Neutral Citation: [2025] UKFTT 00255 (TC)

Case Number: TC09439

FIRST-TIER TRIBUNAL
TAX CHAMBER

Centre City Tower, Birmingham

Appeal references: TC/2019/03697
TC/2021/03025

VAT – Kittel – connection – knew or should have known – appeal allowed in part

Heard on: 3, 4, and 7 February 2025
Judgment date: 24 February 2025

Before

TRIBUNAL JUDGE BLACKWELL
TERRY BAYLISS

Between

DJJ SERVICES LTD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr David Bedenham of counsel, instructed by DWF Law LLP

For the Respondents: Ms Charlotte Brown of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. DJJ Services Ltd ("DJJ") is a company that operates in the construction sector and specialises in providing labour. Mr Diven Laxman is DJJ's sole director and shareholder.

2. The structure of our decision is as follows. After this introductory section, we initially consider the legal framework. We then provide findings of fact from the evidence of the two witnesses and hearing bundle, and then apply the legal framework to those facts.

3. In addition to the oral submissions, we have also had the benefit of skeleton arguments and written closings from HMRC and the Appellant.

The decisions under appeal

4. DJJ has appealed against HMRC's decisions to:

(1) deny it the right to deduct input tax in the sum of £710,678 incurred in periods 06/15 to 09/18 applying the *Kittel* principle and assess it to VAT so as to recover VAT said to be due as a consequence (the "*Kittel* decision");

(2) issue it with a penalty under s69C VATA 1994 in the amount of £64,414.20 (the "69C Penalty"); and

(3) de-register it for VAT applying the *Ablessio* principle (the "*Ablessio* decision").

5. The 69C Penalty decision was withdrawn, shortly before the hearing, by a letter from HMRC to the Appellant dated 29 January 2025.

6. On the final day of the hearing, before oral closing submissions were made, HMRC conceded that the periods 06/17 and prior were out of time. The period under dispute is therefore limited to 09/17 – 09/18, with the amount under dispute now reduced to £229,908. HMRC have not amended their assessment to effect this concession but ask the Tribunal to give effect to it in its decision.

Issues in Dispute

Kittel decision

7. DJJ does not dispute HMRC's evidence that (1) its purchases have been traced to tax losses and (2) those tax losses were the result of fraud. However, DJJ submits that HMRC have not demonstrated that it knew or should have known that its purchases were connected with the fraudulent evasion of VAT meaning that the *Kittel* decision cannot stand.

Ablessio decision

8. DJJ says that, properly understood, the principle in *Ablessio* only applies to the VAT de-registration of taxable persons that have fraudulently misused their VAT number. However, DJJ accepts that this Tribunal is bound by the UT's decision in *Impact Contracting Solution Ltd v HMRC* [2023] UKUT 215 (TCC); [2023] STC 1521 ("*Impact*") where the UT held that the principle:

> "enable[s] the deregistration of a person for VAT purposes who has facilitated the VAT fraud of another, where the person to be deregistered knew or should have known that it was facilitating the VAT fraud of another".

Impact is due to be heard by the Court of Appeal in May 2025. Subject to the Court of Appeal's judgment (and the result of any further appeal), DJJ reserves the right to argue in any onward appeal that the application of the principle in *Ablessio* is limited to taxable persons that have fraudulently misused their VAT number.

9. For the purposes of the present hearing, DJJ submits that even on the more expansive application of *Ablessio* (as set out in *Impact*), HMRC have not proved that the Appellant should be de-registered because they have not demonstrated that the Appellant facilitated the VAT fraud of others (and knew or should have known it was so doing) less still that it was "using its VAT registration solely or principally for abusive or fraudulent purposes".

THE LAW

The right to deduct input tax

10. The right of a taxable person to deduct input tax is contained within sections 24-29 of VATA 1994. In particular:

(1) section 25 of VATA requires a taxable person to account for and pay any VAT on the supplies of goods and services which he makes and entitles him to a credit of so much of his input tax as is allowable under section 26: see section 25(2); and

(2) section 26 of VATA gives effect to Article 168 of EC Council Directive 2006/112 (the "VAT Directive") and allows the taxable person credit in each accounting period for so much of the input tax for that period as is attributable to supplies made by them in the course or furtherance of his business: see section 26(2).

11. The evidential requirements to be satisfied by a trader wishing to exercise his right to deduct input tax are set out within the Value Added Tax Regulations 1995 (SI 1995/2518) (the "VAT Regulations"). In particular:

(1) the obligation of a registered person to provide a VAT invoice is defined in Regulation 13;

(2) the requirements for the contents of a VAT invoice are defined in Regulation 14; and

(3) a trader is required to, *inter alia*, hold or provide the document required in Regulation 13 or such other evidence to support their claim as HMRC may direct, by Regulation 29(2).

12. Those provisions reflect and transpose the corresponding European Community laws contained within Articles 167 and 168 of the VAT Directive.

The loss of the right to deduct input tax

13. The right to deduct input tax will be lost where a taxable person "knew or should have known" that his transaction was connected with the fraudulent evasion of VAT. This is a test that was originally laid down by the Court of Justice of the European Communities ("CJEU") in *Kittel*. There the CJEU stated:

> "56. In the same way, a taxable person who knew or should have known that, by his purchase, he was taking part in a transaction connected with fraudulent evasion of VAT must, for the purposes of the Sixth Directive, be regarded as a participant in that fraud, irrespective of whether or not he profited by the resale of the goods.
>
> 57. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice.
>
> 58. In addition, such an interpretation, by making it more difficult to carry out fraudulent transactions, is apt to prevent them.
>
> 59. Therefore, it is for the referring court to refuse entitlement to the right to deduct where it is ascertained, having regard to objective factors, that the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, and

> to do so even where the transaction in question meets the objective criteria which form the basis of the concepts of 'supply of goods effected by a taxable person acting as such' and 'economic activity'.
>
> …
>
> 61. By contrast, where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT."

14. The *Kittel* Principle was elaborated on by Moses LJ sitting in the Court of Appeal in *Mobilx Ltd v HMRC* [2010] EWCA Civ 517; [2010] STC 1436 ("*Mobilx*") where he stated:

> "43. A person who has no intention of undertaking an economic activity, but pretends to do so in order to make off with the tax he has received on making a supply, either by disappearing or hijacking a taxable person's VAT identity, does not meet the objective criteria which form the basis of those concepts which limit the scope of VAT and the right to deduct (see *Halifax* at [59] and *Kittel* at [53]). A taxable person who knows or should have known that the transaction which he is undertaking is connected with fraudulent evasion of VAT is to be regarded as a participant and, equally, fails to meet the objective criteria which determine the scope of the right to deduct.
>
> …
>
> 52. If a taxpayer has the means at his disposal of knowing that by his purchase he is participating in a transaction connected with fraudulent evasion of VAT he loses his right to deduct, not as a penalty for negligence, but because the objective criteria for the scope of that right are not met. It profits nothing to contend that, in domestic law, complicity in fraud denotes a more culpable state of mind than carelessness, in the light of the principle in *Kittel*. A trader who fails to deploy means of knowledge available to him does not satisfy the objective criteria which must be met before his right to deduct arises."

15. In *Mobilx* the Court of Appeal went on to sound a note of caution in relation to attempts to improve upon the principle laid down in *Kittel*:

> "59. The test in *Kittel* is simple and should not be over-refined. It embraces not only those who know of the connection but those who 'should have known'. Thus it includes those who should have known from the circumstances which surround their transactions that they were connected to fraudulent evasion. If a trader should have known that the only reasonable explanation for the transaction in which he was involved was that it was connected with fraud and if it turns out that the transaction was connected with fraudulent evasion of VAT then he should have known of that fact. He may properly be regarded as a participant for the reasons explained in *Kittel*."

16. In relation to the phrase "the only reasonable explanation" it is important to note, as confirmed by Proudman J. sitting in the Upper Tribunal in the case of *GSM Export (UK) Ltd and another v HMRC* [2014] UKUT 0529 (TCC), that *Mobilx* does not purport to change the test in *Kittel*.

> "19. However, *Mobilx* does not purport to change the test in *Kittel's* case. The requirement as to the taxpayer's state of mind squarely remains 'knew or should have known'. The reference to 'the only reasonable explanation' is merely a way in which HMRC can demonstrate the extent of the taxpayers' knowledge, that is to say, that he knew, or should have known, that the transaction was connected with fraud, as opposed to merely knowingly running some sort of risk that there might be such a connection."

