



Between

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against Notices of Additional Assessments to Income Tax. Those assessments which were issued by the Revenue Commissioners (hereinafter “The Respondent”) on 3rd December 2015 were as follows:

Year of Assessment	Quantum
1999/2000	€209,564
2000/01	64,196
2001	9,079
2002	<u>1,616</u>
Total	<u>€284,455</u>

2. This appeal also relates to Notices of Additional Assessments to Value Added Taxation (“VAT”) which were issued by the Respondent on 3rd December 2015 as follows:

VAT Periods	Quantum
1999	£43,445
2000/01	14,251
2001	<u>2 489</u>
Total	<u>£60,185</u>
Euro Equivalent	<u>€76,418</u>

3. The hearing of the appeal occurred over two dates on 19th February 2020 and 27th April 2023.
4. The Appellant was represented by Counsel and his solicitor. The Respondent was represented by Senior Counsel, its solicitor, one member of its staff and a retired member of its staff. In addition, the Commissioner heard sworn testimony from the Appellant and his expert witness, in addition to legal submissions from the parties’ representatives.

Background

5. The Appellant operated a Public House (“pub”), nightclub and a Petrol Station (“garage”) in his local village of ██████ in ██████ for many years.

6. In 1999, the Respondent notified the Appellant of its intention to conduct an audit on his businesses in respect of the year 1997/98. This audit was subsequently extended to cover the additional years 1998/99 and 1999/2000 following receipt of documentation under section 906A TCA 1997¹, in June 2010.
7. Prior to commencement of the audit, the Appellant and his accountant conducted a pre-audit of the relevant years. Arising from this review, the Appellant informed the Respondent that an additional VAT liability of circa. €7,500 arose for the periods in question and offered a settlement based on this amount.
8. The Respondent rejected this proposal and proceeded to conduct the audit on the Appellant's affairs. Following the audit conclusion, the Respondent raised additional income tax and VAT assessments for the years 1997/98, 1998/99 and 1999/2000 which the Appellant duly appealed.
9. The Appellant contended that the Respondent's figures were without foundation and appeared to be based on the performance of similar businesses in ████████ town. As such, the Appellant submitted that the Respondent, when it calculated the additional income tax and VAT liabilities following the conclusion of the audit, failed to take into account the 'unique nature' of his business.
10. The Appellant submitted that the unique nature of his business stemmed from the fact that his business operated in a small local village and his business suffered as a result of a very public dispute with the local ████████ which led to the boycott of his business by an element of the local population.
11. Following the Appeal hearing which found in favour of the Respondent, the Appellant appealed the Commissioner's findings to the Circuit Court. At that time², the Appellant was entitled to a *de novo* appeal in the Circuit Court under the provisions of section 942 TCA 1997.
12. The matter came before the Circuit Court in October 2008, where Buttimer J effectively dismissed the Commissioner's findings and the Appellant and the Respondent ("the

¹ Sections 906A, 907 and 908 TCA 1997 confer powers on an authorised officer of the Respondent to require a financial institution to provide information or access to books, records or other documents in relation to a taxpayer, in certain circumstances.

² The Finance (Tax Appeals) Act 2015, which commenced on 21st March 2016 removed the right of *de novo* appeals to the Circuit Court. Henceforth, appeals are only allowed on a point of law to the High Court under the provisions of section 941 TCA 1997.

parties”) subsequently agreed a settlement figure of €7,272. In coming to her findings Buttimer J stated³:

“[The Appellant’s business premises are situate] in a small village and in a John B Keane type scenario a quarrel erupted between the [REDACTED] and the publican [the Appellant] and the village divided. One only has to read the account of the District Court prosecution to gauge the depth of feelings. And it was very clear from the appeal that [REDACTED] still feels very strongly, even after all these years. It is irrelevant to this appeal and the years to which this appeal refers that [REDACTED] was charged with assaulting the [REDACTED] and appeared in the District Court in April ’97 and was acquitted in October 2000. The effect of a case like this in a village like [REDACTED] in the 1990s would be enormous and hugely divisive in my opinion. [REDACTED] says that his business struggled as a result, and I accept that.”

13. Following the Circuit Court settlement, the Respondent wrote to the Appellant on 28th March 2011. Within that correspondence it sought payment of the agreed sum of €7,272 in respect of the deemed under-declared VAT for the years 1997/98 to 1999/2000, interest of €5,760 and a penalty of €3,999 (total payable €17,031).

14. On 19th May 2011, the Appellant’s then solicitor wrote to the Respondent as follows:

“.. [REDACTED] instructs us that some years ago you travelled to [REDACTED] and interviewed [REDACTED] outside his premises in relation to VAT concerning his trading operations. [REDACTED] instructs that, in the course of the meeting, you sought payment from him of circa 12,500 punts on foot of alleged liability for VAT.

We are further instructed that when [REDACTED] challenged the figures and offered to have the matter reviewed by your accountant [sic], [REDACTED], you declined to proceed any further with the demand for VAT payments.

To assist us in advising [REDACTED] further in relation to the matter, we would be obliged if you might let us have details of any records or any memorandum held by you in relation to this meeting. Should the written consent of [REDACTED] be required to enable you consider this request and produce the documentation, please so advise and we will arrange for same to be submitted to you.”

15. The Respondent replied to this correspondence on 2nd June 2011 and stated:

³ *The Appellant v The Revenue Commissioners*. Transcript of judgement delivered by Judge Olive Buttimer, in Gorey Courthouse on [REDACTED] at pages 1-2, lines 21.

"...In relation to his income tax affairs I have met and corresponded with [REDACTED] a number of times over the years. I believe the earliest of these meetings was in the nineties and in so far as I can remember it related to arrears of tax. In relation to that meeting and in reply to your letter I will say the following:

- That is almost 20 years ago and I do not have clear recollection of the nature of the meeting.*
- I do not hold any papers or notes in relation to the meeting.*
- I do recall meeting [REDACTED] and that any difference of opinion we had was no more than normal where an amount of tax was in dispute or requested.*
- That at the time the matter was resolved and closed..."*

16. As the Appellant disputed the imposition of the interest and penalty charge imposed by the Respondent in its letter of 28th March 2011, further correspondence exchanged between the parties.

17. On 10th May 2012, The Respondent wrote to the Appellant's accountant. Within that correspondence, it stated that information was available which suggested the Appellant had income that had not been included in his 2010 Income Tax return. To establish the position, the Respondent sought various documentation and in particular requested the Appellant to:

"Identify and provide statements for all bank accounts held in his own name, held jointly with his wife and in her sole name. Please indicate which of these accounts were examined in preparation of the 2010 accounts".

