35TACD2019

NAME REDACTED

Appellant

V

CRIMINAL ASSETS BUREAU

Respondent

DETERMINATION

1. Introduction

1.1. Notices of Assessment were raised against the Appellant in respect of years of 2002-2007 inclusive, 2011 and 2012 pursuant to Taxes Consolidation Act, 1997 (TCA), section 58 on 14th May 2015 and were appealed by the Appellant on 28th May 2015. The Appellant disputes that he has any additional liability to tax and has asserted that the assessments are estimated, excessive and not in accordance with his filed income tax returns.

1.2. The additional income assessed on the Appellant and the associated tax payable is as follows:

Year of Assessment	Income	Tax
2002	€24,609	€13,157
2003	€168,140	€89,211
2004	€41,218	€23,633
2005	€74,783	€41,009
2006	€54,416	€27,187
2007	€6,233	€2,821
2011	€129,293	€67,457
2012	€102,626	€61,710
Total	€601,318	€326,185

2. Legislation

2.1. The charge to tax under Schedule D is governed by TCA, section 18(1) and relates to:

"(a) the annual profits or gains arising or accruing to —

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,
(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,
(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and
(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State, …"

2.2. TCA, section 52 TCA identifies the person chargeable to tax and states:

"Income tax under Schedule D shall be charged on and paid by the persons ... receiving or entitled to the income in respect of which tax under that Schedule is directed in the Income Tax Acts to be charged."

2.3. TCA, section 58(1) charges profits and gains from an unknown source and provides:

"Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made –

(a) the source from which those profits or gains arose was not known to the inspector,
(b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or
(c) the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains."

3. Submissions - Appellant

3.1. The Respondent in its statement of case asserted that the Appellant had additional miscellaneous income of €601,318. From an analysis of the Appellant's accounts it

is evident that a total of €902,711 was generated in sales between the years 2002 and 2010 and was returned in his accounts.

3.2. The sum of €526,617 was lodged to **[Account Name Redacted]** between the years 2002 up to March 2011. These lodgements were made up of Sales of €373,679, a loan of €20,000, personal injury claims and court settlements of €74,894, lottery wins of €2,300, transfer of €2,460, VAT refund of €4,515 and €608, the sale of a car and van for €15,200, the sale of businesses for €20,000 and credit union loans including the sale of a car €12,255.

3.3. The Respondent alleges that between all lodgements there was a total figure of €650,695 lodged into various accounts including **[Account Name Redacted], [Account Name Redacted], [Account Name Redacted] and [Financial Institution and Account Name redacted]. Between [Account Name Redacted] and [Account Name Redacted]** alone the Appellant lodged a total of €641,494. However, it is submitted that the Appellant should not be assessed on gross sales but instead should be assessed solely on his profits of €161,606 for 2002 -2007.

3.4. The sales revenue of €499,304 was lodged to the accounts of Appellant and his wife which is made up of €444,489 of unidentified lodgments and a further €54,905 of cash lodgments in the period under review.

3.5. The Appellant's legitimate source of income as per tax returns was €161,601 in the years 2002 – 2007 therefore the Respondent is suggesting that €337,793 was income from an unknown source. This assertion fails to take into account the generation of gross sales for the years 2002 to 2007 which amounted to €660,468. Sales were far in excess of what was lodged.

3.6. The Respondent failed to take into account the gross sales which was returned in accounts. The Respondent asserts that in the period 2002 to 2007 the Appellant had an assessable income of €161,601. Furthermore, the Respondent suggests that between the years 1998 and 2014 the Appellant lodged €650,000 into the various bank accounts, however it is submitted that the Respondent failed to take into account that the Appellant had sales in excess of €1m.

3.7. Notwithstanding the above, the Appellant also had dog sales of €31,737, €30,000 €24,000 and €14,000 for the years 2011, 2012, 2013 and 2014 respectively. The Appellant had gross dog sales of €99,737 between the years 2011 and 2014 and between the periods 2002 to 2010. As such the Appellant had gross sales from all sources of €902,711.

3.8. In addition to the gross sales of €902,711, the Appellant had a total of €132,640 in personal injury claims.

3.9. In total the Appellant had €1,135,783 excluding horse sales excluding lotto wins and the sale of businesses. It is submitted that €650,695 was lodged between all accounts and that deducted from €1,135,783 leaves the Appellant with a total of €485,088 that has not been lodged therefore it is submitted that after all lodgements have been accounted for the Appellant remained with a surplus of €485,088 at his disposal.

3.10. The Respondent failed to take into account gross sales receipts for the periods in question. The Respondent has correctly made the assumption that the assessable income in the period 2002 to 2007 amounts to €161,601 however, has failed to acknowledge the gross sales of €660,468 during that period.

3.11. It is clear from the level of sales activity that there are no unidentified lodgements. Therefore, the assessments have been based solely on sales lodgements to the Appellant's account that are in excess of his assessable income, however no account has been taken of the actual gross sales revenue and therefore the assessments are incorrect.

3.12. The Appellant can fully account for €1,135,783 in income in an open, transparent and fully compliant manner which it is submitted rebuts the 'speculation and rumour' that has inconvenienced the Appellant for the past nine years and which the Respondent has sought to rely on as part of its belief evidence.

Speculated value of cars

3.13. The assessment of the Respondent's valuation on motor vehicles is an estimation based on an algorithm and does not take into account the condition of the vehicle at the time of purchase or sale. Furthermore, the Respondent used a base price which is calculated at a percentage of the original price but failed to take into account the actual selling price for which the Appellant accounted for by providing sales receipts and accounted for the sale of vehicles in the return of the accounts.

3.14. The Respondent in using Vehicle Department of Transport Details have corroborated the legitimacy of these motor vehicle transactions yet seek to challenge the veracity of receipts submitted by the Appellant indicating purchaser

details, which the Respondent seems to accepts, but refuses to accept the selling price. There is no evidence to suggest that vehicles were not bought for less than the market value, at the year of purchase.

3.15. This definition of trade is very broad. However, it is important to determine if a particular activity constitutes a trade because if a trade does not exist, the profit from that activity is outside the charge to Income Tax. Trade as per TCA, section 3(1) is defined as "trade includes every trade, manufacture, adventure or concern in the nature of trade."

3.16. Albeit the Respondent seems to accept that there was no profit made from the purchase and sale of vehicles it is submitted that in order for the Appellant to be considered to be engaged in trading he would have to be engaged in and contracting in doing a thing capable of producing a profit and for the purpose of producing a profit he carries on a trade or business. There is no suggestion by the Respondent that the Appellant was carrying on a trade, however it is submitted that the only reason the Respondent included this activity in its schedule was to cast an underlying aspersion on the Appellant that he was purchasing and selling vehicles of a high value and gaining miscellaneous income from this activity.

Excessive Valuation on Cars

3.17. It is evident that the Respondent has compiled calculations with a view to establishing that the Appellant had money at his disposal to buy certain vehicles notwithstanding that he was maintaining a wife and five children and servicing a mortgage.

3.18. While it cannot be said that such calculations were used as a means to raise the assessments, the Appellant made returns for profit from the sale of cars in 2007.

3.19. It is suggested by the Respondent that the Appellant paid out monies for the purchase of the vehicles mentioned in 2007. The Appellant is frank, honest and quite transparent in his dealings with the vehicles concerned in the aforementioned year and this is reflected in his returns for 2007 where he declared a profit on the sale of cars of €2,479. The following cross-examination of the Appellant is relevant:

> *"COMMISSIONER KENNEDY: Okay, let's move on to 2007,* ***[Appellant's Name redacted****]. So just going back to the first table. In 2007 they are five weeks (vehicles) purchased. Now, 2007 is the one year that you disclosed an income in your accounts from your vehicle sales, and just bear with me now. In 2007*

you declared a profit on the sales of cars of €2,479. Here we have from the records of Department of Transport five vehicles that were bought and sold in your name, all in 2007, none of which made a profit. What are your comments?

A: *Okay I can recall speaking to my accountant,* ***[Name Redacted]*** *about these and we wrote to* ***[Office Location Redacted]*** *or the Revenue Department that deals with importation and the change over of cars requesting a history. And I made available to him the profit I made off him and we made returns.*

MS. DUGGAN: So how did you pay for these vehicles in 2007?

A: These vehicles were given to me on a sale and return basis.

COMMISSIONER KENNEDY: What does that mean?

A: That means the vehicle is there, there you go, sell it, pay me with the money and take your profit. I didn't lay out money for them."

3.20. The Respondent has clearly recorded the purchase value and sales value as being the same, for each car, which suggests that there was no profit made out of the sale of any vehicle sold in 2007. Yet, the Appellant has declared profit on the sale of vehicles. The Respondent's valuations are incorrect and to use the purchase value and sales value as recorded by the Respondent does not reflect the actual price at which the Appellant bought and sold vehicles for.

3.21. Both the purchase and sale prices are grossly inflated and recorded in a fashion which tends to suggest that the Appellant had greater sums of monies at his disposal. Therefore, there seems to be a suggestion that the Appellant had to have income from other sources to substantiate the purchase of vehicles which is a gross exaggeration by the Respondent, which is not accepted by the Appellant.

3.22. The first of these vehicles was [**Registration Number Redacted**] which was a crashed repaired van, purchased for €2,000 versus valuation by the Respondent of €9,118. Notwithstanding that Vehicle [**Registration Number Redacted**] is a [**Model Redacted**] motor cycle, this means of transport is not a motor vehicle and was never used or intended to be used within any trading activity.

3.23. If the Respondent is relying on this along with motor vehicles in support of its contention that the Appellant had to have monies from miscellaneous income in order to purchase the vehicles at the Respondent's valuation then it should be shown where and how these values are calculated.

3.24. The Department of Transport documents purport to give the market value of each vehicle concerned. The Appellant sets out the purchase details of all the vehicles. This is evident in from the Appellant's evidence that he paid far less than the valuations imposed by the Respondent.