17. The Court of Appeal in *Mobilx* (at [83]) then affirmed guidance on the treatment of circumstantial evidence in cases of VAT fraud. In doing so the Court of Appeal quoted Christopher Clarke J. in *Red 12 Ltd v HMRC* [2009] EWHC 2563; [2010] STC 589 ("*Red 12*"), who had said:

> "109. Examining individual transactions on their merits does not, however, require them to be regarded in isolation without regard to their attendant circumstances and context. Nor does it require the tribunal to ignore compelling similarities between one transaction and another or preclude the drawing of inferences, where appropriate, from a pattern of transactions of which the individual transaction in question forms part, as to its true nature e.g. that it is part of a fraudulent scheme. The character of an individual transaction may be discerned from material other than the bare facts of the transaction itself, including circumstantial and 'similar fact' evidence. That is not to alter its character by reference to earlier or later transactions but to discern it.
>
> 110. To look only at the purchase in respect of which input tax was sought to be deducted would be wholly artificial. A sale of 1,000 mobile telephones may be entirely regular, or entirely regular so far as the taxpayer is (or ought to be) aware. If so, the fact that there is fraud somewhere else in the chain cannot disentitle the taxpayer to a return of input tax. The same transaction may be viewed differently if it is the fourth in line of a chain of transactions all of which have identical percentage mark ups, made by a trader who has practically no capital as part of a huge and unexplained turnover with no left over stock, and mirrored by over 40 other similar chains in all of which the taxpayer has participated and in each of which there has been a defaulting trader. A tribunal could legitimately think it unlikely that the fact that all 46 of the transactions in issue can be traced to tax losses to HMRC is a result of innocent coincidence. Similarly, three suspicious involvements may pale into insignificance if the trader has been obviously honest in thousands.
>
> 111. Further in determining what it was that the taxpayer knew or ought to have known the tribunal is entitled to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them."

18. Further, in *AC (Wholesale) Ltd v HMRC* [2017] UKUT 191 (TCC), the Upper Tribunal considered *Mobilx* concluding that the "only reasonable explanation" test is simply one way of showing that a person should have known that transactions were connected to fraud. On this, the Upper Tribunal went on to state that:

> "29. It is, to us, inconceivable that Moses LJ's example of an application of part of that test, the 'no other reasonable explanation', would lead to the test becoming more complicated and more difficult to apply in practice. That, in our view, would be the consequence of applying the interpretation urged upon us by Mr Brown [Counsel for taxpayer]. In effect, HMRC would be required to devote time and resources to considering what possible reasonable explanations, other than a connection with fraud, might be put forward by an appellant and then adduce evidence and argument to counter them even where the appellant has not sought to rely on such explanations. That would be an unreasonable and unjustified evidential burden on HMRC. Accordingly, we do not consider that HMRC are required to eliminate all possible reasonable explanations other than fraud before the FTT is entitled to conclude that the appellant should have known that the transactions were connected to fraud.

> 30. Of course, we accept (as, we understand, does HMRC) that where the appellant asserts that there is an explanation (or several explanations) for the circumstances of a transaction other than a connection with fraud then it may be necessary for HMRC to show that the only reasonable explanation was fraud. As is clear from *Davis & Dann*, the FTT's task in such a case is to have regard to all the circumstances, both individually and cumulatively, and then decide whether HMRC have proved that the appellant should have known of the connection with fraud. In assessing the overall picture, the FTT may consider whether the only reasonable conclusion was that the purchases were connected with fraud. Whether the circumstances of the transactions can reasonably be regarded as having an explanation other than a connection with fraud or the existence of such a connection is the only reasonable explanation is a question of fact and evaluation that must be decided on the evidence in the particular case. It does not make the elimination of all possible explanations the test which remains, simply, did the person claiming the right to deduct input tax know that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT or should he have known of such a connection."

19. A taxpayer does not need to know specific details of the fraud being perpetuated. In *Fonecomp Ltd v HMRC* [2015] EWCA Civ 39; [2015] STC 2254 the Court of Appeal (Arden LJ) said:

> "51. … the holding of Moses LJ does not mean that the trader has to have the means of knowing how the fraud that actually took place occurred. He has simply to know, or have the means of knowing, that fraud has occurred, or will occur, at some point in some transaction to which his transaction is connected. The participant does not need to know how the fraud was carried out in order to have this knowledge. This is apparent from paras [56] and [61] of *Kittel* cited above. Paragraph [61] of *Kittel* formulates the requirement of knowledge as knowledge on the part of the trader that 'by his purchase he was participating in a transaction connected with fraudulent evasion of VAT'. It follows that the trader does not need to know the specific details of the fraud."

20. It is dishonest for a person deliberately to shut their eyes to facts which they would prefer not to know. If he or she does so, they are taken to have actual knowledge of the facts to which they shut their eyes. See, for example, *Beigebell Ltd (No.2) v HMRC* [2023] UKFTT 363 (TC) and *Cavendish Ships Stores v HMRC* [2020] UKFTT 257 (TC). Such knowledge has been described as "Nelsonian" or "blind-eye" knowledge": see judgment of Lord Scott in *Manifest Shipping Company Ltd v Uni-Polaris Shipping Company Ltd and others* [2001] UKHL 1; [2003] 1 AC 469:

> "112. 'Blind-eye' knowledge approximates to knowledge. Nelson at the battle of Copenhagen made a deliberate decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. It is, I think, common ground – and if it is not, it should be – that an imputation of blind-eye knowledge requires an amalgam of suspicion that certain facts may exist and a decision to refrain from taking any step to confirm their existence. Lord Blackburn in *Jones v Gordon* (1877) 2 App Cas 616, 629 distinguished a person who was 'honestly blundering and careless' from a person who 'refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind – I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover'. Lord Blackburn added 'I think that is dishonesty'."

Approach to assessment of circumstantial evidence

21. In *Mobilx* Moses LJ stated:

> "81. It is plain that if HMRC wishes to assert that a trader's state of knowledge was such that his purchase is outwith the scope of the right to deduct it must prove that assertion…
>
> 82. But that is far from saying that the surrounding circumstances cannot establish sufficient knowledge to treat the trader as a participant. … Tribunals should not unduly focus on the question whether a trader has acted with due diligence. Even if a trader has asked appropriate questions, he is not entitled to ignore the circumstances in which his transactions take place if the only reasonable explanation for them is that his transactions have been or will be connected to fraud. The danger in focusing on the question of due diligence is that it may deflect a Tribunal from asking the essential question posed in *Kittel*, namely, whether the trader should have known that by his purchase he was taking part in a transaction connected with fraudulent evasion of VAT. The circumstances may well establish that he was."

22. In *Mahagében kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága; Dávid v Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó Főigazgatósága* (Joined cases C-80/11 and C-142/11) [2012] STC 1934 the CJEU said the following with regard to due diligence:

> "60. It is true that, when there are indications pointing to an infringement or fraud, a reasonable trader could, depending on the circumstances of the case, be obliged to make enquiries about another trader from whom he intends to purchase goods or services in order to ascertain the latter's trustworthiness.
>
> 61. However, the tax authority cannot, as a general rule, require the taxable person wishing to exercise the right to deduct VAT, first, to ensure that the issuer of the invoice relating to the goods and services in respect of which the exercise of that right to deduct is sought has the capacity of a taxable person, that he was in possession of the goods at issue and was in a position to supply them and that he has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders operating at an earlier stage of the transaction or, second, to be in possession of documents in that regard.
>
> 62. It is, in principle, for the tax authorities to carry out the necessary inspections of taxable persons in order to detect VAT irregularities and fraud as well as to impose penalties on the taxable person who has committed those irregularities or fraud.
>
> 63. According to the case law of the court, member states are required to check taxable persons' returns, accounts and other relevant documents (see *EC Commission v Italy* (Case C-132/06) [2008] ECR I-5457, para 37, and *Dyrektor Izby Skarbowej w Biaymstoku v Profaktor Kulesza, Frankowski, Jówiak, Orowski* (Case C-188/09) [2010] ECR I-7639, para 21).
>
> 64. To that end, Directive 2006/112 imposes, in particular in art 242, an obligation on every taxable person to keep accounts in sufficient detail for VAT to be applied and its application checked by the tax authorities. In order to facilitate the performance of that task, arts 245 and 249 of that directive provide for the right of the competent authorities to access the invoices which the taxable person is obliged to store under art 244 of that directive.
>
> 65. It follows that, by imposing on taxable persons, in view of the risk that the right to deduct may be refused, the measures listed in para 61 of the present

> judgment, the tax authority would, contrary to those provisions, be transferring its own investigative tasks to taxable persons."