18. As the Respondent still awaited documentation from the Appellant's agent on 2nd July 2012, it wrote to him on that date and stated:

"...In the absence of a satisfactory reply I propose to make a further application under section 906A TCA 1997 to obtain the information required.

I will delay the 906A application for 21 days from the date of this letter to allow your client time to reconsider the information provided.

A copy of this letter will issue to [REDACTED]".

19. Absent significant progress on matters, on 10^h May 2013 the Respondent wrote to various financial institutions attaching notices under section 906A TCA 1997. These notices requested the financial institutions to provide the Respondent with copies of any

bank account statements on accounts held by the Appellant and/or his spouse, at any stage.

20. Upon receipt of this documentation from the financial institutions, the Respondent wrote to the Appellant on 24th June 2013. Within that correspondence, the Appellant was advised that the information furnished by one particular financial institution, [REDACTED], revealed that over IR£500,000 was lodged into that bank account for the years 1999 to 2002. As details of that income were not included in the information furnished by the financial institutions in June 2010, nor disclosed on the Appellant's income tax returns for those periods, the Respondent advised absent satisfactory explanations on the source of those undisclosed lodgements, that it would proceed to issue additional assessments to income tax and VAT for the years 1999 to 2002.
21. At that time, in June 2013, the Appellant was in the course of concluding an additional appeal which he had submitted in respect of the income tax years 2003, 2004, 2005, 2008 and 2009. Those appeals were scheduled for hearing by the then Appeal Commissioners on 12th June 2013.
22. Owing to that appeal hearing, which occurred on 12th June 2013, the Appellant wrote to the Respondent on 26th June 2013. Within that correspondence the Appellant requested additional time to allow him to put together information explaining the IBRC lodgements in respect of the periods 1999 to 2002.
23. As the determination of the Appeal Commissioners in respect of the tax years 2003, 2004, 2005, 2008 and 2009 found in favour of the Respondent, the Appellant availed of his then right, to appeal that determination to the Circuit Court for a *de novo* hearing under the provisions of section 942 TCA 1997.
24. Owing to those intervening circumstances, the Respondent wrote to the Appellant on 3rd July 2013 and allowed him until 20th August 2013 to provide the source of the lodgements for the years 1999 to 2002.
25. By letter dated 16th July 2013, the Appellant's agent wrote to the Respondent. Within that correspondence, he stated that as he was not in possession of the [REDACTED] bank statements

⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

at the time he prepared the Appellant's accounts and tax returns for the years 1999 to 2002, he would endeavour to provide adequate explanations on the lodgement sources within the timeframe permitted by the Respondent.

26. Absent satisfactory explanations, the Respondent wrote to the Appellant on 2nd April 2014. It stated that unless full and comprehensive explanations were provided, additional assessments would be raised for the years 1999 to 2002 on 22nd April 2014.
27. The Appellant by letter dated 11th April 2014 contended *inter alia* that all his deposits into the [REDACTED] account "*were declared and accepted by revenue inspector [named] during the audit in 1999 [sic] I cannot understand why you wish to re address these issues*".
28. By way of reply on 16th April 2014, the Respondent explained that the [REDACTED] accounts had not been disclosed at the time of the 1999 audit and as the Respondent was unaware of the [REDACTED] bank accounts at that time, it could not and did not form part of that audit. The Respondent further explained absent satisfactory explanations regarding the lodgements into the [REDACTED] bank accounts, it had no option but to assume that those lodgements related to undisclosed receipts. In that event, the Respondent explained, it was required to issue additional assessments based on the undisclosed receipts to income tax and VAT for the periods 1999 to 2002.
29. On 6th January 2015, absent satisfactory explanations, the Respondent wrote to the Appellant. It advised the Appellant of its intention to raise additional assessments for 1999 to 2002 and that those assessments would be calculated based upon the unexplained lodgements into the [REDACTED] accounts. In addition, the Respondent stated that it noted two unexplained lodgements totalling IR£40,000 into [REDACTED] account held by the Appellant and that various accounts held in both his and/or his spouse's names had earned substantial amounts of deposit interest. The Respondent further advised absent satisfactory explanations of the [REDACTED] lodgements, and as the Appellant had not included the deposit interest earned on his submitted income tax returns, the additional assessments for 1999 to 2002 would also include those sums in the calculation.
30. By letter dated 8th January 2015, the Appellant who was then corresponding directly with the Respondent expressed his shock at the Respondent's intention to raise additional assessments. In response by letter dated 2nd February 2015, the Respondent stated:

'The issue is simple. You cannot adequately explain the existence of bank accounts which you did not provide to your agent and so were not taken into account when filing your tax returns over the years. These accounts have a high level of lodgements yet you maintain they are not business lodgements but you cannot or will not provide

evidence of the source of all but a small proportion of these. Then you must accept that this leaves you in a position that Revenue must raise assessments on the basis of these unexplained lodgements.'

31. On 20th February 2015, the Respondent issued its Notices of Additional Assessment to Income Tax and VAT. Those assessments were calculated as follows:

Assessments under Schedule D, Case IV

1999/2000	Lodgements to [REDACTED] account	IR£40,000
	Lodgements to [REDACTED]	<u>IR£351,008</u>
	Gross Lodgements	IR£391,008
	Net	IR£347,563
	VAT	IR£43,445
2000/01	Lodgements to [REDACTED]	IR£128,255
	Net	IR£114,004
	VAT	IR£14,251
2001	Lodgements to [REDACTED]	IR£22,400
	Net	IR£19,911
	VAT	IR£2,489

Assessments under Schedule D, Case IV – Deposit interest in IBRC account.

1999/2000	Gross	IR£1,297
2000/01	Gross	IR£18,404
2001	Gross	IR£27,030
2002	Gross	€32,336

32. The Appellant appealed those assessments to the then Office of the Appeal Commissioners on 17th February 2015.
33. Following numerous delays, owing primarily to various Court actions instigated by the Appellant, the appeal proceeded to hearing on 19th February 2020. On that date, the then Appeal Commissioner heard opening submissions from the Appellant's Counsel and evidence from the Appellant's expert witness and the Appellant. That hearing was

adjourned to facilitate the Respondent's request to use the powers afforded to it under section 906A TCA 1997, to seek additional information from financial institutions which it deemed it had not been provided with.

