute a declaration of trust in Mr Falk's favour.

This is not, in my view, conduct, either on the appellant company's part or on Mr Falk's, which suggests that Mr Falk did anything meaningful for the appellant company during the period: the appellant kept no record of the "asset" purchased (or any other written record of Mr Falk's work); and Mr Falk's conduct is not that of a reasonable person expecting payment for (meaningful) work done. (Mr Ashurst's evidence, that Mr Falk renounced the shares in Ms Prendergast's favour (but as his nominee) because of his illness at the time, does not make sense to me, particularly in the light of the fact that Mr Falk was well enough at the time to execute several other legal documents. It does not, in any case, explain why nothing was done to show that Ms Prendergast was holding the shares as nominee, until years later when it was done at the appellant company's instigation, as a result of HMRC's enquiries);

(2) Mr Ashurst said that he had "extended" Mr Falk's work after he became a director of the appellant company (shortly after the end of the period); but Mr Ashurst had never seen any written output of Mr Falk's work during the period, nor had any meaningful interaction with Mr Falk, at which any kind of meaningful "handover" could have taken place; the written evidence put forward by the appellant company in this appeal, to demonstrate the work it says that Mr Falk did, is in fact mostly work done *by Mr Ashurst*, whether as a consultant to the appellant company (through Borderup Bridge Ltd) during the period, or afterwards as a director of the appellant company; it seems to me improbable that this work owes anything of substance to work done by Mr Falk during the period, given the minimal interaction between them and the absence of any outcome of Mr Falk's "work" in writing.

The appellant company's work for Stockmarket Casino Plc during the period

34. The invoice issued by the appellant company for £30,000 of consulting work for Stockmarket Casino Plc during the period corroborates Mr Ashurst's evidence that Ms Prendergast, the controlling mind of the appellant company at the time, did this kind of work; and I note that HMRC did not wish to argue that the invoice was a "sham" document. It therefore seems to me likely that the appellant company did do this paid consulting work for Stockmarket Casino Plc during the period, albeit in substance unrelated to the technology-based business idea that was its main business activity (per [31] above).

THE LEGAL ISSUES IN THE APPEAL

35. The legal issues in this appeal are essentially those highlighted in the section above about *What is needed to get an additional deduction under s1044*; they are:

(1) was the appellant company carrying on a trade in the period?

(2) was the £1,439,000 expenditure

(a) allowable as a deduction in calculating the profits of the appellant company's trade?

(b) *qualifying expenditure on contracted out research and development*? This would only be the case if it

(i) was attributable to relevant research and development undertaken on behalf of the company

(ii) was incurred in making a payment to another person in respect of research and development contracted out by the company to that person.

36. The appellant company argued that the answer to all the above questions was "yes", and it was therefore overcharged by the amended assessment for the period; HMRC argued that the answer to all the questions was "no" and that the appellant company was not overcharged; furthermore, HMRC argued that, if the Tribunal were to find that the appellant company was not carrying on a trade in the period, the appellant had been undercharged by the amended assessment.

CONCLUSIONS ON THE LEGAL ISSUES

Was the appellant carrying on a trade in the period?

37. The appellant company's main business activity, as described at [31] above, did not amount to carrying on a trade, for the simple reason that the business idea was at a very early stage. As I have found, the appellant's company's main business activity was an attempt to get a technology-based entrepreneurial business off the ground, in business terms; it was nowhere near commercial viability. It was not, therefore, the carrying on of a trade.

38. In contrast, the appellant's consulting work, for which it earned £30,000, although a "sideline" to its main business activity and in substance unrelated to it, was, in my view, trading. In this respect (only), the appellant company *was* carrying on a trade in the period.

Was the £1,439,000 expenditure allowable as a deduction from the profits of the appellant company's trade?

39. Given my finding that Mr Falk did no meaningful work for the appellant company during the period, the £1.4 million of expenditure associated with Mr Falk is not deductible: expenses must be wholly and exclusively for the purposes of a trade (s54), and this expenditure, viewed realistically, was not for any business purpose.

40. As for the remaining £39,000 of expenditure (relating to Burderop Bridge Ltd), I find that its purpose was entirely for the purposes of the company's main business activity (which did not amount to a trade); it was not therefore for the purposes of the "sideline" consulting activity (which did amount to a trade). It, too, therefore, is not allowable as a deduction from the profits of a trade carried on by the appellant company.

41. These findings means that the appeal falls to be dismissed (as *all* the issues set out at [35] above would have to be decided in the appellant company's favour for it to succeed in this appeal); however, with regard to the "research and development" issues, it will be clear from my factual findings that Mr Falk's work did not amount to research and development undertaken on behalf of the appellant company (and contracted out by the appellant company to Mr Falk); and it seems to me the appellant company (rightly) did not attempt to argue that Borderup Bridge Ltd's consultancy work amounted to research and development so undertaken and contracted out.

DISPOSAL

42. The appeal is dismissed; and the assessment of the appellant company for the period, as amended, stands good.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

43. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

ZACHARY CITRON
TRIBUNAL JUDGE

Release date: 20th SEPTEMBER 2024