



**05TACD2019**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against notices of assessment to income tax dated 4 July 2014, in respect of the tax years of assessment 2009, 2010, 2011 and 2012. The Respondent was of the view that the Appellant's sales figures were understated and notices of assessment were raised accordingly. The tax in dispute for the relevant tax years of assessment totalled €22,549.43. The Appellant disputed the assessments and duly appealed.

**Background**

2. The Appellant carried on business as a driving instructor for the relevant tax years of assessment. During the course of a Revenue audit, the Respondent took the view that the Appellant had understated his income for the tax years under appeal.

3. The Respondent stated that the Appellant failed to produce manual records such as diaries and receipt books during the audit. In addition, the Respondent stated that the Appellant initially resisted access to his soft copy records on a tablet, citing data protection concerns but later furnished the tablet. The Appellant stated that he did not use appointment books or receipt books and that information had been stored originally on another computer and that this data had been transferred to the tablet subsequently. The Respondent stated that the Appellant failed to produce the original computer for inspection and that the tablet did not show data history. The Respondent stated that data had been modified. This was denied by the Appellant.
4. The Appellant stated that work was scarce during the recession, that he struggled financially to meet his outgoings and that he sought social welfare assistance in 2012. He stated that during the tax years of assessment, he defaulted on his mortgage and almost lost his home and that he borrowed money from his children in order to get by. The Appellant submitted that the figures in the assessment were overstated and he challenged the calculation method grounding the assessments and the fact that the calculations were based on odometer readings.

## Legislation

### Section (18) (2) Schedule D of the Taxes Consolidation Act 1997 (hereafter TCA 1997)

*"Tax under Schedule D shall be charged under the following Cases:*

*Case 1 – Tax in respect of –*

- (a) any trade;*
- (b) profits or gains arising out of lands, tenements and hereditaments in the case of any of the following concerns –*
  - (i) quarries of stone, slate, limestone or chalk, or quarries or pits of sand, gravel or clay,*
  - (ii) mines of coal, tin lead, copper, pyrites, iron and other mines, and*
  - (iii) ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of*



*the like nature having profits from or arising out of any lands, tenements or hereditaments;"*

### **Submissions and Analysis**

1. The Respondent measured the odometer reading of the Appellant's vehicle for the four-year period under appeal and divided the reading by four to obtain an average annual odometer reading. The Respondent divided the average yearly odometer readings by an estimated lesson distance of 25km at an average cost of €30 per lesson in order to arrive at estimated annual turnover figures.
2. The Appellant contended that his vehicle odometer reading was an unreliable measure of turnover generated. He submitted that there were a number of variables which adversely affected the reading including; use of the vehicle by five other family members who were insured to drive the vehicle, provision of lessons by the Appellant in adjoining towns up to 50 kilometres distance from his home and the fact that some lessons were provided in a learner driver's own vehicle. The Appellant took issue with the fact that there was little variance for turnover across the four tax years under appeal as the Respondent had simply averaged the odometer readings.
3. At hearing, the Respondent's officials accepted that the odometer reading was a means for the Respondent to estimate turnover but that it was not necessarily accurate or specific. The Respondent conceded that there was no adjustment made in respect of cancellations but submitted that such an adjustment would have been minor in nature.
4. The Appellant submitted that, for the tax years in question during the recession, there were less lessons purchased and that the Respondent did not fully take this into account. In particular, the Appellant highlighted that the largest shortfall in declared income (in accordance with the Respondent's calculation) arose in 2012 which, the Appellant submitted, was one of the most difficult years of the recession. The Appellant stated that he was doing well if he conducted five or six lessons per week in 2012 as demand for lessons diminished during the recession years.



5. The Respondent stated that the money deposited in the Appellant's bank account over the years was not a credible measure of his income because he would have needed more income to subsist and to live. The Appellant stated that the only reason he was able to keep going was because of the '*massive help*' he got from family. The Appellant stated that family members were aware of his precarious financial position and were sympathetic to his circumstances. His son, who attended the hearing confirmed this position.

### **Conclusion**

6. In tax appeals before the Tax Appeal Commission, the burden of proof rests on the Appellant and the Appellant must prove his case on the balance of probabilities. The Appellant, being the person with access to all of the facts and documents relating to his/her own tax affairs, is bound not only to retain documentation in accordance with the requisite statutory provisions but also to produce such documentation as may be required in support of his/her appeal so as to meet the burden of proof.
7. However, in this appeal, the Respondent fairly conceded that the odometer basis of estimation of turnover was limited in its capacity to deliver accuracy but stated that the Respondent had little other basis upon which to proceed.
8. As regards the odometer basis of calculation, the Appellant highlighted a number of variables which adversely affected the reading including; use of the vehicle by five other family members who were insured to drive the vehicle, provision of lessons by the Appellant in adjoining towns up to 50 kilometres distance from his home and the fact that some lessons were provided in a learner driver's own vehicle.
9. In addition, I accept the Appellant's evidence that the recession impacted his business during the tax years in question and that he received financial assistance from family members to assist him through those years.
10. On consideration of the evidence heard and furnished and the reasons set out above, I determine that the four assessments dated 4 July 2014 and totalling €22,549.43 shall be reduced to a sum representing 45% of their aggregate value, namely; €10,147.24.





11. This appeal is hereby determined in accordance with s.949AK TCA 1997.

**COMMISSIONER LORNA GALLAGHER**

**December 2018**