34. Owing to further delays, which arose in part owing to the [REDACTED] and the onset of the Covid-19 pandemic, the matter next came before the Commission on 26th April 2023.
35. In the period between the date the Appellant's appeal was part heard (19th February 2020) and the resumption of that appeal on 26^h April 2023, the Commissioner who part heard the appeal on 19th February 2020 was no longer in office. As such, the appeal hearing on 26th April 2023, was listed by the Commission as a *de novo* appeal⁵.
36. The Commissioner was aware of the [REDACTED] from correspondence provided by the Appellant and his agent. At the commencement of the appeal hearing on 26th April 2023, the Commissioner advised the Appellant's Counsel if any accommodations were required to facilitate the [REDACTED], they would be provided during the hearing.
37. In addition, the Commissioner asked the parties if there was any merit in admitting the transcript of the appeal hearing held on 19th February 2020 into evidence rather than the Appellant running a *de-novo* appeal. The purpose of this request, under the provisions of section 949H TCA 1997⁶, was to assist the parties in concluding the appeal in a timely manner as, if agreed, the Appellant and his expert witness would not be required to re-present the evidence they had previously tendered before the Commission.
38. Following discussion, and having regard to the Appellant's comments in relation to his health issues, the parties agreed to the appeal continuing in the manner suggested by the Commissioner. Following an application by the Appellant's Counsel which was ruled upon by the Commissioner (see below at paragraphs 59-70), the Appeal proceeded with the Appellant being further cross examined by the Respondent's Counsel.

Documentation presented to the Commission

39. Included within the documentation presented to the Commission was the following:

⁵ Section 949AW TCA 1997 provides, in the event of an Appeal Commissioner vacating office before completion of an appeal, the appeal shall be reheard as if the first hearing had not commenced or the appeal may be adjudicated upon in accordance with the provisions of section 949U TCA 1997 (adjudication without a hearing).

⁶ Section 949H TCA 1997 permits the Commissioner to manage and conduct proceedings before the Commission with regard to undue formality being avoided and to adapt a flexible approach in respect of procedural matters.

- 39.1. Judicial Review Order of Quirke J, dated [REDACTED] in respect of the *Appellant v An Appeal Commissioner*. This Order confirmed that the High Court granted an Order of Certiorari⁷ quashing assessments to PAYE/PRSI issued to the Appellant by the Respondent in respect of the tax years 1997/98, 1998/99, 1999/2000 and to income tax for the years ended 31st December 1997, 31st December 1998 and 31st December 2000.
- 39.2. Transcripts of proceedings held before the Appeal Commissioners on 26th April 2012 and 12th June 2013. Those transcripts related to appeals for the years of assessment 2003, 2004, 2005, 2008 and 2009. Those transcripts detailed that a Commissioner recused himself from the Appellant's appeal owing to an allegation of bias. Subsequently, a replacement Commissioner heard the Appellant's appeal on 12th June 2013.
- 39.3. That Commissioner issued his determination on 2nd July 2013. Within his determination, the Commissioner refused the Appellant's appeal.
- 39.4. Transcript of a hearing heard by McDonnell J in Wexford Circuit Court on [REDACTED]. The hearing was in respect of a *de novo* appeal against the Commissioner's determination made on 2nd July 2013. At the commencement of the hearing, the Appellant's Counsel sought an adjournment to those proceedings. That application was refused. In addition, for reasons which included that the Appellant was not in attendance at that hearing, McDonnell J. dismissed the Appellant's appeal.
- 39.5. A copy of Judicial Review proceedings in the name of the Appellant and the Respondent dated [REDACTED]. Within those proceedings, the Appellant sought (and was granted) leave for Judicial Review proceedings against the decisions of McDonnell J made on [REDACTED].
- 39.6. Transcripts of the Judicial Review proceedings heard in the High Court by McDermott J on [REDACTED]. Within that application, the Appellant sought an order quashing the Orders of McDonnell J. By way of perfected Order dated [REDACTED], the Appellant was denied the reliefs sought.

⁷ An Order of Certiorari is one of a number of available resolves where an applicant seeks judicial review remedies arising from a decision made by a public body. Where granted, the original decision reached by the public body is cancelled and the original decision maker generally must then re-examine the case and issue a new decision.

39.7. A letter to the Commission dated 6th April 2017. This letter stated:

“Submissions on behalf of ██████████ are as follows:-

- 1. See attached schedule confirming funds of approximately €1.5 million. This was accepted by ██████████ (Principal Officer) and ██████████ (Assistant Principal Officer) in July 2010.*
- 2. A copy of ██████████ letter dated 28th March 2011. Please refer to paragraph underlined in red. The account with ██████████ was opened in November 1999 and funds lodged were less than the points reported as per point (1) above.*
- 3. Monies lodged from 2002 onwards were part of the funds referred in the schedule in point number (1) above.*
- 4. ██████████ reserves the right to call Revenue Officials to give evidence regarding letters wrote.*
- 5. ██████████ had a Revenue Audit with ██████████ for the years 1997 to 1999 inclusive. The Revenue audit commenced in July 1999 and ██████████ had ongoing discussions with ██████████ over a period of approximately four years. ██████████ is of the opinion that personal savings etc. were not an issue with ██████████ when conducting his Revenue Audit and is surprised such matters are under investigation almost eighteen years later. Therefore the additional bank accounts should fall within the scope of the Revenue audit for the years 1997, 1998 and 1999.*
- 6. Please refer to ██████████ letter dated 27th April 2011 which is self-explanatory.*

...”

39.8. The “attached schedule” at point one above listed the following items:

Wife Salary for 40 years	400,000
Money from pub in Dublin (acquired 1978)	114,000
Money from Mother 1982	181,000
Money from Sister	11,000

Wife pension from 1998-2006	230,000
Wife lump sum on retirement 1998	32,000
■ + Wife pension 2006 to 2010	155,000
2005 SSIA	24,000
1999 Compensation from ■	
High Court defamation case	37,000
1999 ■ Savings Policy [illegible]	
Approx. €3800 invested weekly over 30 years	32,000
1989 ■ policy	6,000

39.9. The letter dated 28th March 2011 referenced at point two above in the letter at paragraph 39.7 was addressed to the Appellant and stated:

"I refer to your letter dated 16th February concerning Revenue enquiry and reply dated 24th February 2011 (copy attached).

I have reviewed the existing Revenue Audit (for the Income Tax years 1997 to 1999 as settled and confirmed in the Circuit Court). In relation to the additional bank accounts that came to light as a result of the Section 906A orders, I am prepared to accept that the earlier lodgements to accounts in 1999 can be explained by the savings and investments schedule presented by you on the 21st July 2011 (underlined in red by Appellant)..