3.25. In support of the contention that the Respondent's values are grossly exaggerated and inflated, the following evidence of the Appellant in relation to **[Registration Number Redacted]** is relevant:

> *"MS. DUGGAN: Well, I suppose, this list says you didn't make any profit, but yes maybe talk us through the cars, that's probably the easiest thing, get it right?*
>
> *A. Right. Car No. 1 is – it's a motorbike, a black bike. I imported it, my brother-in-law imported it from England. I paid him €4,000.*
>
> *A.I sold it to [**Name Redacted**] for a sum set out in his statement.*
>
> *MS. DUGGAN: Okay. So the sum set out in his statement there he says €3,000.00.*
>
> *A. Yes"*

3.26. The evidence of the Appellant in relation to **[Registration Number Redacted]** is:

> *"A. The value – I have 2k next to this white transit van. It was a crashed repaired van."*

3.27. The valuation given by the Respondent has failed to take into consideration that the vehicle had been crashed and therefore its purchase valuation is excessive. The Vehicle Department of Transport documents on which the Respondent relies, are documents which are compiled in the ordinary course of a business and that these documents are also hearsay evidence which cannot be relied on. Buying a personal vehicle cannot possibly make a profit on it as it depreciates over time.

3.28. The purchase of a motor bike is not income taxable as it's hobby/not part of business therefore any assessments based on car sales, which may have been used by the Respondent, with interests, penalties and surcharges is giving a false representation of the assessment for this year and therefore not in accordance with TCA, section 3.

Stud Activities

3.29. It is evident that the Appellant had accumulated earnings from stud fees from the 28th day of March, 1998 to the 5th day of May, 1999. This is summarised by the Appellant and indicates that he earned €12,310.00 from stud fees in the period 28th March, 1998 to 28th May, 1998 and €8,150 from stud fees in the period 14th February, 1999 to 5th May, 1999 amounting to a total of €20,460.

3.30. The Appellant supports the contention that he earned non-taxable income by the inclusion of supporting documentation which is a letter entitled [**Title of Letter Redacted**] dated [**Date Redacted**] the contents of which sets out the breeders registered broodmares, thoroughbred and non-thoroughbred, currently recorded in his name.

3.31. The Respondent has challenged the veracity of this document. However, the Appellant disputes the contention that the document is not applicable to him and the underlying aspersion that this document is false and could have been downloaded from the internet. This is evident during the cross-examination of the Appellant as follows:

> *"MS. DUGGAN: This next document, how do I know that you received this next document from **[Business Name Redacted]?** It just says "Dear Breeder", it could have been given to anybody. You could have downloaded this from the internet for all I know.*
>
> *A. Well, that carries the same weight now as finding material in bins. We'll phone **[Business Name Redacted]** will we, today, I could do it in two seconds, ask them am I a member.*
>
> *COMMISSIONER KENNEDY: Do you have a document there? to do with **[Business Name Redacted]** to authenticate your association?*
>
> *A. I'm looking for it now.*

A. In the horse business you get what's known as a stud book or an owner's book for the horse.

COMMISSIONER KENNEDY: Have you got that?

A: CAB have it."

3.32. Albeit that these figures are not relevant to the period of Assessments in question that the income earned from horse breeding activities which were available to the Appellant as disposable income are monies which he had available to him as savings.

Irish Property

3.33. The Appellant under examination in chief describes how he came into possession of **Address Redacted:**

"A.I transferred heavy plant and machinery equipment to the value of €55,000.

COMMISSIONER KENNEDY: Okay, and where did that plant and machinery come from?

*A: It was my own from **[Business Name Redacted].**"*

3.34. The Appellant had a contract drawn up between the seller and himself and this contract is in the possession of CAB. The Appellant has a written agreement which purports to show that Appellant and the seller of this property entered into a contract whereby plant machinery was exchanged in lieu of cash for the transfer of this property to the Appellant. This written contract is witnessed and stamped by **[Solicitor's Name Redacted] of [Address Redacted].**

3.35. The Respondent's failure to provide the Appellant with a copy or the original of this contract prejudices the Appellant in circumstances where he cannot support the acquisition of this property. Despite this, from the analysis of the Appellant's accounts, the Appellant had monies at his disposal to meet the monthly mortgage repayments.

Purchase of Plant Machinery

3.36. The Appellant has shown how monies were raised in order to purchase the said plant machinery. The Appellant had a credit union loan of €20,000 received on the 3rd day of August, 2005 in order to facilitate putting down a deposit on this plant machinery. This loan amount is recorded in the Appellant's **[Financial Institution Redacted]** account.

3.37. Commissioner Kennedy asked a question of the Appellant in relation to the purchase of plant machinery at:

> *"Did you buy that from him?*
>
> *A.I gave him a deposit of 20, I withdrew it from my bank, I met him the same day and I gave it to him.*
>
> *COMMISSIONER KENNEDY: What about the other 26,600?*
>
> *A: It's not completely paid. I have – I gave the machines back to him on hire and there is monies between us*
>
> *COMMISSIONER KENNEDY: Still outstanding after 14 years?*
> *A .He's deceased.*
>
> *COMMISSIONER KENNEDY: So you still owe him money?*
>
> *A.I owe his company money, but it's not a lot because he owes me where I put that 13 ton machine back to him he put it into a hire company called* ***[Business Name Redacted].***
>
> *COMMISSIONER KENNEDY: What do you mean when you put it back to him?*
>
> *A. He took it back off me on hire, it's called cross-hire."*

3.38. The Appellant has accounted for the plant machinery he purchased. The monthly payments to [**Business Name Redacted**], for the period of 10th day of October, 2005 to the 1st day of June, 2008 are outlined in a contractual agreement. The agreement with [Business Name Redacted] sets out the purchase agreement for a [**Model Name Redacted**] mini digger on the [**Date Redacted**], on a rental purchase option, for the sum of €20,890 to be paid over thirty-six months for the sum of €600.

3.39. As such, the Appellant had a sufficient cash flow from a credit union loan to enter into such an agreement and monies from miscellaneous incomes, which the Appellant categorically refutes, were not used to purchase plant machinery.

Purchase of Property

3.40. The property located at [**Location Redacted**], sits on 1.8 acres and consists of a galvanized shed, measuring 60ft x 30ft with power and concrete floor and a hardcore yard; this property also consists of three lean-to of 15ft x 33ft with a hardcore yard along with one timber built kennel block, five stables and a tack room which had a market value of €60,000 as at the 13th day of May, 2015. This property was purchased, in and around October 2005 for €17,000 and was paid for by Draft cheque dated the 19th day of October, 2005. The money used to fund the purchase of this property was from the sale of [**Business Name Redacted], to [Names Redacted]** for the sum of €20,000.

Personal Injuries

3.41. It is submitted that the Appellant had a total of €82,164.00 is personal injury claims between the years 1993 and 2010. The claims are set out in the following table:

Year	Nature of Claim	Compensation Award
1993	Road Traffic Accident	(£5,000) €7,260
1998/99	Road Traffic Accident	(£5,000) €7,260
2003/2004	**Redacted Ltd.**	€5,750
2008	**Redacted**	€26,060
2008	**Redacted**	€15,000
2010	Trip and Fall	€17,700
2010	**Redacted**	€3,134
	Total	**€82,164**

3.42. The Respondent took issue with the claims in 2008 for an award of €15,000 and in 2010 for an award of €3,134 and indicated that there didn't seem to be any supporting documentary evidence to support these two amounts. A letter from [**Solicitor's Name Redacted**] dated the 18th September, 2008 supports this submission.

3.43. It is submitted that the Respondent has included in its schedule of personal injury settlements of €26,060, €15,000 and €17,700 and therefore it can be assumed that it has included these figures in its calculation of assessments albeit that the aforementioned claims are in years which are not subject to an assessment. In any event it is submitted that these are monies which were available to the Appellant and were carried over from year to year.

3.44. The Commissioner points out at:

> *" it is fine. I see where the 15,000 is and I can see there is a document here. And even though it is hearsay I can accept hearsay in certain cases."*

3.45. In relation to the award of €3,134 in 2010, the following extract of the transcript is relevant:

> *"So, **[Appellant's Name Redacted], [Policy Name Redacted**], do you want to shed light on that document please?*
>
> *A: That's an insurance policy that –*
>
> *COMMISSIONER KENNEDY: Yes I have it."*

3.46. It is submitted that although the only relevant award year which is subject to an Assessment is that of **[Company Name Redacted].** in 2003/2004 in the sum of €5,750 the total amount of awards of €82,164 cannot be taken in isolation. The total amount in awards are non-taxable for income purposes but yet are monies which were available to the Appellant throughout the years and it is submitted that these payouts can be carried forward into the subsequent years. Therefore, putting the Appellant in a position to have more monies at his disposal.

3.47. The Appellant gave the following evidence:

> *"And I would like to highlight again that the payments I got from **Solicitor's name Redacted** in the 90s is significant to my savings because I did hold – I concentrated hard on savings during them years, you know. I like putting my money to use."*

3.48. The availability of these monies to the Appellant should be taken into account.

Businesses

3.49. The Appellant carried on the business of **[Business Name Redacted],** a business in which he traded for in and around a year. The Appellant was subsequently bought out by **[Name Redacted**] for the agreed sum of €10,000. The Appellant produced a draft cheque for the aforementioned amount.

