



116TACD2023

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) pursuant to section 933 of the Taxes Consolidation Act 1997, as amended (“TCA 1997”) against an amended notice of assessment to income tax dated 10 August 2022 raised by the Revenue Commissioners (“the Respondent”), in respect of the tax year ending 31 December 2008, showing an overpaid balance of €43,464.09.
2. The Respondent stated that, having offset other liabilities, the Appellant was refunded €35,389.95. The Appellant contends that he should be refunded the entirety of €100,000 preliminary tax paid by him for 2008. Therefore, the quantum under dispute in this appeal is €64,610.05.
3. The appeal proceeded by way of an oral hearing on 30 May 2023.

Background

4. On 26 January 2012, the Respondent raised a notice of assessment to income tax against the Appellant for 2008 in the amount of €124,370.11. This notice of assessment was not appealed.

5. On 10 August 2022, the Respondent raised an amended notice of assessment to income tax for 2008. The amended assessment provided that the amount of income tax owed was €56,535.91. As the Appellant had paid preliminary tax of €100,000, he had an overpaid balance of €43,464.09.
6. On 8 September 2022, the Appellant appealed the amended notice of assessment to the Commission. In his notice of appeal, he stated *inter alia* that “*There is no way leave in place on the site in [REDACTED] planning for [REDACTED] houses. The €100,000 paid to the Collector General for the site in [REDACTED] is owed back to me in full.*”
7. The appeal proceeded by way of a remote oral hearing on 30 May 2023. The Appellant appeared in person. The Respondent was represented by counsel.

Legislation

8. Section 1008 of the TCA 1997 states *inter alia* that

“(1) In the case of a partnership trade, the Income Tax Acts shall, subject to this Part, apply in relation to any partner in the partnership as if for any relevant period -

(a) any profits or gains arising to that partner from the trade and any loss sustained by that partner in the trade were respectively profits or gains of, and loss sustained in, a trade (in this Part referred to as a "several trade") carried on solely by that partner...

(2)(a)(i) For any year or period within the relevant period the amount of the profits or gains arising to any partner from that partner's several trade, or the amount of loss sustained by that partner in that trade, shall for the purposes of subsection (1) be taken to be so much of the full amount of the profits or gains of the partnership trade or, as the case may be, of the full amount of the loss sustained in the partnership trade as would fall to that partner's share on an apportionment of those profits or gains or, as the case may be, of that loss made in accordance with the terms of the partnership agreement as to the sharing of profits and losses...

(3)(a) For the purposes of subsection (2) and subject to paragraph (b), the full amount of the profits or gains of the partnership trade for any year or period, or the full amount of the loss sustained in such trade in any year or period, shall, subject to section 1012, be determined by the inspector..."

Submissions

Appellant

9. In his Statement of Case, the Appellant stated *inter alia* that “*There was no Way Leave in place on the site in [REDACTED] .. [REDACTED] sent false returns to Revenue for 2008 I refused to sign...The €100,000 paid to the Collector General for the site in [REDACTED] is owed [back] to me in full. There is no CGT and never was.*”
10. There were letters and other documents attached to the Statement of Case which alleged a breakdown in relations between the Appellant and his brother, [REDACTED]. There were also documents concerning the Appellant’s arguments about the site in [REDACTED] as well as a valuation of land in [REDACTED]. There were also allegations made about the behaviour of a number of parties, and evidence of complaints made to various bodies.
11. At the hearing, the Appellant reiterated his contentions about the way leave. He believed he was entitled to the return of the entirety of the €100,000 preliminary tax for 2008 because of the lack of the way leave and a disagreement about the valuation of the site. He stated that he did not sign the partnership accounts “*because they weren't right, they didn't reflect, and there was no wayleave in place on the site... which comes back to where the income tax return was wrong when it was sent in at the beginning.*”

Respondent

12. In its Outline of Arguments, the Respondent submitted the following:

“The Appellant was in the relevant year a farmer, a director of two limited companies, [REDACTED], and was, with his brother, [REDACTED], a partner in a partnership, [REDACTED], partnership reference [REDACTED]. The partnership built and sold property.

In summary, the liability to income tax was assessed in the following circumstances: The partnership filed a Form 1 for 2008 disclosing minimal taxable income of the partners, on the face of which it was stated that the Appellant herein refused to sign the accounts. The partners were audited, and in the course of the audit the partnership accounts were examined: they disclosed partnership profits of €1,019,354. An assessment was raised on the Appellant on the basis of those partnership profits in 2012. The audit of the Appellant’s partner was concluded with an agreed reduced income tax liability, and in 2022 an amended assessment to income tax was raised on the Appellant to give him the benefit of that agreement with his partner – i.e. to

significantly reduce the income tax liability in line with the income agreed with his partner. It is that amended assessment which has been appealed.