I am accepting that the liability plus interest and penalties for those years has been paid in full and I will close the existing audit based on the following amounts:

	<i>Tax</i>	<i>Interest</i>	<i>Penalty</i>
VAT 1997	2,424		
VAT 1998	2,424		
VAT 1999	2,424	5,760	3,999 = €17,031

The Additional undisclosed bank accounts that came to light as a result of the Section 906A orders are for later years (2001 etc.) and fall outside the scope of the Audit for the above years. While we have queried these amounts no Audit

or Investigation letter has issued and as such an unprompted disclosure can be made for the unexplained lodgements.

I propose to leave this option open until the end of 2011 and in the absence of a disclosure to move to Audit/Investigation at that stage.

A copy of this letter has been issued to your accountant..."

39.10. The letter referenced "27th April 2011" at point 6 above in the letter at paragraph 39.7 stated:

"In line with my letter dated 28/3/2011, I wish to advise you that your offer of €17,031 for the years 1997, 1998 and 1999 has been accepted by the Revenue Commissioners in settlement of additional liabilities which were identified during the audit.

This audit is now concluded and I thank you for cooperation.

In relation to the undisclosed Bank accounts for the later years I have at your agents request extended the disclosure option to the end of May 2011."

39.11. A letter from the Appellant to the Respondent dated 11th April 2014. This correspondence stated:

"...You have already accepted that any monies lodged in 1999 are fully explained and you have accepted the schedule of monies earned my [sic] me and my wife (copy attached)..."

I would be grateful if you could forward any other details you have of my [REDACTED] copies of all cheques/drafts lodged and withdrawn and lodged. I have requested these on several occasions from the Bank but of no avail. I believe if we had copies of these drafts it will explain a lot of the lodgements to [REDACTED] [REDACTED]. For example €150,000 lodged to [REDACTED] on 3/3/2005, I believe to the best of my knowledge and belief was actually bank drafts lodged that I had withdrawn from [REDACTED] and not in the form of cash as declared by [REDACTED].

As my deposits were declared and accepted by revenue inspector [REDACTED] during the audit in 1999 I cannot understand why you now want to re address these issues. These deposits are the same money being lodged and withdrawn from various [REDACTED] and [REDACTED] accounts. You will see that I earned

considerable interest from these deposits and the DIRT was paid in full so I cannot understand why you wish to raise assessments on this money...

I now feel you should withdraw any assessments raised as the [REDACTED] accounts have fully proved I had all the money pre 1999. All my money was fully declared and lodged in private accounts so I reject your statements calling these accounts "undisclosed". You have absolutely no evidence to make such a statement and I believe that your office is taking a personal vendetta against me because of the Circuit Court ruling on the 1999 audit. I have no unexplained wealth. "

39.12. A reply to that letter from the Respondent dated 16th April 2014. This letter stated:

"...We do not have any additional relevant information from [REDACTED] as outlined in your letter other than the copy of account number [REDACTED] indicated in my letter dated 24/06/2013. The main issue in relation to this account is the lodgement of £351,000 to [REDACTED] account in 1999. This account was previously not disclosed and if the lodgements cannot be adequately explained, then this will have to be included in any additional assessments. The lodgements may have come from another bank account but to date no evidence has been provided to that effect. Without evidence, I must presume that the lodgements relate to undisclosed receipts.

Looking at the withdrawals, they included society cheque to [REDACTED] [REDACTED] etc. The account was closed on 13th September 2004 with a withdrawal of €9545.52 by society cheque payable to [REDACTED] and so this does not suggest that the account was the source of the €150,000 lodged to [REDACTED] on 3/3/2005.

You say that you can't understand why I want to address these issues again when they formed part of the audit carried out by [REDACTED]. You must appreciate the fact that you did not disclose this [REDACTED] account at that time and so I must now go back and review the earlier years taking these lodgements and withdrawals into account. At this stage, you should consider again whether you have other accounts that you have not disclosed as yet and maybe they might hold the key to the lodgements...

Restating the same thing over and over, that you believe this "office is taking a personal vendetta against you because of the Circuit Court hearing of 1999

audit” is not achieving anything. Again there is “no harassment” from this office and I have given you every opportunity to cooperate with me and to try and bring these issues to a conclusion...

This enquiry in relation to the [REDACTED] accounts has been on-going since May 2012. Apart from promises and requests for additional time and meetings, no progress has been made. I will now go ahead and issue additional assessments...”

39.13. A letter from [REDACTED] to the Respondent dated 13^h June 2013. This letter referred to the Appellant and his spouse and stated:

“...As advised, the above individuals were a former [REDACTED] [REDACTED] customers. They ceased being customers of [REDACTED] in 2004. We have been advised tha [REDACTED] destroyed documentation once the timeframe of five years had lapsed since the account was closed. Therefore, we are unable to provide you with all the documentation relating to accounts held by the above individuals...”

39.14. A letter from the Appellant’s accountant to [REDACTED] dated 29th January 2014. This letter which referred to the Appellant’s father and the Appellant requested details of any bank accounts operated by the named parties for the period 1st January 1970 to 31st December 2000.

39.15. By way of reply on 22nd June 2017, [REDACTED] stated:

“I refer to your letter of the 16th inst. regarding the [Appellant] and to your initial query in 2014 to [REDACTED]

Unfortunately we are not in a position to provide you with information you requested as it was for the period of January 1970 to December 1999 and we only retain customer information for a period of seven years after an account was closed”.

39.16. A copy of a [REDACTED] bank statement in the name of the Appellant and his spouse, number [REDACTED] dated 28th March 2019. These bank statements showed the following transactions:

14/10/1988	Lodgement	£112,000.00
31/10/1988	Monthly Int	236.70

30/11/1988	Monthly Int	418.58
31/12/1988	Monthly Int	435.35
24/1/1989	Monthly Int	338.34
24/1/1989	Withdrawal	£113,428.97
Balance as at 28/3/2019		NIL

39.17. A copy of a [REDACTED] statement dated 28th March 2019 in the name of the Appellant and his spouse, for account number [REDACTED]. This bank statement showed an opening lodgement of £113,428.97 on 26/1/1989, interest of £6,298.20 earned for the period between the date the bank account was opened and the date it was closed, 29th January 1990. The account balance of £119,727.17 was withdrawn by cheque on 29th January 1990.

39.18. A copy of a [REDACTED] bank statement dated 28th March 2019 in the name of the Appellant, on account number [REDACTED]. This account showed an opening lodgement of £250,000 on 2nd August 1996 described as "from [REDACTED]", interest earned for the period from the date the account was opened until the date it was closed on 24th April 1998 of £19,709.13. On 24th April 1998 that bank account was closed when the balance of £268,709.13 was transferred from it. The closing transaction is described as "Money Transfer".