23. The case law indicates that it is necessary to guard against over-compartmentalisation of relevant factors, and to stand back and consider the totality of the evidence: see *Davis & Dann Ltd v HMRC* [2016] EWCA Civ 142, [2016] STC 1236 ("*Davis & Dann*") and *CCA Distribution Ltd v HMRC* [2017] EWCA Civ 1899; [2018] STC 206 ("*CCA Distribution*").

24. In considering circumstantial evidence, the Tribunal should take care not to restrict itself to considering each piece of evidence alone and in isolation from the others. This is because circumstantial evidence is not a chain, where a break in one link breaks the chain, but is a cord: one strand of the cord might be insufficient to sustain the weight, but three strands together might be sufficient: see *R v Exall* (1866) 4 F&F 922, per Pollock CB, cited with approval by the Upper Tribunal *CCA Distribution* at [91]. Accordingly, the whole can end up stronger than the individual parts: see the decision of Judge Christopher McNall in *Wholesale Distribution Ltd v HMRC* [2024] UKFTT 00514 (TC) at [49]

25. Further, it is necessary to consider individual transactions in their context, including drawing inferences from a pattern of transactions, and to look at the totality of the deals effected by the taxpayer (and their characteristics), and at what the taxpayer did or omitted to do, and what it could have done, together with the surrounding circumstances in respect of all of them: see *Red 12* at [109] to [111]. In effect, as a facet of the guidance given in *Red 12*, it is necessary to guard against over-compartmentalisation of relevant factors, and to stand back and consider the totality of the evidence: *Davis & Dann* and *CCA Distribution*.

Burden and standard of proof

26. Where HMRC rely on the *Kittel* Principle, it is for HMRC to prove that each element of the test set down by the CJEU is satisfied (see *Mobilx* at [8]), namely:

(1) there was fraudulent evasion of VAT;

(2) the appellant's purchases on which input tax have been denied were connected with that fraudulent evasion of VAT; and

(3) the appellant knew or should have known that its purchases were connected with fraudulent evasion of VAT.

27. As the CJEU underscored at paragraph [47] of *Kittel*, the right to deduct is "an integral part of the VAT scheme [which] in principle may not be limited". Accordingly, the Tribunal must, before allowing that right to be interfered with, be satisfied that HMRC have proved each element of the *Kittel* test in relation to each purchase that they seek to deny input tax on.

28. It is not enough for HMRC to prove that the appellant's purchases *might* be connected with fraudulent evasion of VAT: see *Hira Company Ltd v HMRC* [2011] UKFTT 450 (TC) at [111], per Judge Poole. Rather, HMRC have to prove, on the balance of probabilities, that the appellant's purchases *are* connected with fraudulent evasion of VAT.

29. Similarly, it is not enough for HMRC to prove that the appellant knew or should have known that its purchases *might* be connected with fraudulent evasion of VAT, were *probably* connected with fraud or were *likely* connected with fraud. Rather, HMRC have to prove, on the balance of probabilities, that the Appellant knew or should have known that its purchases *were* connected with fraudulent evasion of VAT.

30. The standard of proof is the civil standard of the balance of probabilities. As confirmed by Lord Hoffman in *Re B* [2008] UKHL; 35 [2009] 1 AC 11:

> "[13] I think the time has come to say, once and for all, that there is only one civil standard of proof, and that is proof that the fact in issue more probably occurred than not.
>
> …
>
> [70] …[the civil standard of proof] is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies."

EVIDENCE

31. We heard live witness evidence in the following order:

    (1) Officer Coe, a Senior Team Leader at HMRC; and

    (2) Mr Laxman.

32. We have also considered the evidence contained in two electronic bundles of 2,940 and 1,884 pages. We have also had regard to an authorities bundle on 460 pages which, in addition to authorities, contains HMRC's leaflet "Use of Labour Providers" from 2012.

FINDINGS OF FACT

Witnesses

33. We note that a witness may be reliable on part of their evidence and unreliable on another part of their evidence. However we make the following general observations on the two witnesses that we heard.

34. We consider that Officer Coe was generally a helpful witness who sought to assist the Tribunal. There were certain parts of her evidence that appeared somewhat partisan: particularly in relation to whether part of the assessment was out of time. However we note that issue is no longer in dispute.

35. We found Mr Laxman to be an unreliable witness, whose evidence we approach with caution, for the following reasons:

    (1) Mr Laxman was vague and somewhat inconsistent as to how the subcontractors contacted him. Whilst some vagueness might be anticipated, as the events took place over a decade before, it was noticeable that Mr Laxman was more detailed in his description of his work at Tesco as a security guard and also in relation to the Indian sweet centres. Both of these events took place before started using the relevant contractors.

    (2) The inconsistency regarding when Mr Salhan worked for him (below at [43]).

    (3) Mr Laxman's unwillingness to accept that he did not "work in a recruitment company" before DJJ (below at [40]).

    (4) The inconsistency that Mr Laxman says he did not want to compete with Mr Willian, as he was his friend, yet he was willing to enter into the construction industry competing with his wife who also ran a labour supply company in the construction industry (below at [71]).

    (5) Mr Laxman's explanation for the business activities of the subcontractors in the due diligence materials was implausible (below at [99] and [108]).

(6) Mr Laxman's evidence that he and his wife had no idea about each other's businesses and that she was unaware that he was at the Tax Tribunal today and unaware of the *Kittel* denial. He said he told her he was going to court and she simply said that she would pray for him and asked no details. He offered none. This in inconsistent with his evidence that he is an "open" person.

Background

36. Between 2010 and 2012, prior to starting DJJ, Mr Laxman worked as a security guard at Tesco, working through an employment agency called Total Security Services Limited ("TSS"). Mr William was Mr Laxman's day-to-day contact at TSS. Mr Laxman became friends with Mr William, as they worshipped at the same church. Mr Laxman learnt from Mr William how an employment agency made money, making a margin by charging at a higher rate than its cost.

37. For five or six months around 2011/2012 Mr Laxman investigated running an employment agency providing staff for Indian sweet centres. These are small cafés that in addition to selling sweets also provide meals. They required staff both for cleaning and cooking. Mr Laxman had some contacts with the sweet centres because his brother was an accountant for one of the companies and they used to go and have breakfast at a sweet centre.

38. Mr Laxman made contact with potential workers by speaking to chefs and restaurants that he dined in, and also speaking to the cleaners in those restaurants. Also sometimes people said to him that their relations were looking for jobs.

39. Mr Laxman did not want to start an employment agency in the security industry, as he was aware that a licence would be required and he did not want to have his friend Mr William as a competitor.

40. When applying to register for VAT, the declared description of the current or intended business activities was "Recruitment – Supplying permanent staff in the sweet centre shop." The categorisation of the business activity was "Temporary employment agency activities (main activity)." By letter dated 10 October 2012, HMRC requested further information in support of the application and a completed questionnaire. Question 1b on the form was "state your previous experience in this type of business". The form says in answer "work in a Recruitment Company before". It was put to Mr Laxman that this was not the case: initially he sought to justify it by stating that he did as he worked for TSS. When it was put to him that the work he did at TSS was as a security guard, not working in recruitment, he sought to explain how he acquired information from Mr William. Ultimately Mr Laxman accepted that "on the basis of the definition" put to him he did not work in a recruitment company. We consider that, in context, the answer on the form is misleading, Mr Laxman worked in security not in recruitment. His reluctance to accept this goes to the reliability of his evidence.

41. Mr Laxman's evidence was that he did not fill out the forms in relation to DJJ and this was left to his bookkeeper. Despite Mr Laxman claiming to be there when the form was filled out, he accepted that the statement at 1.b of the questionnaire that DJJ had previous experience of this type of business because he had worked in a recruitment company before was incorrect; he had not worked in a recruitment company before and he had no experience of running or working in a recruitment company.