3.50. The Appellant registered a tax registration cancellation notice that he ceased trading business on the 30th day of June, 2004 which is consistent with the year in which the draft cheque issued. The Appellant also attached an email in which it was asserted that he received the draft from **[Name Redacted].** Albeit this is an email which is inadmissible under the rule of hearsay it is submitted that it is consistent with the Appellant's account of a monetary transaction for the sale of this business. During examination in chief the Appellant was asked the following question:

> *" I think there is a draft there, **[Appellant's Name Redacted],** of 10,000. Can you explain that please?*
>
> *A.I was involved in – I setup – me and **[Name Redacted]**, he's a friend of mine, he's a **[Occupation Redacted]** on a large scale, we're talking hotels, buildings, new buildings, housing estates, et cetera. I went into business with him and we started a company called **[Company Name Redacted].** I traded, stayed on board with him for about a year and he offered to buy me out. We had secured a few contracts at this point and he bought me out, I agreed to €10,000 and I took a payment of that from him.*
>
> *COMMISSIONER KENNEDY: this is paid to **[Name Redacted].***
>
> *A. That's his mother, she got the draft out. That's the same figure. And I pointed out this **to [Name Redacted],** he's now **in [Country Redacted]** and –*
>
> *A. that's the way it worked out, his mother withdrew the money, a bank draft of 10,000. That's the way – but he clarifies it here by way of e-mail to me and he states"*

3.51. This transaction was a sale of a business which the Appellant was involved in and indeed made returns on. This resulted in monies being at the Appellant's disposal.

Properties in Spain

3.52. The Appellant gave evidence of the acquisition of properties in Spain. The first property at **[Property Name Redacted**] had a purchase price of €150,000 and the Appellant along with his wife invested €75,000 and drew down a 50% mortgage on that property. The Appellant gave evidence that the second and third properties were purchased together for the sum of €55,000 plus €25,000 investment by the Appellant's brother. The Appellant along with his wife had two thirds share in this property. On the death of the Appellant's brother this property passed to the Appellant in satisfaction of a debt owed by the Appellant's brother.

3.53. Another property was purchased at a cost of around €130,000 however the Appellant asserts that he drew down a 100% percent mortgage on this property.

3.54. It is not inconceivable that the Appellant was not in a strong financial position to purchase the Spanish properties given that he was successful in business and he had claims totaling €67,510 in the years 2004 to 2010.

3.55. The introduction of the purchase of Spanish properties is an attempt by the Respondent to cast an underlying aspersion on the Appellant that he bought these properties with the proceeds of income from miscellaneous income.

Closing submissions

3.56. The Appellant has provided the Commissioner with all evidence within his possession, power or procurement in circumstances where the Criminal Assets Bureau seized the majority of the Appellant's original pieces of evidence. This has put the Appellant at a disadvantage, where original supporting documentation would have vouched for the credibility of evidence and would have the effect of the veracity of copies of documentation being unchallengeable. It is submitted that the Appellant has discharged the onus of proof necessary to displace the assessments of additional income. The Appellant and his wife have no undisclosed income from unknown sources and all incomes earned by both have been accounted for within the Tax Returns for the periods in question.

3.57. The Appellant and his wife had funds available to them via business profits, savings, social welfare payments, settlements for personal injuries and redress board, allowing them to purchase modest properties at home and abroad.

3.58. The Appellant has honestly and transparently set out the means which put him in a position to purchase these properties, one property being acquired for the transfer of plant machinery in lieu of money. The Appellant was not in a position to call **[Name Redacted]** in support of the contract entered into for the property in **[Location Redacted]** and to that extent has provided a death certificate of the party to which he entered into the contract with. It is submitted that the only other means of showing this transaction was by means of an existing contract which is in the possession of the Bureau. Therefore, that the Respondent has engaged in underhanded tactics, by not returning this contract to the Appellant, in an attempt to frustrate the Appellant's efforts to prove the validity of this agreement.

3.59. The Respondent is attempting to cast aspersions of criminal conduct on the Appellant which it says has allowed him to gather assets, an assertion which is strongly denied and will be defended vehemently.

3.60. The Appellant was not in a position to put supporting evidence before the Commissioner particularly bank statements as these were in the possession of his accountants. It was submitted that these bank statements form part of a CAB investigation, which the Respondent is in possession of, and which it could and should have provided to the Commissioner to assist in determining the enquiry against the Appellant.

3.61. The suggestion by the Respondent that the Appellant freely choose not to adduce evidence of his bank statements is untenable, he simply was not in a position to and therefore no weight should be attached to the inability to adduce evidence of same. Factually, the Appellant was advised not to introduce credit union statements based on legal advice and this should not be seen as an attempt to avoid explain them.

3.62. The Appellant has given evidence of potential witnesses' illnesses, death and living arrangements outside this jurisdiction and has provided supporting documentation. To summon all potential witnesses to support the Appellant's evidence is an extreme and excessive task. The Appellant has provided to the best of his ability, written statements, some of which the Appellant accepts were written by him but signed by the parties who he had entered into various agreements with. To that extent the Appellant provided names, address and contact details of all these parties, in the event that the Respondent decided to contact them. It is submitted that the Respondent did make contact with some witnesses and have indeed taken a sworn affidavit from one.

3.63. The Respondent has engaged in an unethical approach and have interfered with potential witnesses that the Appellant could have summoned. The Appellant did not in any way try to mislead the Commissioner as to unavailability of his accountant and indeed sought a further half day for his accountant to give evidence on his behalf. Again, the Bureau took the unethical approach of contacting one of the Appellant's witnesses.

3.64. The Bureau further frustrated the Appellant's attempts at producing evidence by making available to the Appellant, two days before the hearing, substantial illegible photocopies of the original invoice books of horse and dog sales activities, the property of the Appellant which was seized by the Bureau.

3.65. The Appellant has given a true account of the means of acquiring **[Property Location Redacted]** and for the Respondent to suggest that machinery didn't lose value during recession years is preposterous, considering that the Respondent is not an expert in valuation of plant machinery and furthermore the Appellant gave evidence that this plant machinery was purchased at trade price and traded at retail cost. It is further submitted that the Respondent is privy to the accounts and bank statements of the Appellant therefore are aware of the transactions supporting the purchase of this plant machinery.

3.66. Unfortunately, the Appellant's accounts were not in a position to show same as more time was required to analyse the accounts. It is correct to say that the Appellant did not know what **[Name Redacted]** had done with the machinery on Day 1 of cross examination but with the passage of time, some eight months later was in a position to confirm what had become of the plant machinery.

3.67. The only available contract surrounding **[Property Location Redacted]** was witnessed by a Peace Commissioner and for the Respondent to challenge its veracity is incredible.

3.68. The sale of **[Business Name Redacted]** to the Appellant's brother has been sufficiently substantiated and evidenced in a contract however, this witness was unavailable as he is now deceased. In an effort to verify this Appellant submitted to the Commissioner and Respondent a copy of his late brother's Will.

3.69. Any documentation used in support of the Appellant's activities of horse and dog breeding may be hearsay but there is discretion to accept hearsay documents. The Appellant produced evidence in relation to €3,000 from **[Branch Name Redacted]**

Credit Union for the sale of gates; however, the Appellant did indicate on Day 2 that he was not sure if it was for the sale of gates.

3.70. The Appellant has shown where he had savings of €17,000 in the credit union and evidence of withdrawals reflects this. Notwithstanding this, the Appellant has also evidenced savings in a Post Office account. The Respondent to suggest that there is no evidence that the books belonged to the Appellant is preposterous and that such a suggestion is an attempt to undermine the credibility of the Appellant.

3.71. The Respondent's challenge to the veracity of documentary evidence produced by the Appellant is a further attempt to undermine the Appellant's credibility.

3.72. The Appellant has outlined his connection with properties abroad and the Respondent has supported the contention that one of the properties has a 50% mortgage of upwards of €68,000 but failed to identify that the property purchased in 2013 has a 100% mortgage, notwithstanding that this is a property purchased outside the periods of assessments.

Legislation and Statute of Limitations

3.73. The Respondent is statute barred, in bringing its Assessments, for all years prior to 2011, pursuant to TCA, section 959AA(1) which provides:

> *"Where a chargeable person has delivered a return or a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period-*
>
> *a) an assessment for that period, or*
> *b) an amendment of an assessment for that period*
>
> *shall not be made by a Revenue Officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and –*
>
> *(i) no additional tax shall be payable by the chargeable person after the end of the chargeable period of 4 years and*
> *(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered, by reason of any matter contained in the return.*

3.74. The Respondent made its assessments for the years 2002 to 2012 excluding 2008, 2009 and 2010 on the 14th May, 2015. The Appellant's tax returns record a full and true disclosure of all material facts. As such, the Respondent cannot demonstrate that the Appellant has not made full and true disclosure of all material facts for the periods in question. The only period that the Respondent is entitled to make an Assessment for are the years 2011 and 2012 because the Respondent is statute barred from going back to the years before 2011 under TCA, section 959AA.

3.75. It is evident from the Respondent's statement of case at point 5 under the heading Preliminary issue, it is asserted "*that the Appellant and his wife have undeclared income from an unknown source.*" Clearly the Respondent has invoked TCA, section 58 in an attempt to circumvent TCA, section 959AA and the time limits specified therein.

3.76. When the assessments were made, in 2015, there were no profits or gains from unknown or unlawful sources, for the period in question, therefore the Respondent cannot invoke TCA, section 58. The Respondent is attempting to circumvent the time limits set out in TCA, section 959AA. It is also submitted that the Respondent cannot invoke TCA, section 58 as tax has erroneously been applied to gross takings and not to profits only. This is contrary to the rule set out in TCA, section 65(1) which provides:

> *"Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment."*

3.77. The Respondent has not applied the rules of accountancy in accordance with TCA, section 65, rules which were affirmed in the Supreme Court decision of *M. Cronin (Inspector of Taxes) v Cork & County Properties Limited* 1986 WJSC-SC 230.

Conclusion

3.78. The Respondent, in raising assessments for the years up to 2011, is statute barred under the legislation set out in TCA, section 959AA(1).

3.79. The Respondent's assessments for the years for the periods in question including 2011 and 2012, and all other years are in breach of TCA, section 65 as the Respondent has not complied with the Rules of Accountancy.