39.19. A copy of a [REDACTED] bank statement dated 28th March 2019 in the name of the Appellant and his spouse, for account number [REDACTED]. This shows the following transactions:

		IR£	IR£
4/12/1992	From Dph [REDACTED]		100,000.00
	(Interest for period 4/12/1992 – 31/5/1993)		4 716.39
6/10/1993	Cash Withdrawal	4,500	
	(Interest for period 1/6/1993 – 31/5/1994)		4 344.26
9/6/1994	Cash Withdrawal	4,500	
	(Interest for period 1/6/1994 – 28/9/1994)		1 237.28
19/10/1994	Cash Withdrawal	5,000	

	(Interest for period 29/9/1994 – 30/11/1994)		582.75
21/12/1994	Cash Withdrawal	5,000	
22/12/1994	Cash Withdrawal	1,000	
29/12/1994	Cash Withdrawal	2,000	
10/3/1995	Cash Withdrawal	8,000	
7/4/1995	Cash Withdrawal	2,000	
21/4/1995	Cash Withdrawal	2,000	
9/5/1995	Cash Withdrawal	1,300	
16/5/1995	Cash Withdrawal	1,000	
	(Interest for period 1/12/1995 – 31/5/1995)		1,333.04
17/10/1995	Lodgement		46,580.00
	(Interest for period 1/6/1995 – 10/1/1996)		1 941.61
10/1/1996	Money Transfer		42,000.00
26/3/1996	Lodgement		56,600.00
	(Interest for period 11/1/1996 – 31/5/1996)		2 784.53
27/5/1996	Lodgement		54,000.00
2/8/1996	To ██████████	250,000	
1/8/1996	Lodgement		33,500.00
26/9/1996	Cash Withdrawal	5,950	
	(Interest for period 1/6/1996 – 30/11/1996)		2,231.73
12/3/1997	Cash Withdrawal	11,705.25	
	(Interest for period 1/12/1996 – 31/5/1997)		903.40
30/7/1997	Cash Withdrawal	7,000	
6/8/1997	Cash Withdrawal	4,800	
	(Interest for period 1/6/1997 – 30/11/1997)		687.57
18/12/1997	Cash Withdrawal	19,669	

18/2/1998	Cash Withdrawal	3,500
6/3/1998	Cash Withdrawal	2,000
	(Interest for period 1/12/1997 – 31/5/1998)	290.00
	(Interest for period 1/6/1998 – 28/7/1998)	69.32
28/7/1998	N/Cheque to Bank	12,825.63

39.20. Copy of a [REDACTED] bank statement dated 28th March 2019 in the name of the Appellant and his spouse, for account number [REDACTED]. This account shows a money transfer of £306,095.77 lodged to it on 11/1/1999 and interest of £815.80 earned on the monies to the date of closure of the account on 12th February 1999. The account was closed on that date and the closing transaction entitled 'money transfer' was in the sum of £306,911.57.

39.21. [REDACTED] bank statements on account number [REDACTED] in the name of the Appellant and his spouse for the periods 9th November 1999 to 13th September 2004. A copy of the non-deposit interest transactions on this bank account are listed at **Appendix 1** to this determination.

39.22. A letter from the Appellant's expert witness. This letter dated 11th February 2020 referred to the Appellant, was described as "*Subject – Lodgements to [REDACTED] [REDACTED] in 1999*" and was addressed to the Appellant's solicitor. It stated:

"I have conducted a review of lodgements totalling €351,008.52 into [REDACTED] [REDACTED] of [REDACTED] [REDACTED] lodged on 9th November 1999.

I have considered all available documentation, evidence and explanations provided by [REDACTED]

I can confirm that on 12th February 1999 [REDACTED] had a sum of €306,911.57 in [REDACTED]. There are no further [REDACTED] statements available to date for 1999 which would confirm where the funds transferred to. I have examined extensive correspondence between [REDACTED] [REDACTED], yourself, [REDACTED] Accountants and [REDACTED] regarding requests for the missing statements and the frustration encountered when attempting to procure same.

██████████ confirms that the sum of €306,911.57 was reinvested with ██████████ and continually rolled over until he became a customer of ██████████ ██████████ further explained that he made the move to ██████████ following the receipt of advice from a friend. He also provided me with a detailed recollection of meeting the ██████████ representative and how he found their offering and service to be superior to that of ██████████. He confirmed to me with certainty that monies were transferred from ██████████ to ██████████.

In the absence of supporting documentation, I cannot confirm the source of the ██████████ lodgements but it would be a fair assumption to make that this is the source of the bulk of the lodgements given the evidence provided...

39.23. A letter from ██████████ dated 23rd March 2012. This letter stated that the Appellant's policy matured on 14th March 1991 and a cheque in the sum of €5,223.97 was paid to ██████████ on that date, in the Appellant's favour.

39.24. A letter from ██████████ dated 30th March 2012. This letter confirmed that the Appellant received the sum of £25,584.92 in February 2000.

39.25. A letter from ██████████. Solicitors addressed to the Appellant and dated 13th June 2012. This letter was entitled "Re: (1) Article in ██████████ concerning drugs raid, and (2) Separate article in ██████████ headed "Young man hospitalised after ██████████ attack". The letter stated:

"We enclose for your attention copy statement of monies on your case v ██████████ ██████████ at (1) above which was furnished to you on conclusion of the case, confirming payments (two) to you in the sum of £21,000 and £5,081.92 ..."

A copy of the "statement of monies" was not provided to the Commission.

Witness Evidence

Mr ██████████

40. ██████████, having being sworn in by the Commissioner, stated that he was a Chartered Accountant and Registered Auditor and was the Principal in his own practice since January 2011. He advised that he was retained by the Appellant to present expert witness evidence on the Appellant's behalf to the Commission.

41. The witness explained that the focus on his work was to primarily establish the source of the funds lodged into the [REDACTED] on 9th November 1999 in the sum of €351,008.52.
42. The witness stated he was instructed that multiple attempts were made by the Appellant, his accountant and his solicitor to procure bank statements prior to 1999 but those attempts were largely unsuccessful as the information was primarily no longer available from the various financial institutions owing to the lapse in time.
43. He explained absent bank statements and in order to establish where the funds came from he conducted 'extensive interviews' with the Appellant and his accountant. He stated that the schedule provided by the Appellant (see sub-paragraph 39.8 above) really explained where the sum of €351,008.52 came from and "*it really did stack up in my view... I would think it quite clear that that was the source of the funds*⁸".
44. Based upon his interview with the Appellant, the witness stated as per his provided Report, that he was of the view that the funds lodged into the [REDACTED] [REDACTED] came from a transfer of funds from [REDACTED] account held in the name of the Appellant.
45. The witness confirmed that his report contained an error as it referred to euros within the narrative rather than Irish pounds which was the currency in operation at the time the transactions occurred. As such, the witness requested the Commission to accept his report with the substitution of "IR£" in place of "€".
46. Under cross examination, the witness stated that:
- 46.1. He had compiled his report from the bank statements made available to him and the explanations provided by the Appellant.
- 46.2. He was unable to reconcile the lodgements from one bank account to another.
- 46.3. That the Appellant informed him that he had a safe in his house and that he (the Appellant) kept large sums of money periodically in that safe.