42. It is Mr Laxman's case that his accountant, Madhan Salhan, advised him in 2012 to enter the construction industry supplying labour. He says Mr Salhan acted for him registering him for VAT and filing CIS and personal tax returns from December 2012.

43. We do not accept this to be the case because it contradicts the documentary evidence. Mr Salhan was only authorised as his agent on 12 February 2016. The notes of a visit (in relation

to an enquiry) by HMRC on 18 March 2016 record Mr Salhan was "appointed for this enquiry – has no other connection or tax knowledge of the business." The note further states the inspector:

> "realised that Mr Salhan did not know much about the way the business was run and had no in depth knowledge of the records and what was included on the vat returns, he kept having to look to Amit for answers, so decided there was no point in asking any more questions."

and

> "no tax work carried out as yet – appointed for this meeting."

44. Mr Laxman stated he was juggling providing labour for sweet centres at the same time as looking into the construction industry. He wanted to start in the sweet centres as it was starting small and avoided a big risk.

45. Mr Laxman received a letter from HMRC, dated 18 December 2013, identifying increasing problems with unpaid taxes through the use of Labour providers in the construction industry. It also enclosed HMRC's notice on "Use of Labour Providers". At the hearing Mr Laxman stated he recalled receiving the letter and indicated he had read the accompanying leaflet.

46. DJJ did not have its own workforce and sourced labour for its customers from a number of subcontractors. At any time DJJ only sourced workers from one subcontractor. Mr Laxman explained that DJJ ceased to use each subcontractor either because they were deregistered or because of poor performance.

47. When starting out Mr Laxman wrote letters of introduction to many possible subcontractors. He was originally approached by Tollgate Solutions Ltd, the first subcontractor which he used. He would meet potential subcontractors on construction sites, they would hand out business cards. Initially, when Mr Laxman met his customers, he would bring a representative of his subcontractor along with him, but he would not introduce them as a subcontractor but as DJJ.

48. When carrying out due diligence Mr Laxman was helped by his brother.

49. DJJ was supplied labour consecutively by the following nine suppliers/subcontractors:

Subcontractor	Dates
Tollgate Solutions Ltd	June – September 2015
Primary Services Ltd	September – December 2015
MSDI Ltd	December 2015 – March 2016
JAS V Ltd	March – June 2016
CGX Ltd	June – September 2016
WV2 Ltd	September – December 2016
Banssi Solutions Ltd	December 2016 – June 2017
VIKX Ltd	June 2017 – March 2018
Stone Force Services Ltd	March 2018 – June 2018

50. Each of the above suppliers were defaulting traders. It will be recalled, the appeal in relation to the *Kittel* decision now only relates to the period from September 2017, so it only relates to the input tax in relation to VIKX Ltd and Stone Force Services Ltd.

51. DJJ was sent veto letters respect of seven of these nine subcontractors: Primary Services Ltd (2 November 2015); Jas V Ltd (17 June 2016); CGX Ltd (30 August 2016); MSDI Ltd (6 September 2019); Banssi Solutions Ltd (21 February 2017); Vikx Ltd (11 January 2018); WV2 Ltd (31 January 2018). Hence by the start of September 2017 Mr Laxman had received five veto letters. However the veto letter in respect of CGX Ltd was misaddressed (see [141] below).

52. Each of those veto letters stated that the supplier had been deregistered and contained warnings such as:

> "HMRC has identified increasing problems with fraud and unpaid taxes through the use of Labour Providers and is taking steps to combat these losses by tackling specific schemes to defraud.
>
> It is good commercial practice for all businesses to carry out checks to establish the credibility and legitimacy of their supplies, customers and suppliers in order to avoid involvement in supply chains where VAT and/or other taxes will go unpaid." (Veto letter for Primary Services Ltd)
>
> "We've identified increasing problems with fraud and unpaid taxes with businesses in your trade sector. Fraud and general non-compliance with taxation rules and regulations is a major concern for the UK and there is a significant loss to UK tax revenue. We're taking steps to combat these losses by tackling specific schemes to defraud.
>
> Our leaflet 'Use of Labour Providers – Advice on due diligence' gives guidance to businesses which use labour providers. For a copy, go to
>
> www.gov.uk/government/publications/use-of-labour-providers" (veto letter for Banssi)

53. Although the veto letters did not expressly state that the companies had been deregistered for VAT fraud, Mr Laxman accepted that the veto letters were serious matters. He stated that veto letters were discussed on construction sites between contractors there and regarded by them as serious. Mr Laxman himself would not trade with a supplier if they had been deregistered, because he regarded it as a serious matter.

54. On 31 March 2017, DJJ received a tax loss letter in relation to all of the seven suppliers that DJJ had traded with up until that date. The letter also highlighted the importance of due diligence and "a lack of any effective due diligence undertaken by parties operating within chains".

55. Hence by the start of September 2017 Mr Laxman was aware that all of his previous seven suppliers had been involved in tax losses.

56. HMRC notified DJJ of tax losses relating to Vikx Ltd on 10 August 2018.

57. On 28 January 2019 HMRC sent the *Kittel* decision to DJJ. This was followed, on 18 September 2019 with the assessment on form VAT655.

Objective factors

58. HMRC rely upon the objective factors, discussed below, which they say prove DJJ had the requisite knowledge.

59. We consider each of these factors in turn in the following subsections, before standing back and considering the totality of the evidence. As the burden of proof is on HMRC we

structure the following paragraphs by first stating HMRC's case and then considering HMRC's case, taking account of the submissions of the Appellant.

DJJ was supplied by nine defaulting traders consecutively

HMRC's case

60. It is common ground that for the periods in dispute DJJ was supplied solely by nine defaulting traders. It is HMRC's case that when one of these suppliers was deregistered for VAT, DJJ would systematically and seamlessly move onto another defaulting trader without issue.

61. HMRC assert it is beyond coincidence or mere bad luck that DJJ repeatedly and consecutively traded solely with defaulting traders in the 06/15 – 09/18 period. Further, there is no evidence that DJJ made any effort to work with more than one supplier at a time.

DJJ's case

62. DJJ's reply to this is that it is HMRC's own case is that there some sort of "organised scheme" in operation, and Mr Laxman's evidence was that he now believes DJJ was potentially targeted by the people behind this scheme. In other words, DJJ says it was not "bad luck" that nine consecutive suppliers defaulted but, rather, this resulted from someone else's design about which DJJ had no knowledge. Nor can it be said that DJJ "should have known" it was being targeted in this way. The first time DJJ was told there had been tax losses was not until 31 March 2017 and, prior to that, it was not even made clear that HMRC had concerns about DJJ's trading (beyond the general concerns that HMRC had about the wider construction sector).

Discussion

63. We remind ourselves that we are looking at the period from September 2017. By this period DJJ had received the tax loss letters in addition to the veto letters, which it will be recalled Mr Laxman accepted were serious matters. We also note that despite these letters the quality or extent of the due diligence has not increased. We also note that the number of consecutive defaulting traders with DJJ traded was very high, it was not just a couple.

64. Viewed in this context, and against the entirety of the evidence in the round, which we discuss below, we consider it more likely, on balance of probabilities, the explanation for this was that DJJ knew the transactions were connected to fraud, rather than DJJ being the victim of a sophisticated fraud.

65. We therefore consider this to be a significant factor in favour of HMRC's case.

The background to and the circumstances in which DJJ was set up are unclear

HMRC's case

66. HMRC say that the background to and the circumstances in which DJJ was set up are far from clear. It is not clear at all on Mr Laxman's evidence why he moved from security to catering to the construction industry, seemingly juggling all three at the same time. It is also not clear who helped or advised him in this process.

67. HMRC's position is that it did not make any sense for DJJ to go into industries in which he had no direct knowledge or experience and supplying labour in the security industry would have made more sense. Mr Laxman claimed that he did not want to be in competition with TSS, the owner/director of which had become a friend. HMRC's position is that DJJ initially registered with HMRC as supplying staff to Indian sweet centres as this would avoid the additional formalities required in the construction industry (e.g. health and safety requirements and additional registrations such as CIS) as well as avoiding the scrutiny from HMRC that the construction industry attracted.

DJJ's case

68. DJJ notes that Officer Coe accepted that DJJ supplied labour to sweet centres. Further they note it was not put to Mr Laxman that he had declared this business activity so as to avoid HMRC scrutiny.