3.80. There was no profits or gains from unknown or unlawful sources, for the period in question or any other periods, therefore the Respondent cannot invoke TCA, section 58. The Assessments that the Respondent have put forward as miscellaneous income is excessive, in fact and based on conjecture and belief evidence which the Appellant strongly rebuts with factual evidence demonstrated in the Appellant's returns. The Appellant should not be assessed on gross sales but instead should be assessed solely on his profits of €161,602.00 and therefore the Respondent has erroneously arrived at incorrect Assessments.

3.81. It is accepted that the Respondent can rely on belief evidence based upon hearsay, however this information should not be used by way of proof but as a line on inquiry only, as per McLoughlin J in *Re Haughey* [1971] IR 217.

3.82. The workings of the Respondent are arriving at its assessments are fundamentally flawed. The Respondent has failed to take into account cost of goods being deducted from Bank accounts.

3.83. RBO Accountant took into account the Appellant's wife's income when they were not married thus giving a false account of income earned. Furthermore, that firm failed to take into account that **[Name Redacted]** had an un-taxable state benefit through children's allowance.

3.84. The Respondent has grossly exaggerated the value of the purchase price of vehicles in an attempt to cast an aspersion that the Appellant was in a position to afford such valuable vehicles because he had miscellaneous income from an unidentified source.

3.85. The Respondent accepted that the Appellant had not made any profit from the sale of vehicles by giving a sales value less than the purchase value, albeit it is submitted that these values are excessive and exaggerated.

3.86. It can only be assumed that the Respondent may have erroneously taken car purchases and sales into account when making its assessments as it seems to be the only reason why the Respondent introduced car purchases and sales.

3.87. The Appellant never traded in cars nor did he satisfy the definition of trade, therefore the Respondent should never have introduced this line of inquiry. In the alternative it is submitted that car sales and purchases were introduced in an attempt to paint the Appellant in an unfavourable light, with an underlying insinuation that the

Appellant earned miscellaneous income from sources other than his income throughout these years.

3.88. The Appeal Commissioner is given a power or discretion under law and it must be assumed that the body or person is required to exercise that power or discretion in line with the constitution.

3.89. The Respondent has misled the tribunal therefore it is prejudicial and the evidence of an assessment is inconsistent with the standards of fairness, therefore the Commissioner should allow the appeal and find in favour of the Appellant.

3.90. In the absence of fair and accurate assessments the Appeal Commissioner should reject all of the Respondent's evidence which is based on guess work.

3.91. The Respondent has portrayed the character of the Appellant as an "accused person" rather than as a witness as to fact.

3.92. The Appellant has been prejudiced by virtue of the fact that limitations have been placed upon him as to how the conduct of his case, as a person in effect accused, rather than a witness as to fact, contrary to natural justice.

3.93. The Appellant is deprived of the opportunity to test the veracity of the evidence the Respondent absent full disclosure. It is submitted that the Appellant has been erroneously assessed on gross sales instead of being assessed solely on his profits of €161,601 for 2002 -2007. If the Appellant is correct in this assertion then it follows that all tax assessments for the period in question are fundamentally flawed and the appeal should be allowed.

3.94. In *O'Dwyer v Dublin United Transport Company, Ltd* [1949] IR 295 it is suggested that there is an argument that any ambiguity in a taxing statute should be settled in favour of the taxpayer in accordance with general legal rules of interpretation. If the Appellant is correct in his assertions then it follows that all tax assessments for the period in question are fundamentally flawed and the appeal should be allowed.

4. Submissions Respondent

Overview

4.1. The Appellant has repeatedly referred to periods outside of the ambit of the appeal. However, this evidence cannot be looked at in isolation and must be treated with caution in circumstances where it represents only a snapshot of that period in particular where no evidence has been given of expenditure during this period.

4.2. The Appellant's own tax returns show that he carried out the businesses of fabricating garden furniture, plant hire and a hair salon for the years 2002 - 2007. He gave evidence of these businesses winding down in 2011 and that he was left with only the dog breeding business.

4.3. A detailed analysis of the Appellant's income and expenditure for the relevant periods was performed calculating the income from unknown sources that were not previously returned for income tax purposes.

4.4. The Appellant's and his wife's net disposable income for the years 2002 to 2007 and 2011 to 2012 and tax actually paid is as follows:

Year	Returned income for on tax returns	Tax paid by the Appellant	Year tax paid
2002	€21,391.00	€1,979	2005
2003	€31,860.00	€5,219	2005
2004	€33,782.00	€5,797	2005
2005	€30,217.00	€3,804	2005
2006	€20,584.00	€410	2006
2007	€23,767.00	€2,368	2008
2011	€11,707.00	€735	2013
2012	€14,200.00	€890	2014
TOTAL	€187,508.00	€21,203.00	

4.5. As a consequence, the Appellant's net disposable income was:

Year	Appellant's & wife's tax net income
2002	€19,412
2003	€26,641
2004	€27,803
2005	€26,413
2006	€20,173.81
2007	€21,399
2011	€10,972
2012	€13,310
TOTAL	€166,124

4.6. Out of these funds, the Appellant and his wife maintained five children, bought four properties in Spain, bought two properties in Ireland as well as servicing the mortgage on their family home, bought and did up a significant number of cars, paid significant sums of VRT, owned horses, owned pedigree dogs, went on holidays and paid for a wedding.

4.7. Based on the receipt of additional information after the assessments issued, the Respondent is seeking to reduce the tax assessed, notwithstanding that the tax assessed on the original notices of assessment are higher. As such, the tax assessed should therefore be reduced in accordance with the following table:

Year	Additional miscellaneous income	Additional income tax
2002	€24,609.00	€11,961
2003	€168,140.00	€81,101
2004	€41,218.00	€21,484.78
2005	€74,783.00	€37,281.33
2006	€54,416.00	€24,715.35
2007	€6,233.00	€2,564.75
2011	€129,293.00	€61,324.76
2012	€102,626.00	€56,100.12
TOTAL	**€601,318.00**	**€296,533.09**

4.8. This analysis excludes verifiable personal injury payments received by the Appellant.

Burden of Proof

4.9. In the context of tax appeals, the burden of proof to show that the amount due is excessive rests with the taxpayer. This accords with the general law in civil cases that the burden of proof falls on he who asserts. This onus may be justified on the basis that only the taxpayer has access to the full facts relating to his personal tax situation. In *Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, Charleton J. stated:

> *"This reversal of the burden of proof onto the taxpayer is common to all forms of taxation appeals in Ireland"*
>
> and
>
> *"The burden of proof in this appeal process, is as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable"*

4.10. The Appellant is subject to tax on a self-assessment basis and the responsibility to establish that the tax the Appellant says is due rests with him only.

4.11. The High Court in *TJ v Criminal Assets Bureau* [2008] ITR 119 stated at paragraph 50:

> *"The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has*

the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court...There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant."

4.12. It is the Respondent's submission that the Appellant has failed to discharge the burden of proof that he and his wife did not earn the amounts assessed on them and it is clear that their expenditure clearly surpassed their means.

Proceeds of Crime application

4.13. The Appellant during the course of the hearing asserted that that he would be somehow prejudiced in his defence of the Respondent's application under the Proceeds of Crime Act if he adduced evidence on oath in relation to his own bank statements. However, and notwithstanding those current proceedings, it should be noted that an application under the Proceeds of Crime Act 1996 is not a criminal prosecution but a civil action by the State to seize assets in relation to which the Chief Bureau Officer of the Respondent has formed the view represent the proceeds of criminal conduct.

4.14. In the course of such an application, it is for the Respondent to establish to the satisfaction of the High Court, on the balance of probabilities, that the Appellant was in possession of or control of assets which comprised directly or indirectly the proceeds of crime. It is important to note that this is not a criminal prosecution and therefore any concern about the Appellant incriminating himself does not arise.

4.15. It was open to the Appellant to put his bank statements into evidence before the Tax Appeals Commission to prove the income actually received during the periods in question and the expenditure incurred. However, the Appellant declined to do so. This appears to have been an entirely tactical decision.

4.16. The assertion that it would be somehow prejudicial for the Appellant to adduce oral evidence on oath in relation to his own bank statements in the course of this appeal to his defence of the Respondent's application under the Proceeds of Crime Act is rejected.

4.17. There is no question of the Appellant being compelled to give evidence before the Tax Appeals Commission which would somehow incriminate him in the course of the Proceeds of Crime application. The application under the Proceeds of Crime Act is a civil application the ultimate consequence of which are financial only, namely, the seizure of assets. The suggestion that in giving evidence in relation to his own bank accounts, the Appellant could somehow harm his position in relation to the Proceeds of Crime application is untenable and suggests that the Appellant does not want to give evidence because it would harm his case in the proceeds of crime application.

4.18. The Appellant freely chose not to adduce evidence of his bank statements within these proceedings and it is the Respondent's submission that the Tax Appeals Commission must refuse to give this argument any weight or consideration.

The failure of the Appellant to adduce evidence to discharge the burden of proof

4.19. The Appellant has been given significant opportunities by the Tax Appeals Commission to present the best possible evidence to support his appeal, including the summoning of witnesses, but the Appellant has failed to do so.

4.20. By notice of appeal hearing and accompanying directions dated 28 August 2018, the Appellant was directed to provide a schedule and copies of all documentation he wished to rely upon in his appeal. The Appellant failed to comply with this direction. The Respondent issued a reminder to the Appellant on 21 September 2018 to provide this documentation, but the Appellant refused to do so.

4.21. The Tax Appeals Commission made further directions for the Appellant to provide documentation in support of his claims at the conclusion of the first day of hearing on 15 October 2018. This documentation was to be provided by 5 November 2018. The Appellant failed to comply with this direction.

4.22. The Respondent wrote to the Tax Appeals Commission by letter dated 4 December 2018 highlighting the Appellant's failure to comply with this direction and seeking to have the Appellant's case dismissed on the grounds of his consistent non-compliance with the directions.