The Appellant

47. The Appellant stated that he was turning 80 years of age (as of 19/2/2020) and that he had worked since the age of 12. He advised⁹:

⁸ Transcript, 19th February 2020 at page 25, lines 17-22.

⁹ *Ibid* at page 41, lines 16-25.

“Teal, Teal won the Grand National in 1952. Arthur Thompson was riding him. He also won the Grand National on Sheila’s Cottage in 1948. He said if Teal didn’t fall he’d win the Grand National and I won £34 on him and I bought a hundred day old chicks and put them to the point of laying and sold them for £150 to ██████ and the next thing I got 600 day old chicks. They were in ██████. They used to send them down on the bus and the next thing I got 30 pigs. It escalated.”

48. The Appellant stated that subsequently, when he was 15 years old, he got a job for ██████ ██████ for 22 and six pence. He stated that he stayed in that job for a few years and then went to another garage in ██████ before leaving to go back to ██████ ██████ to manage it when he was about 19 or 20 years of age. He stated¹⁰:

“...[I was paid] £10 a week and they gave me four gallons of petrol, travelling expenses and a ██████ car which I still have at home still which is worth a million pound. There was no benefit in kind at that time with the four gallons of petrol and I stayed there for a few years and gathered up a set of tools and started on my own and I worked for farmers, 50 acre farmers welding for three shillings and ten shillings, working for 500 acre farmers that wasn’t entitled to pay tax, nothing.

And I went up to the Bank Manager. I’d about £6,500 in ‘64 and the same man wouldn’t give you a biro and I asked him for £3,000 and he said at the present time no and he came down to the garage where I was working at 3 O’clock with a cheque book and he said I’m giving you that and for God’s sake mind it.”

49. The Appellant explained upon receipt of those funds that he started his garage by building the petrol station. He further advised that he got married in ██████ and bought a “little” 25 acre farm for £8,550 which he reared pigs on. He stated that he never drank nor smoked and his wife was a “notorious worker”. He stated that the “*oul money escalated*”¹¹.
50. Subsequently the Appellant advised that in 1974/75 his brother was working in a pub in ██████ and he, the Appellant, proceeded to purchase that pub for somewhere in the region of £33,000 to £35,000. He advised that he also acquired an oil tanker and delivered oil up to 1998 when he had to cease that business owing to health issues.
51. In the early 1990’s, the Appellant advised that his mother, who owned a pub, transferred the licence to him and he did building works to that pub which resulted in him then having “*one of the top nightclubs*” in the country.

¹⁰ Transcript, 19th February 2020 at page 42, lines 4-19.

¹¹ *Ibid* at page 42, lines 26-27.

52. The Appellant stated at all times he paid all of his taxes and lived a frugal life having acquired a Council house in 1970 for £900, where he lived most of his life and reared his family. He stated that he was only ever on one holiday in his life (his honeymoon) and aside from Christmas Day, he never took time off work.
53. When questioned about where he got the money lodged into the various bank accounts in his name, he stated it came from money he “*had floating around in a safe and yokes like that*”¹².
54. He explained that he liked to move his money around when there was a better (interest) deal available and he often moved money from one account or institution to that of another for that reason.
55. Under cross-examination, the Appellant stated:

55.1. Following his unsuccessful Judicial Review challenge before the High Court on [REDACTED] [REDACTED] 2016, he received a summary summons from the Respondent seeking payment of the taxation liabilities for the years of assessment 2003, 2004, 2005, 2008 and 2009. He stated that he instigated a High Court challenge to that summons before Barrett J who gave judgment on [REDACTED] [REDACTED] 2019 in favour of the Respondent. He further advised that he appealed that decision to the Court of Appeal but that Court refused his appeal on [REDACTED] [REDACTED] 2020.

55.2. That the Court of Appeal case concerned those years 2003, 2004, 2005, 2008 and 2009 in which the Respondent sought to charge and collect taxation on the grounds that his bank accounts contained unexplained lodgements for those years, which had not been included in his submitted tax returns. The Appellant stated that as some of those alleged unexplained lodgements may have been identified during the course of this appeal, he sought a stay on the summary judgment obtained for the years 2003, 2004, 2005, 2008 and 2009 pending the outcome of this appeal as he felt monies were being ‘double counted’. The Appellant acknowledged by virtue of the Court of Appeals refusal to accept his appeal that these grounds were no longer applicable.

55.3. That he often kept money in a safe in his house. When asked why, the Appellant explained:

“It’s not to conceal anything, it’s just a passion I had over the years. I’d just like to make the point that my Mother put money in the bank in the safe in a sealed

¹² Transcript, 19th February 2020 at page 46, lines 19-20.

*envelope way back in the 1970's. She sealed it up, she sealed it up in a bag and it was sealed and put into a safe and that would be the norm. People lost their life savings in the house being robbed and with no safe and it's just I've a passion of that.*¹³

- 55.4. To a certain extent, he distrusted banks and that is why he used the safe for the safeguarding of his funds.
- 55.5. When his wife was paid a salary from her employment, she often cashed her wage cheque and left it in her handbag. As her bag would often be "filled up" with sums of three to four thousand in it, he would remove some of those funds and put them into the safe for security purposes.
- 55.6. Most of the cheques he received from various sources over the years such as the payments received from the defamation action, the gifts/inheritances from his sister and mother and the sale of the pub in [REDACTED] were cashed in the bank and lodged into his household safe. When asked why he did this, he explained "for safe-keeping".
- 55.7. That, he had stated in the course of his previous appeal held in June 2013, he had the sum of some €400,000 in his home safe as at December 2002, and that this sum of money was the source of the majority of the lodgements made in the years then under appeal (2003, 2004, 2005, 2008 and 2009).
- 55.8. That he never disclosed the existence of several bank accounts he had in operation during the course of the audit in 1999. He confirmed that those bank accounts only came to light when the Respondent received the information from various financial institutions following its (second) section 906A TCA 1997 requests.