Discussion

69. We accept that it is far from clear why Mr Laxman chose to move into the construction industry. On his account it was due to a discussion with his accountant, but we have already found that we do not accept that he was in contact with that accountant at that time.

70. However, we accept it was not put to Mr Laxman that his activities in the catering industry were done to avoid detection from HMRC. Accordingly, we do not consider it fair to take that into account. We accept it was put that (i) it did not make any sense for DJJ to go into industries in which he had no direct knowledge or experience; and (ii) he was involved in "juggling" multiple business activities at the same time. But those are different points.

71. Mr Laxman stated he did not want to enter into the security industry because he did not want to compete with Mr William, his friend. However Mr Laxman's wife ran a business supplying labour to the construction industry. Accordingly it is difficult to understand why he would not want to compete with his friend, but would with his wife. Initially Mr Laxman attempted to explain this by saying that Mr William was established in the security industry, so he would be a tough competitor. However, Mr Laxman also accepted that the construction labour supply industry was highly competitive. Accordingly, we do not find this a plausible explanation.

72. While we do not take into account the argument that involvement in the catering industry was a ruse to avoid detection, we consider Mr Laxman has not provided a clear account of why he entered the construction industry. Accordingly, we regard this as a significant factor.

Mr Laxman had no prior experience of or knowledge of the labour supply industry and/or the construction industry

HMRC's case

73. HMRC say that Mr Laxman had no prior experience of or knowledge of the labour supply industry and/or the construction industry. Mr Laxman had never previously worked on a construction site or in a recruitment business. It is inconceivable that construction contractors and sub-contractors would choose to deal with DJJ over other more established and experienced companies.

74. When pushed by the Tribunal, Mr Laxman stated that in the early days he would take the director of his suppliers to meetings with his clients as they understood the construction terms, the work required and how to charge for the work required. As well as highlighting Mr Laxman's total lack of expertise in this area and emphasising that it is not credible that clients would wish to use DJJ over competitors, this is significant evidence of contrivance and orchestration, which is referred to below.

DJJ's case

75. DJJ's case is that Mr Laxman said, and it was not subject to challenge, that:

(1) he had initially intended to supply staff to Indian sweet centres;

(2) DJJ's accountant had suggested that he look into supplying labour in the construction industry;

(3) he did research and tried to make as many contacts in the construction industry as he could; and

(4) he would in the earlier periods take someone from his suppliers with construction experience to meetings with customers as they understood the construction terms, the works required and how to charge for the work required.

Discussion

76. We do not accept that (2) was not subject to challenge. It was squarely put to Mr Laxman that the documentary evidence suggested that he was not in contact with his accountant at the relevant time. It logically follows that his accountant could not have suggested looking into the construction industry.

77. We consider it irregular for Mr Laxman to take his suppliers for meetings with his clients, that essentially negates any need for his involvement. We acknowledge that, on Mr Laxman's evidence, that was only for the early periods and Mr Laxman suggested that his value-added was that he was a "good communicator". Nonetheless, we regard this as irregular.

78. Accordingly we accept this is a significant factor, although it somewhat overlaps with the previous factor.

DJJ did not add any value to the supply chain

HMRC's case

79. HMRC say that DJJ did not add any value to the supply chain. While Mr Laxman's oral evidence was that the value DJJ added was as a broker or intermediary, this argument falls away given his evidence that on occasion his suppliers would accompany him to meetings with DJJ's customers. Further and in any event, by his own admission, he had a total lack of skills or expertise in this industry and therefore there is no legitimate reason why his customers could and would not engage directly with DJJ's suppliers.

80. DJJ had no workforce, no specialist skills and no contacts. Mr Laxman explained in oral evidence that the market was saturated with suppliers, who would often be found at construction sites touting for business with their business cards. It would appear, therefore, that DJJ's broker or introductory skills (insofar as they were in a position to offer this) were obsolete.

81. DJJ offered no value to the supply chain and there is no commercial and/or legitimate reason why they would be an additional layer in the supply chain, creating additional costs, when their clients could just engage more established, knowledgeable and experienced competitors very easily.

DJJ's case

82. DJJ's case is that Mr Laxman explained that DJJ operates, in effect, as a broker – finding sites that need labour and then sourcing that labour. There are many examples in commerce of the use of brokers (rather than a consumer of a service going direct to the ultimate provider of the service) – Officer Coe made no attempt to ascertain whether this sort of brokerage occurred in the legitimate labour supply market.

Discussion

83. We find there to be significant overlap between this ground and the previous two grounds.

84. We accept that the appeal now relates to the later periods, when on Mr Laxman's evidence he was accompanied by his suppliers in the earlier periods. Therefore that point raised by HMRC has less weight in relation to the periods under consideration.

85. However, as we raised at the hearing, we find the plausibility of the idea that DJJ added value as a broker less plausible on the facts of this case, since DJJ only used one supplier at

any time. There was no evidence before us that Mr Laxman sought alternative suppliers other than when he ceased using a particular supplier. There was, therefore, no reason why DJJ's client could not contact his supplier directly.

86. While we find this a significant factor, we note that it overlaps substantially with the preceding two factors.

Despite the lack of skills, contacts and experience in this industry, DJJ's turnover increased rapidly once it started supplying labour to the construction industry from defaulting traders

HMRC's case

87. HMRC say that:

(1) turnover for the first full year of trading was just over £14,000, prior to the denial period (as originally assessed);

(2) for the first year of the denial period, as originally assessed, 06/15 – 03/16, turnover had jumped to £377,089;

(3) turnover for the next year of the denial period, as originally assessed, 06/16 – 03/17, had increased threefold to over £1.2m; and

(4) turnover for the period 06/17 – 03/18 was also just over £1.2m.

88. It is not credible that a legitimate company with no prior experience or contacts in this competitive industry could have such a rapid increase in turnover.

DJJ's case

89. DJJ's case is that DJJ's turnover reflects its sales (not its purchases). There was, then, clearly a demand for the labour supplied by DJJ (and HMRC did not contend, less still evidence, that such demand was in any way illegitimate).

90. Mr Laxman explained that the barrier to entry was finding customers that needed labour. Clearly DJJ did find such customers (as evidenced by its turnover).

91. It is difficult to see how the turnover figures (which are the result of sales to customers about which HMRC have expressed no concern) assist HMRC in establishing that DJJ knew its purchases were connected with fraudulent evasion of VAT.

Discussion

92. We agree with DJJ. While the growth in turnover is extraordinary, especially given Mr Laxman's lack of background in the industry, we consider that any increase in turnover is attributable to clients not suppliers. HMRC accept it is a highly competitive industry, which suggests there should be no difficulty in finding suppliers. HMRC have adduced no evidence regarding DJJ's clients. In those circumstances we do not find this to be a significant factor.

DJJ, through Mr Laxman had a general awareness of fraud in the construction industry and an awareness of fraud in the supply chains in which DJJ operated

HMRC's case

93. HMRC rely on the letter of 18 December 2013, the veto letters and the tax loss letter. They also point to Mr Laxman's oral evidence that people in the industry would share information received from HMRC, including information in HMRC's letters (specific reference was made to the initial letter warning of fraud in the industry and the veto letters). Indeed, this was how Mr Laxman knew that they were standard form letters, although he accepted they were addressed to DJJ.

DJJ's case

94. DJJ say that until receipt of the tax loss letter dated 31 March 2017, Mr Laxman did not understand HMRC to have any concerns about DJJ's purchases. Indeed, despite meeting with DJJ's accountant in March 2016, HMRC did not express any concerns (either at the meeting or in the period that followed until 31 March 2017).

Discussion

95. We note that the relevant period is now confined to the period after September 2017. Accordingly, even taking DJJ's case at its highest, it is clear Mr Laxman by this time had both an awareness of fraud in the construction industry and also an awareness of fraud in the supply chains in which DJJ operated. We find this to be a significant factor.

The due diligence undertaken by DJJ was not meaningful

HMRC's case

96. HMRC say that the due diligence undertaken by DJJ was not meaningful. Such due diligence did no more than confirm the existence of the suppliers and their registrations for VAT and CIS.