4.23. The Appellant continued to fail to provide documentation and the Respondent again wrote to the Tax Appeals Commission seeking a further direction that the Appellant comply with the direction to provide documentation. The Appellant finally delivered this documentation to the Respondent on 14 June 2019.

4.24. The Appellant was provided with copies of all of the documents seized by the Respondent on 28 May 2015. If the Appellant had at any stage any difficulty in accessing any of these documents, he should have raised it with the Respondent or sought a direction from the Tax Appeals Commission.

4.25. The Appellant also received copies of all of his bank statements in January 2019 in the course of the Proceeds of Crime application. It also remained open to the Appellant to obtain this information from his own banks.

4.26. The Appellant made repeated assertions in the course of his giving evidence that it was for the Respondent to carry out investigations into the various versions of events which the Appellant was attempting to put before the Tax Appeals Commission. This merely demonstrated the Appellant's fundamental misunderstanding of the case he was obliged to meet.

4.27. It is also stark that the Appellant could call no witness to support his version of events.

4.28. Furthermore, it was apparent that the Appellant chose not to involve his own accountant until the very last minute even though he had instructed an expert tax advisor for the first day's hearing on 15 October 2018 and engaged solicitor and counsel in November 2018. The manner in which the Appellant misled the Commissioner as to the unavailability of his accountant is also noteworthy.

4.29. It is the Respondent's submission that the Appellant has not discharged the burden of proof and accordingly, the assessments as raised should stand.

Failure to adduce reliable evidence

4.30. The Appellant failed to provide evidence of:

i. Invoice books which he said he had

ii. Purchase receipts which he said he had

iii. Origin of funds used to purchase **[Property Location Redacted].**

4.31. The Appellant gave evidence of a 13 tonne digger having been purchased in 2005 for €25,000 from a private individual. The Appellant had stated that his accountant had this information and that he made monthly repayments of €1,000 but that after five years, he had still only paid 80%. He stated that he made monthly payments of €1,000 over five years which would amount to €60,000. He then stated that he still owed money on this digger in the sum of €16,600 which means he ultimately owed €76,600 on a €25,000 13 tonne digger. He then gave a version of events that was difficult to follow:

> *"COMMISSIONER KENNEDY: So you still owe him money?*
>
> *A. I owe his company money, but it's not a lot because he owes me where I put that 13 ton machine back to him he put it into a hire company called [Business Name Redacted] –*
>
> *COMMISSIONER KENNEDY: What do you mean when you put it back to him?*
>
> *A. He took it back off me on hire, it's called cross-hire.*
>
> *COMMISSIONER KENNEDY: Is this not the machinery that you used to buy the house with?*
>
> *A. Yes, I used it for a while. I had this machinery for a number of years. I think I acquired it in 2005 –*
>
> *COMMISSIONER KENNEDY: You bought the house with machinery which you gave* ***to [Name Redacted]****?*
>
> *A. Yes.*
>
> *COMMISSIONER KENNEDY: How did* ***[Name Redacted]*** *give it back to Mr –*
>
> *A. No, he never gave it. I had it from 2005 to 2010. During them five years I was working with this machinery."*

4.32. One must also assume that the 13 tonne digger would have been worth a fraction of its cost after five years of use and hire which again raises significant questions about the credibility of the Appellant's evidence in this regard.

4.33. In relation to the purchase of the 3 tonne case digger, the Appellant proffered an alleged document from **[Business Name Redacted]** which he said stated that he was to pay for the 3 tonne case digger over 36 months at the rate of €600 per month. He also submitted a leasing document between **[Name Redacted]** and AIB which does not in any way support his version of events.

4.34. There was no reliable or credible evidence of:

a) the 13-tonne digger, 3 tonne case digger and 5 tonne dumper being exchanged for a house at **[Location Redacted].**

b) these items of plant coming in or going out of his business accounts

c) Even if the value of the purchase price of the plant as asserted by the Appellant was accepted, the plant was allegedly purchased five years before the purchase of the house and must have been worth significantly less after five years wear and tear:

i. the only evidence the Appellant proffered to support this alleged swap was a hearsay document. No credible reason was given as to why **[Name Redacted]** did not come to give oral evidence in support of the Appellant's assertion;

ii. the Appellant stated that he did not know what **[Name Redacted]** did with the plant and machinery. However, the Appellant proceeded to claim that **[Name Redacted]** moved the machinery to **[Location Redacted];**

iii. the veracity of the document in the Appellant's booklet of evidence which purports to be a witness statement from **[Name Redacted]** and not a contract, nor could it be in circumstances where an actual contract for sale was entered into in 2010 is contested by the Respondent, and

iv. the contract for sale of **[Property Location Redacted]** whereby he allegedly swapped a house for five-year-old plant during the height of a recession.

Sale of **[Name Redacted]**

4.35. The Appellant stated on the first day of the hearing that he sold **[Business Name** Redacted**]** to his sister in law **[Name Redacted]** for €25,000. The Appellant failed to summon **[Name Redacted]** to give evidence for the second day of the hearing.

4.36. The Appellant stated he paid CGT on the disposal of this business but this was not reflected in his 2005 return. The Appellant went on to state on the second day of hearing that he in fact sold **[Business Name Redacted]** to his brother. The Appellant gave oral evidence that **[Brother's Name Redacted]** agreed to purchase **[Business Name Redacted]** for €25,000 but that he did not transfer the money over. The Appellant then stated that his brother invested in the properties in Spain in the sum of £25,000. He then stated that one of the Spanish properties was then taken in lieu of this debt and this was agreed around October 2018. A typed note from [**Name Redacted]** was produced noting that **[Brother's Name Redacted]** had an outstanding debt to the Appellant prior to **[Brother's Name Redacted]** death, however the veracity of this document is not accepted by the Respondent.

4.37. It was not until Day 2 of the hearing that the Appellant referred to a business by the name of **[Business Name Redacted]** for the first time. The Appellant also referred to it by another name, **[Business Name Redacted].** Furthermore, the Appellant gave evidence of using 12 display sheds from **[Business Name Redacted]** in building kennels and stables at **[Location Redacted]** and so it is not at all clear what was actually purchased by **[Name Redacted]** or **[Name Redacted].**

Origin of funds used to purchase and develop lands ***at [Location Redacted].***

4.38. The Appellant provided pictures of the work he carried out at **[Location Redacted]** and the work was substantial. It is clear that significant sums must have been expended by the Appellant in completing a shed which measures 60ft x 30ft with power and concrete floor and a hardcore yard. There were also three lean-to sheds of 15ft x 33ft with a hardcore yard along with one timber build kennel block, five stables and a tack room. His initial evidence was that this had been completed using left over stock from his joinery business which had ceased trading three years previously in 2005 but he later added to this evidence on the second day making reference to steel sheds. On Day 2, he stated he took the shed from a garage forecourt, but did not give any evidence as to how much he paid for it. The Appellant appeared to later change his evidence in respect of this shed whereby he stated that it was a flat packed shed.

4.39. The Appellant stated that he paid for **[Location Redacted]** with a credit union loan and purchased plant and machinery with a credit union loan. The Appellant provided two credit union loan agreements. However, these two documents were the same. He gave evidence that the agreement was for a loan for plant and machinery but also stated it was used for the purchase of **[Location Redacted].** When asked why he exhibited two credit union loan application forms he stated that "One is savings and one is a loan." This statement makes no sense. The Appellant later admitted that there was only one loan on Day 2.

*Alleged sale of [**Business Name Redacted**]*

4.40. There was no reliable or credible evidence of the €10,000 purported to have been received from the sale of **[Business Name Redacted].** This is alleged to be evidenced by a bank draft made payable to **[Name Redacted].** That the sale of this business allegedly by the Appellant to **[Name Redacted]** could somehow be evidenced by a bank draft made payable to **[Name Redacted]** is simply incredible.

Alleged Savings

4.41. The Appellant submitted two different spreadsheets of the alleged savings he made. The Appellant claimed to have savings of €17,000 in the credit union but his documents show that on 8 January 2008 he had savings of €19,880.34, but that withdrawals of €7,524 and €12,255 were made on 9 January 2008.

4.42. The Appellant included plant hire in the sum of €70,000 with no evidence to support the assertion. Moreover, the submission that savings could include plant hire does not make any sense.

4.43. The Appellant referred to savings of €3,134 paid by **[Company Name Redacted]** but this was actual income he received from a policy when he was out of work due to injury. It must be assumed that the Appellant would have actually required that money to live on if he was not earning at the time and that this money could not have been savings.

4.44. The Appellant submitted a hearsay document listing what purported to be stud fees. No returns were made in respect of this alleged income which arose outside of the year of assessment in any event. A return of this income would have been required in order to claim the exemption for stud fees available at the time. Moreover, this alleged income relates to 1998-1999 which is not subject to this

appeal. The document presented by the Appellant to support the contention he earned stud fees was illegible.

4.45. The Appellant had included a **[Model Redacted]** jeep, sold for €12,000 but later gave evidence that this was a courtesy vehicle from **[Business Name Redacted].**

4.46. The Appellant said that he sold a **[Model Redacted]** Mercedes, for €8,000 on Day 1 of the hearing. However, on Day 2, the Appellant failed to provide any evidence in support of this claim.

4.47. The Appellant stated that his father in law paid for his wedding reception, but no evidence was given as to who paid for all of the other wedding necessities such as a wedding dress, attire for the wedding party, photographer, wedding jewellery, music and honeymoon.

4.48. The Appellant included a cheque for €3,000 from **[Branch Name Redacted]** Credit Union for sale of dogs however but the supporting documentation provided refers to the "sale of gates".

4.49. On Day 2, the Appellant abandoned his assertion that his Aunt **[Name Redacted]** left him €18,500 even though he had undertaken to bring a copy of her will on Day 1.