The Appellant did not initially file an income tax return for 2008. On 4 February 2010, the Respondent issued an IT reminder letter for Income tax 2008 to the Appellant and Agent. The Respondent entered an Inspector Estimate on 25 January 2012 showing a liability amounting to €124,370.11 and a Notice of Assessment was issued to the Appellant and agent on 26 January 2012. A notice of Amended Assessment was issued by the Respondent to the Appellant on 10 August 2022 following a review of the tax return resulting in a reduced tax liability amounting to €56,535.91. A handwritten signed Form 11E dated 29 September 2009 was received by the Respondent by e-mail on 14 January 2023 showing the farm income only, all other sources of income were omitted making it an incomplete return. The Respondent had no record on any systems of receiving this manual handwritten form 11E prior to 14 January 2023.

An initial audit letter issued on 03 February 2010, for 2007 and 2008 income tax. This was later extended.

During the course of the audit, at audit interview, the Appellant confirmed that his sources of income were partnership income, schedule E income as a director of [REDACTED], [REDACTED], farming income and deposit interest in relation to the partnership.

During the course of the audit, multiple requests for further information were made, but were not complied with. The Appellant seemed to be in a dispute with his brother, and the little information provided by the Appellant seemed to be seeking to discredit his brother rather than address the issue of his income in the relevant year. The Appellant was represented by three different agents during the period 24 October 2006 to 17 April 2012 and had no agent representation thereafter.

The Partnership accounts disclosed partnership profits for 2008 of €1,019,354 (Profits from partnership accounts €1,026,170 less deposit interest recorded on face of accounts €6,816), to be shared equally between the two partners. Analysis of that position in the course of the audit, using VAT returns and bank accounts for reference, confirmed that the recorded sales in those accounts were relatively accurate.

On 16 January 2012, the Respondent raised an assessment for Capital Gains Tax for the year 2002 on the Appellant, arising from the disposal of sites. For the avoidance of doubt, that assessment is not the subject of the within appeal.

On 26 January 2012, a Revenue Officer raised an inspector's assessment to Income Tax for 2008 on the Appellant, on the basis of income of €259,950, being his 50% share of partnership profits of €519,900. In so doing, the Revenue Officer underestimated the partnership profits by approximately 50%. The Appellant had paid preliminary tax of €100,000 on 19 November 2008, and he was duly given credit for the payment, resulting in a balance due of €24,370.11. For the avoidance of doubt, that assessment is not the subject of the within appeal, although what is at issue in the within appeal is his income tax liability for 2008. That assessment was not appealed, and the Respondents duly sought to collect the liability.

[...]

On 14 September 2021 a meeting was held remotely, and the Respondent agreed to review the file and ascertain if any adjustments to the 2008 income tax liability should be made. A letter issued on 22 July 2022 setting out the outcome of that review, and agreeing to reduce the 2008 income tax liability.

On 10 August 2022, an amended assessment to income tax was raised on the Appellant, and a Notice of Amended Assessment to income tax issued, with an income tax liability of €56,535.91 based on the Case I assessable profit for the building partnership, consistent with the reduced partnership profit as per the settlement of the other partner's tax liability for 2008.

As the Appellant had made a preliminary tax payment of €100,000, this resulted in an overpayment for 2008 of €43,464.09. After offsets against income tax liabilities for 2002 to 2007, a refund of €35,389.95 was due to the Appellant, and it was duly refunded on 08 September 2022.

[...]

At issue here is a purely factual question: what was the partnership profit in 2008. The burden of proof rests with the Appellant to demonstrate that the partnership accounts are incorrect, and to demonstrate the correct partnership profit for 2008.

[...]

The Appellant seems to contend that the Partnership accounts are incorrect, and were drafted by the Appellant's brother to cause him issues with the Respondent.

This allegation is not credible, and is unsupported by evidence. The Partnership accounts were prepared before the audit. In the course of the audit they were

discovered, and were found to be reasonably consistent with the other material, such as VAT returns of the Partnership and the bank accounts of the Partnership.

No contradictory evidence as to the Partnership's actual profits has been produced by the Appellant.

It is not credible to suggest that the Partnership accounts were produced by one partner to increase the other partner's tax liability, given that in fact they gave rise to an increased liability to tax of both partners. The other partner in this case, the Appellant's brother, himself challenged his liability to income tax on the basis of the accounts. It is not credible to say that the Appellant's brother mis-stated the Partnership profit to harm the Appellant, when the same profit gave rise to the Appellant's brother's own increased tax liability."

13. The Respondent also submitted a summary of three tests it carried out against the partnership accounts, based on VAT filings compared to turnover, bank lodgements compared to turnover, and bank lodgements compared to VAT filings. It concluded that, on the basis of those tests, the partnership accounts were reasonably accurate.