Matters subsequent to the hearing held on 19th February 2020

56. At the closing of the appeal hearing on 19th February 2020, the Commissioner adjourned the hearing for conclusion on a date to be agreed by the parties and the Commission. The Commissioner reminded the Appellant, as he was still under cross examination by the Respondent's Counsel, it was not appropriate for him to discuss his evidence with his Counsel save that leeway was to be afforded on matters not under evidence and necessary for the conclusion of his appeal.

¹³ Transcript, 19th February 2020, page 78 at lines 15-22.

57. In addition, as the Respondent was of the opinion that the Appellant held further bank accounts which had not been disclosed, it was agreed that the Respondent would seek additional information from financial institutions under further (being, the third) section 906A TCA 1997 requests.

58. On 27th May 2022, the Commission received a folder entitled “906A Requests and Additional Information Received”. Included within that folder was the following documentation:

58.1. Letters of request, dated 17^h April 2020, from the Respondent to the following financial institutions:

- 58.1.1. [REDACTED]
- 58.1.2. [REDACTED]
- 58.1.3. [REDACTED]
- 58.1.4. [REDACTED]
- 58.1.5. [REDACTED]
- 58.1.6. [REDACTED]

58.2. Replies from those financial institutions which consisted of the following documentation:

58.2.1. Copy of a signed home loan application from [REDACTED] in the name of the Appellant and his spouse. This application was dated 2nd January 2002 in which the Appellant and his spouse sought a home loan of €178,000 over a period of 15 years. The Appellant’s salary was shown as €44,767 with a handwritten note beside it stating “average over 3 years” and his spouse’s salary was shown as ‘€21,000’. Under section 7 of the application form under the heading ‘assets’, it listed the following:

Family Home, [REDACTED]	€152,368
Commercial Property (details illegible)	2,539,476
[REDACTED]	<u>190,000</u>
Total	<u>€2,881,844</u>

- 58.2.2. ██████████ in the name of the Appellant and his spouse for a bank account referenced '██████'. That bank account showed an opening mortgage balance of €178,351.51 on 14th March 2002.
- 58.2.3. █████ ██████████ on account number ██████████ ██████████ ██████████ for the periods under appeal. All of these bank statements showed nil or minimal non-material transactions for those periods.
- 58.2.4. Statements from ██████████, in the name of the Appellant's spouse, on an account referenced '██████' for the period 2nd December 1998 to 2nd December 2019. The opening balance on that account was £17,204.50 and the closing balance was €2,136.46. The account showed during the period of operation that the Appellant made weekly lodgements of relatively small amounts (<€100) into that account.
- 58.2.5. A second ██████████ account in the name of the Appellant for the periods 6th June 2008 to 14th September 2016. These statements showed sums being lodged and identical, or near identical amounts, being withdrawn on the same date. Those sums ranged in value from €1,350 to €50,000.
- 58.2.6. A third ██████████ account in the name of the Appellant for the periods 29th June 2011 to 5th April 2017. These accounts showed the same pattern of lodgements and same day withdrawals with values ranging from €3,000 to €86,000.

Continuation of Appeal on 26th April 2023

59. On the re-commencement of the Appellant's appeal, the Appellant's Counsel stated that he wished to make an application to the Commission before he re-tendered the Appellant for the continuation of his cross examination. The Commissioner acceded to this request.
60. The Appellant's Counsel submitted that the provisions of section 956 (1) (c) TCA 1997¹⁴ restricted the Respondent from issuing assessments after six years from the date upon which the Appellant submitted his tax return. As the Respondent issued its notices of assessment for the periods under appeal (1999/00, 2000/01, 2001, 2002 and 2003) on 3rd December 2015, the Appellant's Counsel submitted that it had not issued those

¹⁴ This section of the TCA 1997 was operable at the time the Inspector began his enquiries. It was deleted by section 129 (2) Finance Act 2012 with effect from 1st January 2013.

assessments in accordance with the timeframe stipulated in section 956 TCA 1997 and hence were *void ab initio*.

61. The Appellant's Counsel further submitted that the Respondent, in its letter of 28th March 2011 (see, sub-paragraph 39.9 above) had agreed that the additional bank accounts which came to light as a result of the section 906A TCA 1997 orders had no bearing on the current periods under appeal as the Respondent accepted the source of funding in those bank accounts came from the detailed schedule provided by the Appellant (see above at sub-paragraph 39.8).
62. The Appellant's Counsel submitted for the Respondent to now seek to base its assessments for the periods under appeal on the amounts lodged into the additional bank accounts displayed *mala fides* and was unfair.
63. The Respondent's Counsel replied to those submissions by stating that an exception to the six-year timeframe was also contained within section 956(1) (c) TCA 1997, as opened by the Appellant's Counsel. The Respondent's Counsel submitted that the effect of this exception resulted in there being no time limit imposed on the Respondent issuing its notices of assessment where it had been established that fraud or neglect occurred in the filing of the Appellant's income tax returns. The Respondent's Counsel submitted that as there was ample evidence before the Commission to demonstrate that the Appellant was negligent in filing his tax returns, then no such time restrictions were imposed on the Respondent.
64. Furthermore, the Respondent's Counsel submitted that no *mala fides* occurred on the Respondent's behalf when it issued its notices of assessments for the periods under appeal, as despite giving the Appellant ample opportunity to explain the source of the lodgements for the periods under appeal, he had failed to do so.
65. In those circumstances, the Respondent's Counsel requested the Commissioner to refuse the Appellant's submission.

Ruling on Preliminary Issue

66. The Commissioner stated that his jurisdiction is limited to considering "the assessment and the charge", as stated by Murray J. at paragraph 64 of the Court of Appeal's decision in *Kenny Lee v Revenue Commissioners* [2021] IECA 18 ("*Lee*").
67. Furthermore, the Commissioner advised that the Commission is a statutory body created by the Finance (Tax Appeals) Act 2015 and section 6(2) of the Finance (Tax Appeals) Act 2015 which sets out the functions of an Appeal Commissioner appointed pursuant to

that Act. Therefore, the Commissioner explained that he has jurisdiction as set out in statute and does not have jurisdiction to set aside a decision of the Respondent based on alleged unfairness, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, cannot fall to be determined as part of the Appellant's appeal. Therefore, the Commissioner found that he could not consider the Appellant's Counsel's submission that the Respondent displayed *mala fides* and/or that its actions were unfair.

68. Turning to the substantive submission, the Commissioner opened section 956 TCA 1997 which provides:

“(1) (a) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector—

(i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(ii) may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.

(b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in paragraph (a) (i) shall not preclude the inspector—

(i) from making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to section 955 (2), from amending or further amending an assessment in such manner as he or she considers appropriate.

(c) Any enquiries and actions referred to in paragraph (b) shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 6 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at that time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.”