4.50. There was no evidence of the Appellant receiving the lotto proceeds referred to in the list furnished. Moreover, the Appellant gave no evidence of his net gain on lotto wins, if any, on the assumption that statistically, the Appellant would have had to purchase a large number of lotto tickets in order to enjoy the winnings he says he did. The Appellant stated on Day 2 that his bank account statements would support this version of events but failed to furnish the bank statements.

4.51. The Appellant's evidence of his post office savings was questionable to say the least. There was a difference of 20 years between the two copies of post office books. There was no evidence that these books actually belonged to the Appellant.

Miscellaneous

4.52. The Appellant failed to provide evidence of mortgage arrears which is referenced at page 6 of his outline of argument.

4.53. The Appellant declared income from his kennels in 2011 and 2012 but there was a suggestion in his oral evidence that this income may have gone back to 2005 which he had not declared.

4.54. The Appellant failed to provide evidence of maintenance that he paid.

4.55. The Appellant stated that in reference to the sale of pups, his accountant told him to lodge the proceeds to his bank account and keep a receipt book. The Appellant failed to produce any evidence to support this and said the evidence was with **[Name Redacted]** or with the Criminal Assets Bureau.

4.56. The Appellant had no evidence to support the alleged purchase of a horse he had, **[Name Redacted],** save that it might show on his bank statements.

4.57. The Appellant referred to a conservatory in passing and there is no evidence as to how this was paid for.

4.58. The Appellant referred to the sale of an antique carriage for the first time on Day 2 which he said he sold for €8,000 which must have had some purchase and/or repair costs.

Vehicles Bought & Sold for Cash

4.59. The Appellant had a significant turnover of vehicles during the period in respect of which he paid VRT. The records maintained by the Department of Transport to assess the values of the vehicles owned by the Appellant show the value of the vehicle when registered by the Appellant. The Appellant purchased over twenty motor vehicles between 2003 and 2012. Of fourteen vehicles on which VRT was paid, VRT was paid in cash on all but three of the vehicles registered to the Appellant.

4.60. The information procured from that Department show how much the Appellant paid for the vehicles and calculates the approximate value of the vehicles when sold on.

4.61. The Appellant did not declare a trade in motor vehicles in any year except his 2007 IT return, which shows a profit of €2,479 from motor sales.

4.62. The Appellant admitted that he had a TAN number and motor dealer trade plates. Yet the Appellant's oral evidence was initially that he was not running a car business and he then went on to say he was trading but did not operate a garage. While referring to how he could purchase vehicle **[Registration Number Redacted]** while his taxable income was €11,707, he stated that he had a motor trade policy while operating his plant hire business. However, this plant hire business was not in operation in 2011.

4.63. The Appellant disagreed with the Department of Transport valuations for his cars but did not provide any credible or reliable evidence to displace those valuations

4.64. The Appellant did not have the means to purchase the volume and cost of the vehicles he purchased during the period. By way of example, in 2005, the Appellant bought two cars, one of which was valued at €22,955 and the other was valued at €19,998, a cumulative value of €42,953. In 2005, the Appellant had a declared taxable income of €30,217 and paid tax of €3,804 which left take home pay of €26,413 out of which the Appellant had to maintain his five children, his mortgage payments and everyday living expenses.

4.65. In particular, the Appellant paid €10,000 in VRT 2006 when he had take home pay of €20,584. Also in 2012, the Appellant purchased vehicles worth €28,000 when his take home pay and that of his wife's was €14,200.

4.66. The Appellant paid VRT of €10,000 on the import of **a [Model Redacted**] in 2006. This sum would have represented almost 50% of his net income in that year. When asked to provide evidence of this payment, the Appellant stated it would be clear from his bank statements, which he refused to produce.

4.67. The Appellant claimed that in 2005, the **[Registration Number Redacted] [Model Redacted]**, cost €8,000 and VRT was €6,000. This would mean that the Appellant paid an extraordinarily high rate of VRT, at 75%, when compared to alleged purchase price.

4.68. The Appellant claimed that he paid for the **[Model Redacted] [Registration Number Redacted]** purchased in 2006 with **the [Model Redacted] [Registration Number Redacted],** even though the [**Model Redacted]** purchased in 2006 was purchased 6 months before the was sold. He also stated in respect of this car that it was a category B write off, and that was why it was so cheap. However, he stated a number of times:

"After I paid for it problems I identified that there was problems with it. It wasn't performing properly so I checked it out."

4.69. This indicated that he was unaware that there was any problem with the car when he purchased it.

4.70. The Appellant's submission that he did not know that he could appeal significant sums of VRT is not credible. It is also not credible that the Appellant purchased vehicles which were not roadworthy on which he paid market value VRT and did them up in his own time, at no cost, and subsequently sold them on for significant profit.

4.71. The Appellant's legal submissions assert "there is no evidence to suggest that vehicles were not bought for less than the market value, at the year of purchase" and the Respondent absolutely concurs with this submission.

4.72. Leaving aside the issue of whether or not the Appellant was trading in motor vehicles, it is the Respondent's submission that the Appellant was spending significant sums on vehicles which were beyond his declared means.

4.73. During the Appellant's evidence he stated that he had use of car as [**Registration Number Redacted]** "a courtesy" while keeping an eye on **[Business Name Redacted]** operations on **[Location Redacted].** Yet in correspondence received by way of email from the Appellant's solicitor, [Name Redacted], on 11 June 2019 entitled "Vehicle Purchases 2003 – 2012" it is stated that the purchase price of this vehicle was €3,000.

4.74. The Appellant stated he was in possession of trade plates, yet his evidence was the records show him as the owner which indicated he had to transfer ownership. This is inconsistent with holding trade plates.

4.75. The Appellant stated that vehicles **[Registration Number Redacted]** and **[Registration Number Redacted]** were given to him in lieu of money he was owed for the return **of [Registration Number Redacted]**. He stated he only realised there were issues with the **[Registration Number Redacted]** after he paid the VRT of €10,000 and used the vehicle for three years. The Appellant asserted he received the vehicle mentioned in return for the faulty car. But then he stated that he kept the **[Registration Number Redacted]** carried out repairs and sold it for cost i.e. €10,000 he was given this car in lieu of money he was owed. The Appellant stated he was chasing **[Name Redacted]** for three years to remedy the situation and he is

now deceased. The Appellant's version of events that he received two vehicles in exchange for one three years after he received the first vehicle is not credible.

4.76. The Appellant was not at all "frank, honest and quite transparent in his dealings with the vehicles concerned" in the course of the hearing, he attempted to distract and confuse without actually relying on any credible or reliable evidence to support the assertions he was making.

Properties in Spain

4.77. The Appellant initially denied owning any property in Spain on Day 1.

4.78. He then attempted to assert that the properties were bought for his brother and they were to be transferred to his niece for her inheritance.

4.79. The Appellant also stated that he gave his brother and wife a power of attorney to enter into these purchases, but this is inconsistent with his version of events that the properties were purchased for his brother. In any event, the Appellant submitted no evidence of any power of attorney.

4.80. The Appellant purchased **[Property Name and Location Redacted]** on 4 September 2009 for €150,000 in respect of which he said he obtained a part-mortgage. The Appellant failed to provide any documentary evidence to support this mortgage on or how it is being repaid.

4.81. **[Business Name Redacted]** (of which one the Appellants is a sole shareholder) purchased **[Property Location Redacted]** on 4 September 2009 for €55,000. The Appellant seemed to suggest he received €20,000 from his brother on 9 September 2005, four years earlier for this property.

4.82. **[Business Name Redacted]** (of which one the Appellants is a sole shareholder) purchased **[Property Location Redacted]** on 4 September 2009 for €25,000. The Appellant gave evidence that this was owned jointly with his brother but there is nothing to support this assertion by the Appellant.

4.83. **[Business Name Redacted]** and both the Appellant and his wife purchased **[Property Location** Redacted**] [Date Redacted**] for €123,177. The Appellant stated that he had a 100% mortgage on this property but he provided no evidence of this mortgage nor does there appear to be any charge registered on the property.

4.84. The Appellant admitted receiving rental income from foreign property.

Hearsay evidence

4.85. The Respondent takes issue with the significant hearsay evidence tendered by the Appellant. In particular, the Respondent contests the veracity of the following documents contained in the Appellant's booklet:

a) copy of stud book earnings is not relevant to the years of assessment (referring to 1998-1999) but goes towards the credibility of the Appellant and the evidence he proffers. This book could belong to anybody and could have been written at any time;

b) In relation to the purchase agreement for **[Property Name Redacted] there** is no reason why **[Name Redacted]** could not have come to give evidence. The Respondent does not accept the veracity of this document in the absence of any oral evidence by **[Name Redacted].**

c) The loan application form for **[Branch Name Redacted]** Credit Union. Apart from the fact that the Appellant purported to use the loan to justify two separate purchases namely the property **at [Location Redacted]** and plant and machinery, it was not even clear that the copy provided refers to the Appellant;

- the Appellant was unable to provide the original invoice from **[Business Name Redacted]** and only had a copy on Day 2 of the hearing. It is not clear why the Appellant would only have a copy and not the original. The Respondent does not accept the veracity of this document and the Appellant has provided no other evidence (such as a bank statement evidencing the alleged payment of this money to **[Business Name Redacted]** to support his version of events. This handwriting appears to be the Appellant's own. The Appellant's hand writing appears to have two distinguishable features **[Description Redacted].**