97. No ongoing due diligence was undertaken to verify the validity of their VAT registrations, their financial viability by checking the company accounts, or that these companies were complying with their VAT and CIS obligations. Had these checks been carried out, it would have been apparent to DJJ that these companies were not complying with their tax obligations, since:

(1) Tollgate Solutions Ltd submitted nil VAT returns and no CIS returns were ever submitted;

(2) Primary Services Ltd did not file company accounts, there was no evidence that they had complied with their VAT or CIS obligations and nil returns had been submitted.

(3) JasV filed nil returns for 10/15 and 01/16.

(4) Banssi Solutions Ltd filed nil VAT Returns.

(5) Stone Force Services Ltd failed to file VAT returns for 05/18, 08/18 and nil return for its final period.

98. Further, there was no evidence of checks being carried out in relation to the workers themselves, for example, whether they were permitted to work in the UK, whether they had the requisite skills for the job or whether they were being paid at least the minimum wage. Mr Laxman claimed that these checks were carried out when he visited the premises but there was no documentary evidence of these in the bundle, nor any reference in the handwritten meeting notes that documented all the due diligence that had been disclosed as part of these proceedings. Further, in oral evidence, Mr Laxman said that everything was very fast paced and sometimes workers were required to attend sites "in 30 minutes." This is contrary to his evidence that he would obtain and review evidence of the workers before the supplies took place.

99. Also there were inconsistencies or issues with some of the documents, which should have been picked up by Mr Laxman. For example, Tollgate's VAT certificate at gave the business activity as "collection of non-hazardous waste". Mr Laxman tried to claim in cross-examination that Tollgate had been contracted with solely to provide waste management. This was clearly incorrect as they were supplying labour and were the sole suppliers of labour for more than one project during the period they supplied DJJ. In any event, Mr Laxman's handwritten note of the meeting with Tollgate confirmed that they were concrete workers and finishers. Mr Laxman tried to explain away the business activity of "floor and wall covering" on the VAT certificates

of Primary Services Ltd and Banssi Solutions Ltd on the same basis, i.e. they were solely engaged for the provision of flooring work. However, this is disputed on the basis that they were sole suppliers for a period. It is not plausible that DJJ would solely contract for waste disposal services for a period, followed by floor and wall covering services/other specific construction related services for the next period.

100. HMRC also say that it is striking that a number of documents disclosed by DJJ had "only for DJJ" or similar written across them.

101. Finally, it is notable that when challenged about the lack of meaningful due diligence, Mr Laxman claimed that this had been lost due to a change of premises. HMRC assert that this is implausible, given he was able to provide all the due diligence noted on his meeting notes. Mr Laxman's oral evidence that he undertook further due diligence was inconsistent with the documentary evidence and should be given no weight.

DJJ's case

102. DJJ say, as is made clear at paragraph [82] of *Mobilx*, the Tribunal should not unduly focus on due diligence. It is simply one feature that can be weighed in the balance when considering whether a taxpayer knew or should have known that its purchases were connected with the fraudulent evasion of VAT. Despite this, the vast majority of HMRC's cross-examination was spent on "due diligence" seemingly with the aim of establishing (1) that the due diligence was focused on establishing the existence of the companies and (2) that Mr Laxman relied on others (accountants or bookkeepers) when assessing whether, in light of the due diligence conducted, DJJ ought to trade with the relevant supplier.

103. Mr Laxman's evidence was that he wanted to ensure the suppliers were properly incorporated and took comfort from the fact that HMRC had registered them for VAT and gross payment status.

Discussion

104. In his second witness statement, dated 29 April 2022, Mr Laxman exhibited due diligence in relation to all nine suppliers. The following due diligence was exhibited:

(1) ***Tollgate Solution Ltd***: Certificate of Incorporation, VAT Certificate, CIS registration and undated contract;

(2) ***Primary Services Ltd***: Certificate of Incorporation, VAT Certificate, CIS registration, copy of Mr Gurmit Singh's passport, paying in details and CIS subcontractor details ;

(3) ***MSDI Ltd***: Certificate of Incorporation, IN01 Application to Register a Company, AP01 Director's New Appointment, VIES check dated 17/11/15, CIS subcontractor details, blank invoice;

(4) ***Jas V Ltd***: certificate of incorporation, VAT online enrolment acknowledgement, Mr Singh's confirmation of SA, illegible photocard driving licence, paying in slip, Companies reference details, Employer registration letter;

(5) ***CGX Ltd***: certificate of incorporation, VAT online enrolment acknowledgement, CIS subcontractor registration letter, copy of driver's licence for Mr Gian Chand, VIES check dated 25 April 2016, CIS subcontractor details;

(6) ***WV2 Ltd***: certificate of incorporation, VAT online enrolment acknowledgement, CIS subcontractor registration letter, copy of passport for Mr Gurmej Singh, VIES check dated 19 September 2016, paying in slip, corporation tax new company letter, new employer registration letter, cover sheet for Public Liability Insurance for the period

29/4/16 to 28/4/17, Confirmation of Mr Singh's UTR, Subcontractor verification request dated 19/9/16, companies house check on directors;

(7) ***Banssi Solutions Ltd***: Certificate of incorporation, VAT certificate, CIS return submission receipt, verification request, VAT VIES check dated 10/12/16;

(8) ***Vikx Ltd***: certificate of incorporation, VAT Certificate, illegible CIS letter, illegible copy of passport, VIES VAT Check 7/4/17, CIS submission receipt;

(9) ***Stone Force Services Ltd***: certificate of incorporation, VAT certificate, CIS registration letter, passport copy for Mr Gurinderpal Singh, VAT VIES check dated 18/1/18, paying in slip, CIS verification check, CIS submission receipt.

105. Whilst VAT and CIS registration will have provided some comfort, we consider that after receiving the tax loss letter DJJ should have sought greater assurance. It should have been evident that the level of due diligence previously undertaken was not sufficient to prevent DJJ repeatedly being involved in tax loss chains.

106. We note HMRC suggest DJJ should have sought sight of its suppliers' VAT returns (above at [97]). We accept that suppliers may well have refused to supply such information. However, given the preceding chain of consecutive defaulters we consider that it would have been reasonable for such information to be requested after DJJ received the tax loss letter. Further we consider that it would have been reasonable for this to be documented.

107. Further we consider that, after receiving the tax loss letter it would have been reasonable to expect DJJ to both carry out and retain checks in relation to workers, including retaining copies of the CSCS Green Card. We consider particular care should have been taken to retain documentation after the tax loss letter: especially as it emphasised the importance of due diligence. We therefore do not consider adequate care was taken if such documentation was lost in an office move (it is unclear to us from the evidence when the office move took place).

108. We also agree with HMRC that Mr Laxman's explanations as to the trade descriptions of his suppliers is implausible (above at [99]) and this should have caused him to have concerns and raise questions. His answers to the questions on those topics during cross-examination suggest he is not a reliable witness.

109. Thus while due diligence must not be over emphasised, we consider it a relevant factor. We consider the due diligence undertaken after the tax loss letter to be inadequate. We therefore consider this to be a significant factor.

No evidence of commercial negotiations taking place with DJJ's suppliers

HMRC's case

110. HMRC say that while contracts with eight suppliers have been provided, they are in standard format except for the contract with WV2 Ltd. None of them set out the works they relate to, the scope of the works, the period of works or agreed payment, despite Mr Laxman's claim they were negotiated. There is no evidence of any negotiations taking place with DJJ's suppliers.

111. For the contracts other than WV2 the cover page states:

> "This contract is only operative at any time a Works Schedule between the Contractor and the Subcontractor is in operation and annexed to this contract."

No Works Schedules (defined on the same page as "[t]he document setting out the details of particular Services to be carried out by the Subcontractor for the Contractor") have been disclosed by DJJ and Mr Laxman was unclear as to whether they existed or not.

112. There is no evidence or suggestion that Mr Laxman considered other suppliers. All the suppliers were recently incorporated and registered for VAT and it does not make commercial sense why DJJ would choose to trade with the suppliers it did over other, more established traders. This was particularly so given Mr Laxman's evidence that there was a market rate that was similar for all suppliers and anything below would give him cause for concern.

DJJ's case

113. DJJ's case is that this point did not feature in Officer Coe's evidence and was not put to Mr Laxman.

114. In any event, Mr Laxman explained how he liaised with customers and suppliers and provided some documentation relating to the same (those documents are listed in DJJ's written closing and discussed below). Mr Laxman also explained that as a result of the passage of time and an office move, other documentation had been mislaid.