Material Facts

14. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

- i) The Appellant was in partnership with his brother [REDACTED]. The partnership profits were to be shared equally between them. The partnership accounts for 2008, which were not signed by the Appellant, showed net profits of €1,019,354.
- ii) Following an audit, on 26 January 2012 the Respondent raised a notice of assessment to income tax against the Appellant in respect of the partnership profits for the year 2008 in the amount of €124,370.11. This notice of assessment was not appealed by the Appellant.
- iii) Following a further review, on 10 August 2022 the Respondent raised an amended notice of assessment to income tax against the Appellant in respect of the partnership profits for the year 2008. The amended assessment provided that the amount of income tax owed was €56,535.91. As the Appellant had paid preliminary tax of €100,000, he had an overpaid balance of €43,464.09. After offsets against liabilities were applied, the Appellant was refunded €35,389.95.

Analysis

15. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: *"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."*
16. The starting point in considering this appeal is to determine what the appeal is about. The Commissioner is satisfied that the appeal was brought on foot of the raising of the amended notice of assessment to income tax for 2008 on 10 August 2022. Therefore, it follows that this appeal is concerned with, and can only be concerned with, the amended notice of assessment to income tax for 2008.
17. In *Lee v Revenue Commissioners* [2021] IECA 18, Murray J stated that the jurisdiction of the Commission *"is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. This means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax."* It therefore follows that the Commission is not entitled to inquire into, and making findings about, issues that are not relevant to the charge to tax.
18. The Commissioner considers that the Appellant is under a fundamental misapprehension about the role and jurisdiction of the Commission in this appeal. His sole argument challenging the amended notice of assessment was that there was no way leave over a certain site in [REDACTED], and that therefore he had no liability to capital gains tax. However, this appeal is not concerned with capital gains tax, and therefore the status of the site in [REDACTED] or any other property, is not relevant to the appeal and is not something the Commissioner can consider in this Determination.
19. The only matter the Commissioner can consider is whether the Respondent was correct in raising the amended assessment to income tax. In considering this, the burden of proof rests on the Appellant to show that the Respondent was not correct; *Menolly Homes v Appeal Commissioners*. The Commissioner is satisfied that the Appellant has not met this burden. Firstly, the Commissioner notes that the amended notice of assessment actually reduced the Appellant's tax liability, compared to the original assessment raised in January 2012. The Appellant did not appeal against the original assessment, and no explanation was provided by him as to why he did not appeal against that assessment, but had appealed the amended assessment which reduced his liability. The Commissioner notes that there has been very extensive engagement between the parties

on various matters since 2010, as set out in the Respondent's Statement of Case of 29 November 2022, but does not consider it necessary to address that engagement for the purposes of this Determination, which is solely concerned with the amended notice of assessment of 10 August 2022.

20. More fundamentally, the Commissioner is satisfied that the Appellant has not challenged the figures on which the notice of assessment was based. He stated that he had not signed the partnership accounts because he did not accept them, but he did not provide alternative accounts or figures. Furthermore, he did not dispute the tests carried out by the Respondent on the partnership accounts which suggested to the Respondent that the accounts were reasonably accurate. The Commissioner agrees with the Respondent that the Appellant's suggestion that his brother artificially inflated the profits stated in the partnership accounts to leave the Appellant with an unfairly elevated tax liability is not credible. Therefore, the Commissioner concludes that there is no evidence before him that could enable him to find that the Respondent's amended notice of assessment was incorrect.
21. The Respondent submits that the assessment to income tax was in fact inaccurately low. The partnership accounts disclosed net partnership profits for 2008 of €1,019,354. These were to be divided equally between the Appellant and his brother. However, according to the Respondent, in the original notice of assessment, the Appellant's liability was mistakenly assessed on the basis of income of €259,950, which was approximately 50% lower than his income as stated on the partnership accounts. Subsequently, the Appellant's liability was further reduced on foot of a settlement agreement between the Respondent and his brother. Given this, the Commissioner asked counsel for the Respondent at the hearing whether the amended notice of assessment should be increased pursuant to section 949AK(1)(b) of the TCA 1997. Counsel stated that the Respondent was not seeking for the assessment to be increased, and therefore, notwithstanding the evidence that suggests that the Appellant was undercharged, the Commissioner will not direct any increase in the Appellant's liability.
22. Finally, the Commissioner notes that the Appellant has made very serious allegations against a number of named individuals, including officials of the Respondent and other professionals. The Commissioner has no jurisdiction to consider these allegations, which he is satisfied are irrelevant for the purposes of this Determination. Therefore, no details of these allegations have been set out herein.

Determination

23. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the amended notice of assessment dated 10 August 2022 to income tax for 2008, issued by the Respondent in respect of the Appellant, is correct. Therefore, the assessment that the Appellant had an overpaid balance of €43,464.09 stands.
24. The appeal is hereby determined in accordance with section 949AK of the TCA 1997. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Simon Noone
Appeal Commissioner
05th July, 2023.

The Tax Appeals Commission has been requested 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.