- the use of commas to separate days, months and years when writing dates e.g.01,01,2001;

d) two different pen types were used in the invoice from **[Business Name Redacted].** Furthermore, only a copy was provided which is illegible. No valid reason was given as to why **[Name Redacted] of [Business Name Redacted]** could not come to give evidence. The Respondent does not accept the veracity of this document in the

absence of any oral evidence by a representative from **[Business Name Redacted]** The Respondent is at a loss as to the relevance of a leasing agreement between **[Name Redacted]** and AIB but submits that the best person to give evidence as to the relevance of this document is **[Name Redacted];**

e) the bank draft for the sale **of [Business Name Redacted]** is simply a draft made payable to the Appellant and could have originated from his own funds. The Respondent did not accept that this draft originated from **[Name Redacted],** or whomever it is the Appellant says he sold this business to.

f) the email from **[Name Redacted]** and draft payable to **[Name Redacted].** In the absence of oral evidence from **[Name Redacted],** this is hearsay. Moreover, the purported email from **[Name Redacted]** is only an extract (and the requesting email from the Appellant has not been furnished) and refers to the purported date of sale as being 25 January 2004 whereas the draft is dated 25 November 2004. The Respondent does not accept the veracity of this document in the absence of any oral evidence **by [Name Redacted];**

g) the Respondent does not accept the veracity alleged letter from **[Name Redacted]** relating to the payment of the wedding reception in the absence of any oral evidence by **[Name Redacted];**

h) the alleged agreement of the sale **of [Business Name Redacted] to [Appellant's Brother's Name Redacted]**. The Respondent does not accept the veracity of this document in circumstances where the Appellant's oral evidence on Day 1 was that he **sold [Business Name Redacted] to Name Redacted. This** handwriting appears to be the Appellant's own;

i) the Respondent does not accept the veracity the horse sales document to an abattoir in the absence of any oral evidence from **[Name Redacted].** Moreover, the originals of these documents were not produced, and it is not clear why words on this document are scratched out;

j) the Respondent does not accept the veracity of the letter from **[Name Redacted]** noting that his brother **[Name Redacted]** had an outstanding debt to the Appellant before his death in the absence of any oral evidence from **[Name Redacted].** No reason was given by the Appellant as to why **[Name Redacted]** could not give oral evidence in support of his assertions;

k) the Respondent does not accept the veracity of car purchase documents in the absence of any oral evidence from **[Persons' Names Redacted]** Again, this handwriting appears to be the Appellant's own. In particular, the Respondent does not accept that the invoice from **[Business Name Redacted]** refers to the purchase of the vintage Mercedes in the absence of oral evidence as to its veracity. The Respondent also queries the veracity of the alleged documents from **[Business Name Redacted**] – one being a typed letter and the second being a written note on a pro forma invoice. Why not include both on the one typed letter as both appeared to have been made on the same day, 25 November 2018;

l) the Appellant only supplied copies of two extracts of the post office books which at best can only represent a snapshot of what happened in these accounts. Moreover, there is no evidence that these post books even belong to the Appellant;

m) there was no evidence that lotto winnings actually belonged to the Appellant;

n) the Appellant admitted writing the documents he tendered in evidence as purported witness statements;

o) the emails handed in by the Appellant, to **[Solicitor's Name Redacted]** and to the Tax Appeals Commission to summons **[Officer's Name]** of CAB, are also questionable. These emails are listed as being sent to 'info' and 'solicitors' and there is no evidence of who these emails were actually sent to.

4.86. the Respondent accepts that the Commissioner has a greater discretion to admit hearsay evidence than a court would but in deciding whether or not to admit such evidence, it is submitted that the Commissioner must carry out a careful balancing act so that in admitting such evidence, the Commissioner does not "act in such a way as to imperil a fair hearing or a fair result. I do not attempt an exposition of what they may not do for, to quote the frequently-cited dictum of Tucker L.J. in Russell v. Duke of Norfolk:

> *"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth Kiely v Minister for Social Welfare (No 2) Henchy J [1977] IR 267 at 281"*

4.87. The volume and nature of the documents purported to be admitted by the Appellant, in the absence of any independent oral evidence to support the veracity of those documents must be considered with appropriate caution and circumspection. It is the Respondent's strong contention that the veracity of these documents, in particular the handwritten documents prepared by the Appellant himself, cannot be relied upon by the Commissioner in assessing the Appellant's liability.

4.88. The Respondent objects to the admission of evidence by way of submission as set out in the section entitled 'Analysis of Return of Accounts'. The Appellant failed to give any evidence in relation to the income tax returns he made and failed in particular to give any evidence in relation to his bank accounts. The attempt now by the Appellant to submit evidence by way of legal submission is entirely unfair to the Respondent in circumstances where the Respondent has not been given any opportunity to test this evidence by way of cross-examination.

4.89. It is also incredible that the Appellant now has the audacity to refer to funds coming into and out of his bank accounts when he has not put his bank statements before the Tax Appeals Commission, particularly when he was expressly given the opportunity in the course of the appeal but positively decided not to do so.

4.90. Moreover, it is an abuse of the significant goodwill already shown by the Tax Appeals Commission to the Appellant whose evidence in chief actually concluded on Day 1 of the hearing and which concluded for a second time on Day 2 for the Appellant to now attempt to introduce new evidence in this way.

4.91. In particular, reference is made to the following bank accounts which have not been put before the Tax Appeals Commission and in respect of which the Respondent has not been given the right to cross-examine the Appellant on:

a) [Account Name Redacted];
b) [Account Name Redacted];
c) BOI cash save account; and
d) [Branch Name Redacted] credit union.

4.92. Reference is also made to 'profits' with no evidence ever having been given by the Appellant as to how such a figure was arrived at

4.93. Furthermore, figures given appear to include periods outside the scope of the appeal.

4.94. The Appellant also suggests in his legal submission that the Respondent "*took into account* the *Appellant's wife's income when they were not married thus giving a false account of income earned*". The Appellant put forward absolutely no evidence in support of this assertion.

4.95. Finally, the Respondent takes particular exception to the submission made as follows:

> *"The Appellant can fully account for €1,135,783 million in income in an open, transparent and fully compliant manner…"*

4.96. Nothing could be further from the truth. The Appellant has deliberately withheld relevant information from the Tax Appeals Commission, and deliberately failed to adduce independent oral testimony to support the very many versions of unbelievable events that he has put forward.

4.97. The inflammatory suggestions made in the Appellant's legal submissions that the Respondent "*misled the tribunal*" and that the "*evidence of Assessment is inconsistent with the standards of fairness*", "*based on guess work*" and that the Appellant was "*deprived of the opportunity to test the veracity of the evidence*" is simply absurd and is merely a sorry attempt by the Appellant to detract from the fact that he was not able to disprove the assessments raised on him by the Respondent.

4.98. The Appellant was given every opportunity and facet of fair procedure by the Tax Appeals Commission and was in effect, allowed to run his case twice. The Appellant was entirely the author of his own downfall – it was open to the Appellant to give detailed evidence as to his own accounts and his bank statements and he chose not to do so. The Appellant failed to give cogent, credible or reliable evidence as to his tax affairs for the years in question and failed to adduce the best possible evidence to discharge his burden of proof. Accordingly, it is the Respondent's submission that his appeal must fail.

Respondents conclusion

4.99. The Appellant has not produced satisfactory evidence that he was not in receipt of additional undisclosed income. He has failed to discharge the burden of proof and his appeal should fail.

Analysis

Jurisdiction of the Appeal Commissioners

5.1. An appeal conducted by way of hearing pursuant to TCA, 949AH, is adjudicated by examination of the appellant. Thereafter the Appeal Commissioner, in accordance with TCA, section 949AK, is required to determine whether the assessment should be:

(a) reduced,
(b) increased, or
(c) where neither paragraph (a) nor (b) applies, determine that the assessment stand.

5.2. In compliance with these obligations, this appeal proceeded by way of 2 case management conferences and 3 days of hearings at which the Appellant was represented by Counsel.

Appellant's Submissions

5.3. The submissions made by Counsel for the Appellant are utterly bizarre in particular where it was asserted that:

(a) the Appellant was compromised in this appeal by the seizure and retention of original documentation by the Respondent when in fact all information was returned to the Appellant on 28th May 2015;

(b) the funds to purchase properties in Spain arose from legitimate sources but yet in evidence the Appellant initially denied that he owned any properties in Spain;

(c) the Respondent had retained and was unwilling to furnish the Appellant with the purported contract for the purchase of the property, **[Location Redacted]** procured from the Appellant's solicitor by way of Court order. However, there was insufficient evidence to demonstrate that the Appellant had sought such a document from his own solicitor. Furthermore, at the hearing on 24th July 2019, the Respondent provided the Appellant with the full conveyance file.

(d) notwithstanding the above, and contrary to the Appellant's assertions, there was no contract in the file and indeed it was uncertain whether an actual

contract existed as the Appellant was unable to provide any further clarification;

(e) the Appellant was not in a position to provide bank statements as those statements were in the possession of the Appellant's accountants. However, such an assertion is entirely inaccurate as at the hearing on 24th July 2019, Counsel for the Appellant confirmed that both the accountant and indeed the Appellant had the bank statements;

(f) the Appellant could be somewhat compromised due to the failure of the Tax Appeals Commission to allow a further day of hearing to permit the Appellant's accountant to give evidence. This assertion is wholly inappropriate as the accountant:

(i) attended at a case management conference on 8th February 2018 and was fully aware of the Appellant's obligations;

(ii) had notice of the case management conference on 26th July 2018;

(iii) had notice of a hearing set for 19th February 2019 which was adjourned by the Appellant's solicitor on 12th February 2019 to enable the accountant prepare a detailed report which would be circulated to all parties in advance of the next hearing. However, such a report was never furnished;

(iv) had a meeting with the Respondent specifically postponed (in relation to a different taxpayer) to facilitate his attendance at the hearing 28th June 2019. Notwithstanding that postponement, the accountant failed to attend the hearing, and

(v) should have been in possession of the bank statements when preparing the Appellant's accounts and tax returns but certainly was in possession of those documents from January 2019 when an affidavit in the proceeds of crime application was furnished to the Appellant together with all bank statements.