Discussion

115. The documents referred to in the Appellant's closing are:

(1) two letters to customers essentially introducing themselves. The letters are identical and dated 10 December 2014 to Harry Construction Ltd and 3 March 2015 to JRB contractors Ltd.

(2) an "Application for Inclusion on Approved Subcontractor List" with Harry Construction Ltd, signed by Mr Laxman on 14 May 2015.

(3) an email from Harry construction dated 26 May 2015.

(4) an email from Harry construction dated 28 May 2015.

116. Both the letters to customers state:

> "My name is Diven Laxman and I am the Director of DJJ Services Ltd. My company is trying to add value to small businesses by providing help in managing their staffing requirements.
>
> We provide all kind of technical, skilled and non-skilled staff to businesses so that they can focus on their products and sates with piece of mind. Our aim is to cater to the needs of any business in terms of staffing requirements
>
> We are trying to provide you a bespoke solution for your staffing requirements so that these solutions allow you to:
>
> □ Increase productivity
>
> □ Reduce operating costs
>
> □ Increase customer satisfaction
>
> □ Save advertising & hiring cost
>
> Further to our phone conversation, please take a few minutes lo read this document See how DJJ Services Ltd can optimize your staffing requirements.
>
> I invite you to contact us today so that we can discuss in detail how we can help you.
>
> Thank you for the interest you have shown in DJJ Services Ltd."

117. It is noteworthy that the letters do not refer to the construction industry at all, but is highly generic. As such they are not helpful in evidencing any negotiation.

118. The "Application for Inclusion on Approved Subcontractor List" was with Harry Construction Ltd, which Mr Laxman stated was his first construction client. The form is

incomplete at the start where it says "Document issued by" and "date". The second paragraph states:

> "The awarding of contracts is determined not only on the grounds of price and technical ability, but also past safety records and present ability to carry out the work safely and without health risk."

We note that as Harry Construction Ltd were DJJ's first construction client this is surprising because they cannot have had any safety record. The form also states:

> "Please provide your company accident statistics for the past two years. (Please attach details to this form.)"

There is no acknowledgement on the form or any attachment that it is not possible to provide such statistics, as the company was not in the construction business in the preceding two years. We therefore do not find this to be a helpful document for showing there to have been negotiation.

119. The email from Harry Construction Ltd of 26 May 2015 states:

> "Please find attached the sub-contractors order as above.
>
> Please sign it and return to me by post.
>
> Please attached your passport copy, Driving Licence, and company trading address proof within this document.
>
> Diven make sure put right people to build this job and we cant afford to give bad quality any more." [sic]

We do not consider this to be particularly useful evidence of negotiation.

120. The email from Harry construction dated 28 May 2015 states:

> "Please find attached the assessment as above.
>
> I have paid you measured works on account up to 26/05/1S. I haven't paid any NPO as we haven't made any agreement with SRM yet.
>
> Once we agreed NPO with SRM then I will let you know.
>
> Some works is Zero VAT on this project and I will let you know when you on site next.
>
> If you have any query please do not hesitate to contact me."

121. Again, we do not find this particularly useful evidence of negotiation.

122. These pieces of evidence were not raised at the hearing, but we consider it fair to consider them as they were referred to in the written closing. Nonetheless, we do not find they support negotiation.

123. Furthermore, all these letters are in relation to trading well before the periods which are now in dispute, after September 2017. We consider that it would have been reasonable to expect evidence of negotiation to have been retained as part of due diligence after DJJ received the tax loss letter. We do not consider, after receiving the tax loss letter, moving office is a reasonable explanation for losing documentation as they then should have been especially attentive to keep evidence of negotiation.

124. Accordingly, we consider there to be no evidence of negotiation and we consider this to be a significant factor.

Family connections

HMRC's case

125. HMRC note that Mr Laxman's wife has been a director of two businesses in the construction labour supply industry which have both received *Kittel* denials. One of those companies traded with Banssi Solutions Ltd, and it received a veto letter in relation to Vikx Ltd.

126. Mr Laxman's oral evidence that he and his wife did not discuss their businesses at all, to the extent that he had no idea that she had received *Kittel* denial letters and she was unaware of why he was attending court was highly implausible. This was particularly so given his oral evidence that he was a "good communicator" who "shared everything" and his second witness statement at confirming that he witnessed a loan agreement between his wife's company WTV Ltd and Mr Jashpal Singh. The latter clearly confirms that contrary to his oral evidence, he did have knowledge of his wife's business affairs.

127. It makes no sense that husband and wife are in direct competition with each other in the same industry, making the same supplies when by Mr Laxman's own evidence it was a highly oversubscribed market. It is also inconsistent with his oral evidence that he decided not to supply labour to the security industry as he did not want to be in competition with a friend and his evidence that traders in the construction industry often shared information they had received from HMRC. One would expect that a wife would be at least in the same category as these traders and friends.

128. Mr Laxman's brother and sister-in-law have also been directors of separate labour supply agencies in the construction industry. They have also received *Kittel* denial letters.

129. This is the same brother who acted as DJJ's bookkeeper, filled in forms and verified the due diligence, writing "only for DJJ" on the documents to avoid confusion with his other clients. As Mr Laxman accepted in cross-examination, his brother knew all about his business and who he was trading with. Mr Laxman's initial oral evidence was that he and his brother would talk about business at cafes when he started trading in Indian sweet centres as his brother had some as clients in that industry and introduced him.

130. It is not credible that these family members did not discuss what was happening in their businesses and it is not credible at all that 4 close family members, being two sets of spouses, would set up businesses doing exactly the same thing. It is striking that all four family members have received *Kittel* denial letters.

131. HMRC is not asserting that DJJ through Mr Laxman was involved in or in charge of the businesses of his family members. HMRC are, however, asserting that this is a highly contrived situation with no legitimate explanation that goes to the issues of knowledge and orchestration.

DJJ's case

132. DJJ's case is that Officer Coe agreed that there was no evidence that Mr Laxman was controlling or involved in the operation of these other companies which his relatives controlled. Mr Laxman confirmed that he played no role in these companies and had no knowledge of their tax affairs. In those circumstances, it is difficult to see what relevance these other companies can have to the issue of DJJ's state of knowledge.

133. It was not put to Mr Laxman that it was odd that he did not know more about companies operated by his wife. Mr Laxman explained that she was a private individual who did not talk about "her business" – it was not suggested that Mr Laxman was being untruthful when he gave this evidence.

Discussion

134. As already noted, we find it odd that Mr Laxman ran a business in competition with his wife.

135. At the end of cross-examination we asked Mr Laxman if his wife knew where he was that day. He said he had told her that he was going to court, but did not mention what the hearing was about. She did not ask, but said that she would pray for him. Following our questions we asked Ms Brown if she had any further questions for Mr Laxman: she had none.

136. We accept that it was not put to Mr Laxman that he was being untruthful. We do not therefore consider it open to the Tribunal to make the finding that Mr Laxman was aware of the tax affairs of his relatives' companies. Accordingly we place no weight on this factor.

Continuing to trade with defaulting traders after being informed of their deregistration

HMRC's case

137. HMRC say that DJJ continued to trade with CGX Ltd and Banssi Solutions Ltd after the date of the veto letters that were sent to DJJ informing them of CGX Ltd and Banssi Solutions Ltd's deregistration.

138. In respect of CGX Ltd, the deregistration veto letter was issued on 30 August 2016. A further six invoices were paid after that date on 31 August, 4 (2 invoices on that date), 11, 18 and 25 September, totalling £8,457.26, plus VAT.

139. In respect of Banssi Solutions Ltd, the deregistration veto letter was issued on 22 February 2017. A further 26 invoices were paid after that date, on 28 February (2), 1 (2), 7, 8 (3), 15 (3), 18 (1), 22 (5), 28, 29 (4), March 5 (3), 12 April 2017, totalling £227,138.75 plus VAT. The numbers in brackets indicate the numbers of invoices on particular dates, when it was not a single invoice.

140. Mr Laxman originally claimed in his witness evidence that he couldn't recall receiving the CGX and Banssi veto letters. However, in oral evidence, his position had shifted somewhat to say that he may have been away due to illness or holidays but was unable to confirm.

DJJ's case

141. DJJ's case is that the CGX veto letter was incorrectly addressed. The CGX Ltd veto letter was addressed to "Office 27 Vicarage Road". This is a typographical error as Mr Laxman confirmed that the address at the time was "Office 2, 7 Vicarage Road".

142. In any event, Mr Laxman's clear evidence was that if he received a veto letter, he would immediately cause DJJ to cease trading with the de-registered trader. Accordingly, any continuation of trade after the date of a de-registration letter was inadvertent and caused by Mr Laxman not receiving the relevant de-registration letter. Stepping back, it would be curious indeed for DJJ, who ceased trading with all other suppliers on receipt of a de-registration letter, to have decided to behave differently in relation to CGX and Bannsi Solutions Ltd. This tends to support that Mr Laxman had not seen the de-registration letters.

Discussion

143. We agree with DJJ that the most plausible explanation as to why they continued to trade with CGX Ltd was that the letter was misaddressed. We find that likely, given that DJJ ceased trading with the majority of other suppliers when notified.

144. The letter for Bannsi Solutions Ltd was correctly addressed. There was a lengthy period of trading after that letter, and the trades were of high value. Further, one of those trades was even after the date of the tax loss letter, of 31 March 2017, which named Bannsi Solutions Ltd.

145. We note no commercial rationale has been given for continuing to trade with Bannsi Solutions Ltd. The explanation, such as it was, was vague concerning being out of the country but with no dates or detail. We place little weight on this explanation.

146. We note that this trading was in time fairly proximate to the periods under dispute. Given the general and specific awareness of fraud DJJ had at this stage, we consider that ignoring the veto letter and continuing to trade with Bannsi Solutions Ltd is a relevant factor as to whether DJJ had the requisite knowledge.

Trading above the VAT threshold after DJJ was deregistered

HMRC's case

147. HMRC note that it was not disputed that DJJ traded above the VAT threshold after DJJ was deregistered. Mr Laxman's explanation was that he needed to continue to trade and generate revenue. HMRC's position is that once DJJ reached the VAT threshold, he should have contacted them to request to be reinstated. It is notable however that Mr Laxman had failed to contact HMRC at any stage in the enquiries and proceedings. The first time he and the HMRC officers met was on the first day of the hearing. It is asserted that a legitimate trader with no experience in the industry would have welcomed assistance and guidance from HMRC and would have engaged with them.

148. Further, Mr Laxman's stated position is at odds with his approach to deregistered suppliers. He claims that he knew de-registration was a serious action and would immediately stop trading with them. It is therefore not clear why he considered it was appropriate for DJJ to continue to trade to the extent it did without seeking advice or guidance from HMRC.

DJJ's case

149. DJJ's case is that Mr Laxman's evidence was that he understood that DJJ could continue to trade provided it did not charge VAT. That understanding, whether correct in law or not, might be thought understandable given the *Ablessio* letter itself stated:

> "DJJ Services Ltd will be deregistered with effect from 21/12/2018. As of that date DJJ Services Ltd may not issue tax invoices charging VAT or showing a VAT registration number. DJJ Services Ltd must not quote the cancelled VAT number for the purposes of new transactions with suppliers or customers."

Further, Mr Laxman explained that, despite not charging VAT to its customers and being unable to recover input tax on its purchases, DJJ continued to buy and sell labour in the same manner as it had in the period for which input tax has been denied – which tends to support that VAT fraud was not the only reasonable explanation for DJJ's trading.

Discussion

150. We consider it is relevant that DJJ did not contact HMRC for guidance, once they reached the VAT threshold. We accept that the law on what should be done in such circumstances is uncertain. However we consider a prudent or compliant taxpayer would have contacted HMRC.

151. Further we note that in his oral evidence Mr Laxman explained he was trading in this period "to show [he] can get justice" and stated he did business at a loss. This itself suggests that such trading was done to provide a justification of legitimacy for the earlier trading. It therefore does not support DJJ's case that VAT fraud was not the only reasonable explanation for DJJ's trading.

Evidence of orchestration

HMRC's case

152. HMRC rely upon the following facts to assert that the fraud in these transactions was part of an orchestrated scheme:

(1) The fact that DJJ traded solely with nine defaulting traders one after the other in the period in dispute.

(2) The fact that Mr Laxman took his suppliers' directors to meetings with DJJ's clients, showing there was no need for DJJ to be in the chain of transactions.

(3) The fact that on 19 August 2018 someone claiming to be Mr Laxman rang HMRC's call centre and spoke to an advisor to request assistance with resetting his password and thereby had access to his HMRC account.

(4) The family connections and family businesses that have all been the subject of a *Kittel* denial in the same industry.

(5) The due diligence marked specifically for DJJ's use, to avoid confusion with other traders using the same suppliers. In particular, it is noted that Mr Laxman's brother's company, First Choice Employment Ltd, which also supplied construction labour, received a veto letter in relation to Tollgate Solutions Ltd at the time that DJJ was trading with Tollgate Solutions Ltd.

(6) The fact that DJJ was able to obtain clients and suppliers with ease despite having no relevant experience or expertise.

Preliminary discussion

153. We note that we have already discussed certain of these, specifically:

(1) With regard to (4), for the reasons set out above at [134]-[136], we do not therefore consider it open to the Tribunal to make the finding that Mr Laxman was aware of the tax affairs of his relatives' companies. Accordingly we place no weight on this factor.

(2) For the same reason we do not consider (6) relevant, as its relevance appears to be tied to imputed knowledge through family connections: see above at [129].

(3) With regard to (6), we have explained why that is not relevant/open to us to make such a finding for the reasons set out above at [139] regarding turnover.

154. Similarly, we have already found (1) and (2) to be relevant for the reasons set out, respectively, at [63]-[65] and [77] above. This therefore leaves (3) to discuss.

DJJ's case

155. With regard to (3) of [152], DJJ note that HMRC now accept that the person that contacted HMRC and claimed to be Mr Laxman was not Mr Laxman, after listening to his voice at the hearing. In any event, if there was an orchestrated scheme in operation, that tends to support Mr Laxman's evidence that it appears that DJJ may have been targeted by bad actors.

Discussion

156. We consider that the phone call to HMRC in which someone held themselves out to be Mr Laxman, but was not Mr Laxman, is evidence of orchestration.

157. Taking the evidence in the round, including the matters referred to at [63] to [64] above, we consider that the more plausible explanation is that this is evidence of orchestration of which Mr Laxman was aware.

Conclusion

158. With regard to the periods 06/17 and prior, we allow the appeal against the *Kittel* decision, as it is now agreed by the parties that the assessment was made out of time.

159. Viewing the evidence in the round, we find on balance of probabilities, that Mr Laxman knew that the 09/17 – 09/18 transactions were connected to fraud, having regard to the following factors:

(1) DJJ was supplied by nine defaulting traders consecutively;

(2) Mr Laxman has not provided a clear account of why he entered the construction industry; Mr Laxman had no prior experience of or knowledge of the labour supply industry and/or the construction industry; and DJJ did not add any value to the supply chain. While presented as three factors we find there to be significant overlap.

(3) DJJ, through Mr Laxman had a general awareness of fraud in the construction industry and an awareness of fraud in the supply chains in which DJJ operated.

(4) While due diligence must not be over emphasised, the due diligence undertaken by DJJ was not meaningful.

(5) No evidence of commercial negotiations taking place with DJJ's suppliers.

(6) Continuing to trade with Bannsi Solutions Ltd after being informed of their deregistration.

(7) Trading above the VAT threshold after DJJ was deregistered.

160. Viewing the evidence in the round, those same factors lead us to conclude that the only reasonable explanation for the transaction in which DJJ was involved in that period was that it was connected with fraud. We therefore find that DJJ should have known that the transactions were connected to fraud.

161. Therefore, with regard to the periods 09/17 – 09/18, we dismiss the appeal against the *Kittel* decision, as we find both DJJ knew the transactions were connected to fraud and also that they should have known.

162. We find that DJJ facilitated the VAT fraud of another, and that they used their VAT registration principally for abusive or fraudulent purposes (as stated in the *Ablessio* decision letter). We find this to be the case given that DJJ knew the transactions were connected to fraud and DJJ was supplied by nine defaulting traders consecutively. We therefore dismiss the appeal against the *Ablessio* decision.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

163. 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.

Release date: 24th FEBRUARY 2025