(g) the Respondent had interfered with potential witnesses is not only disingenuous but it is also contemptuous. While the Respondent had contacted the Appellant's accountant, who was fully aware of these

proceedings, such contact was made to facilitate the Appellant to ensure that his accountant could attend the hearing on 28th June 2019 and thereby postpone a meeting that the accountant had with the Respondent in relation to a different client on the same day;

(h) the accounts and bank statements contained sufficient evidence to support the purchase of **[Property Location Redacted]** notwithstanding that the Appellant chose not to introduce those documents into evidence;

(i) the Respondent had access to the contract for either the purchase or sale of the property at **[Property Location Redacted]** and had refused to provide copies to the Appellant. However, there was no evidence that the Respondent had those contracts. Furthermore, no explanation was provided for the failure of the Appellant to produce such documents.

5.4. Finally, the Appellants' submissions are not only contrary to statute but fundamentally depart from the settled law in relation to the fundamental principles of the rules of evidence.

Car Dealing

5.5. It is clear from the evidence that the Appellant purchased over twenty motor vehicles between 2003 and 2012. Of the fourteen vehicles on which VRT was paid, VRT was paid in cash on all but three of the vehicles registered to the Appellant. The information procured from that Department of Transport show how much the Appellant paid for the vehicles and calculates the approximate value of the vehicles when sold on.

5.6. The Appellant admitted that he had motor dealer trade plates however in his oral evidence said that he was not running a car business.

5.7. The Appellant also disagreed with the Department of Transport valuations for his cars but did not provide any credible or reliable evidence to displace those valuations.

5.8. I therefore agree with the Respondent that the Appellant was not frank, honest and transparent in his dealings with the vehicles concerned. On the contrary, his evidence was disjointed and confusing. Furthermore, the Appellant was unable to provide any credible or reliable evidence to support his assertions.

5.9. Finally, in accordance with the Badges of Trade and indeed with the settled law on the criteria to determine the existence of a trade, it is very clear that the Appellant was

carrying on a trade in car dealing not only with reference to the number of vehicles purchased but also the extent of supplementary work carried out to repair the vehicles for subsequent sale.

Properties in Spain

5.10. The Appellant initially denied owning any property in Spain on Day 1 of the hearing. Once evidence was adduced to the contrary, he made assertions that his deceased brother held an interest in some of the properties. His evidence was that the entitlement to some those properties was subject to litigation between certain beneficiaries. However, on Day 2 of the hearing no further evidence was adduced with regard the existence or indeed resolution of the dispute. Furthermore, there was no evidence that his brother held any interest in the properties.

5.11. The Appellant also failed to provide any evidence that the properties were acquired with the assistance of a mortgage or indeed how those mortgages were being serviced.

Hearsay

5.12. A significant portion of the Appellant's evidence was in the form of hearsay documents. While an Appeal Commissioner may "*admit evidence whether or not the evidence would be admissible in proceedings in a court in the State,"* pursuant to TCA, section 949AC, it is necessary to conform with the basic principles of the rules of evidence.

5.13. The law of evidence concerning hearsay includes, *inter alia*, a document generated out of court or tribunal by another person who is not produced as a witness to prove the truth of what is asserted in the document. While there are many reasons why hearsay evidence should be excluded, the lack of opportunity to cross-examine is considered to be the principle one.

5.14. Administrative tribunals are not necessarily restricted by the rule against hearsay. However as note above, TCA, section 949AC gives an Appeal Commissioner certain flexibility to admit hearsay evidence. However, where such evidence is admitted, tribunals are required to observe natural justice as espoused by Hench J. in *Kiely v Minister for Social Welfare* (No. 2), [1977] IR 267. In that case, the Supreme Court held that an appeals officer in a social welfare tribunal was wrong to accept the hearsay evidence of a doctor, in the form of a written opinion, in rebuttal of the oral testimony of two other doctors when considering a claim for a death benefit under the Social Welfare Acts. In delivering judgment, Henchy J said at pg 281:

> *"Of one thing I feel certain, that natural justice is not observed if the scales of justice are tilted against one side all through the proceedings. Audi alteram partem means that both sides must be fairly heard. That is not done if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross-examination. The dispensation of justice, in order to achieve its ends, must be even-handed in form as well as in content. Any lawyer of experience could readily recall cases where injustice would certainly have been done if a party or a witness who had committed his evidence to writing had been allowed to stay away from the hearing, and the opposing party had been confined to controverting him simply by adducing his own evidence. In such cases it would be cold comfort to the party who had been thus unjustly vanquished to be told that the tribunal's conduct was beyond review because it had acted on logically probative evidence and had not stooped to the level of spinning a coin or consulting an astrologer. Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice.*

5.15. The Respondent accepts that the Appeal Commissioner has a greater discretion to admit hearsay evidence. However, in deciding whether or not to admit such evidence, the Respondent submitted that I must carry out a careful balancing act.

5.16. In this regard, the volume and nature of the hearsay documents submitted by the Appellant cannot be accepted specifically in the absence of any independent oral evidence to support the veracity of those documents. Furthermore, in light of the principles espoused by Henchy J. in *Kiely,* to admit such documents would have the effect of denying the Respondent an opportunity to cross-examine and test the veracity of such evidence that would create an imbalance and therefore deprive the Respondent of the entitlement to participate in a balanced and fair hearing.

5.17. Finally, the Appellant was given every opportunity and afforded fair procedures when allowed a second hearing day in which he could give evidence in chief.

Evidence

5.18. The Appellant's evidence, given over a period of 11 hours was disjointed, contradictory and misleading. In fact, it was difficult to find any aspect of the Appellant's evidence that was credible.

5.19. Furthermore, it was open to the Appellant to give detailed evidence as to his own accounts and his bank statements but he chose not to do so. The Appellant also failed to give cogent, credible or reliable evidence as to his tax affairs and failed to adduce the lawful evidence to discharge his burden of proof.

Burden of Proof

5.20. The general principle of "*he who asserts must prove*" is the civil burden of proof imposing an obligation to sustain an assertion or proposition by positive argument. The default position in tax litigation requires the taxpayer to provide sufficient evidence to reduce or displace a tax assessment. In *Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, Charleton J. stated:

> *"The burden of proof in this appeal process, is as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable"*

5.21. In light of all of the opportunities afforded to the Appellant, a decision was taken not to adduce his financial statement, bank statements or indeed to provide any witness in support of his appeal. The Appellant has therefore frustrated his own appeal and any prospect that he may have had to have the assessments to tax reduced.

Time Limits

5.22. The Appellant submitted that full and true tax returns were submitted disclosing all material facts and therefore the Respondent is not entitled to make an assessment for any year prior to 2011 pursuant to TCA, section 959AA(1).

5.23. However, as the assessments made relate to the years of assessment prior to 2013, TCA, section 955 is relevant. Therefore TCA, section 955(2) provides:

> *(a) "Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts*

necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and -

(i) No additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii) No tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(b) Nothing in this subsection shall prevent the amendment of an assessment

(i) Where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),

(ii) To give effect to a determination on any appeal against an assessment,

(iii) To take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv) to correct an error in calculation, or

(v) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid where appropriate in accordance with any such amendment and nothing in this section shall affect the operation of section 804(3)."

5.24. TCA, section 955(2)(a) restricts the amendment of a tax assessment to 4 years from the year of assessment in which a fully complaint tax return was filed. However pursuant to TCA, section 955(2)(b,) no such time limit applies where a tax return did not contain a full and true disclosure *"of all material facts necessary for the making of an assessment."*

5.25. Therefore, contrary to the Appellant's submissions, it is clear from the evidence that a full and true disclosure of all material facts was not made in the Appellant's tax returns.

As such, the Respondent was entitled to amend the assessments in respect of all years under appeal.

Notices of Intention to dismiss

5.26. Due to the failure of the Appellant to comply with a direction from the Tax Appeals Commission, the Respondent made several applications to have the Appellant's case dismissed pursuant to TCA, section 949AV. However, before an appeal can be dismissed, the appellant must be afforded an opportunity to provide an explanation as to why an appeal should not be dismissed.

5.27. In general, it is difficult to give due weight to the assortment of explanations furnished by appellants and invariably the most expeditious course of action is to list the matter for hearing at the first available opportunity. In this regard, the following highlights the attempts to which the parties were facilitated:

a) case management conference on 8th February 2018;
b) case management conference on 26th July 2018;
c) hearing set for 3rd September 2018 - the parties were not available;
d) hearing date set for 27th September 2018 - the Appellant was not available;
e) hearing 15th October 2018 – proceeded accordingly;
f) hearing date set for 14th December 2018 - Respondent was not available;
g) hearing date set for 19th February 2019 – Appellant was not available;
h) hearing 28th June 2019 – proceeded accordingly, and
i) hearing 24th July 2019 – proceeded accordingly

6. Conclusion

6.1. In light of all of the opportunities afforded to the Appellant, he decided not to adduce his financial statements, bank statements or indeed to provide any witness in support of his appeal. The Appellant has therefore frustrated his own appeal and any prospect that he may have had to have the assessments to tax reduced. Furthermore, I found it difficult to accept any aspect of the Appellant's evidence.

6.2. Therefore, in accordance with the additional amendments to the assessments proposed by the Respondent, I have determined that the assessments should be reduced as follows:

Year	Additional miscellaneous income	Additional income tax
2002	€24,609.00	€11,961
2003	€168,140.00	€81,101
2004	€41,218.00	€21,484.78
2005	€74,783.00	€37,281.33
2006	€54,416.00	€24,715.35
2007	€6,233.00	€2,564.75
2011	€129,293.00	€61,324.76
2012	€102,626.00	€56,100.12
TOTAL	**€601,318.00**	**€296,533.09**

6.3. This appeal is therefore determined in accordance with Taxes Consolidation Act 1997, section 949AK

Conor Kennedy
Appeal Commissioner
26th August 2019

No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.