69. The Commissioner acknowledged that the Appellant was still in the process of giving evidence and that the appeal was still in progress. However, on the evidence to date, the Commissioner stated it was apparent that the Appellant had failed to include some lodgements and deposit interest within his submitted returns for the periods under appeal and as such, this resulted in him being negligent in the filing of the said returns.
70. As section 956(1) (c) TCA 1997 provides that the six year time period did not apply to returns submitted in a negligent manner, the Commissioner stated that he was required to refuse the Appellant's submission. As such the Commissioner found that the Respondent was not precluded from issuing its additional assessments to VAT for the periods 1999, 2000/01 and 2001 and its Notices of Additional Assessments to Income Tax for the years 1999/2000, 2000/01, 2001 and 2002.

Substantive Hearing

71. Following the Commissioner's ruling the Appellant confirmed his agreement to the appeal proceeding. The Commissioner took the opportunity to acknowledge the Appellant's decision to dispense with his *de novo* appeal and the Respondent's Counsel commended the Appellant's Counsel on securing agreement to that course of action.
72. As the Appellant was under oath from the previous appeal hearing, the Respondent's Counsel continued his cross examination. During the cross examination, the Appellant stated that:
- 72.1. The source of funds lodged into his various bank accounts did not come from his pub/night club and petrol station but rather from accumulated savings.
- 72.2. He had numerous interactions with the Respondent over the years who confirmed that his tax affairs were substantially in order and that prior to the receipt of documentation under the (second) section 906A TCA 1997 application, he had never informed the Respondent on the existence of those bank accounts.
- 72.3. The Respondent's Counsel stated when the Appellant was originally asked to explain where the source of funds lodged into the various bank accounts held by the Appellant and his spouse had come from, the Appellant stated that they had come from the list of "income sources" provided to the Commission, which he cashed and stored in his safe before periodically lodging some or all of this into the various bank accounts. The Respondent's Counsel submitted that the Appellant subsequently conflicted this evidence by stating that the monies came

from funds he held in bank accounts over the years. When asked to explain this discrepancy, the Appellant stated:

“No it would have been a mistake. It would have been a mistake. I really don’t understand the question, but if I lodged €20,000 in a bank maybe I should say, oh god, I shouldn’t have put that there. I may take out that that is to go in the safe. That had nothing to do with that. And there was nothing concealed. I mean you must agree, you must agree this is a very minor thing¹⁵”.

73. Under re-examination by his Counsel, the Appellant stated:

73.1. He often took funds to and from his safe depending on the returns on offer from various financial institutions and furthermore that he often transferred funds from one financial institution to another if they offered a better rate (of interest).

73.2. He often withdrew sums from his various bank accounts in the form of a “teller cheque”, stored these in his safe for different periods of time before periodically lodging these back into his bank accounts.

73.3. The reason why he lodged and withdrew sums from the [REDACTED] account on the same day was to avoid bank charges on the lodgement and withdrawal of those sums which a bank would charge.

Submissions

Appellant

74. The Appellant acknowledged in line with *Menolly Homes v The Appeal Commissioners and Anor* [2010] IEHC 49 (“*Menolly Homes*”) that the onus of proof in proving his appeal rested on him.

75. However, the Appellant submitted that this onus did not extend to the Respondent automatically treating unidentified deposits as taxable income. In support of this submission, the Appellant opened the United Kingdom (“UK”) case of *Miss Mead Ali v Commissioners for Revenue and Customs* [2012] UKFTT 289 (“*Ali*”).

76. In *Ali*, the Appellant, who was a Muslim pharmacist, gave evidence to the First-tier Tribunal¹⁶ (“FTT”) in the course of which she explained the provenance of the various sums deposited by her over a period of five years. The FTT accepted that there was,

¹⁵ Transcript, 27th April 2023, at page 56, lines 16 to 23.

¹⁶ The First-tier Tribunal have responsibility for handling appeals against some decisions made by His Majesties Customs & Excise (“HMRC”). Broadly speaking, it is the UK equivalent of the Commission.

within the Appellant's community, often 'communal use' of bank accounts by family members, and this had occurred in connection with the Appellant's accounts. The FTT was satisfied, on the balance of probabilities, that the Appellant had discharged the burden of proof on her to show that the various deposits in her bank accounts did not represent undeclared taxable income and the FTT allowed the appeal.

77. The Appellant submitted that further proposition that the required level of proof was "on a balance of probabilities" standard was contained in the FTT case of *Romark Jewellers Limited v Commissioners for Revenue and Customs* [2012] UKFTT 432 ("*Romark*").
78. In *Romark*, the Appellant was a company which carried on a retail jewellery business. HMRC became aware that Mr. Krempel, the sole director and shareholder of the company, had made cash deposits of £114,250 into an offshore savings account in 2003 and 2004. Mr. Krempel, when questioned by HMRC, stated that the deposits were the proceeds of sales of jewellery which his mother had given to him. Mr. Krempel produced a handwritten list of the items of jewellery which he said his mother had given to him. The value of the items of jewellery amounted to £146,000. HMRC did not accept Mr. Krempel's explanation and issued assessments.
79. HMRC contended that an admitted failure to include all tax in the return for 2002-2003 and unexplained amounts paid into an offshore bank account by Mr Krempel indicated that there was undeclared income in the business. Mr Krempel contended that the amounts were the proceeds of the sale of jewellery given to him by his mother to sell on her behalf and that the company had declared all the proceeds of sale by the business in the years under appeal.
80. The FTT held that the outcome of the appeal turned on whether the Tribunal accepted Mr. Krempel's evidence that the amounts assessed were the proceeds of sales of jewellery belonging to his mother. The Tribunal was satisfied having heard the evidence, on the balance of probabilities that the amounts assessed were the proceeds of sales of jewellery given to Mr. Krempel by his mother and the appeal against the assessments was allowed.
81. Furthermore, the Appellant submitted that *ON v Refugee Appeals Tribunal & Ors* [2017] IEHC 13 is authority for the proposition that the standard of proof is the balance of probabilities coupled with, where appropriate, the benefit of the doubt being given to the Appellant. At paragraph 63 of that judgment, O'Regan J held:

"In light of the foregoing principles and having regard to the fact that the balance of probabilities is the civil standard of proof in this jurisdiction, I am satisfied that the

principle of equivalence and the principle of effectiveness are both safeguarded by the application of the standard of proof – being the balance of probabilities – coupled with, where appropriate the benefit of doubt. Until such time as the State might introduce more favourable standards as contemplated by Article 3 of the 2004 Directive, this is the appropriate standard to apply, i.e. the balance of probabilities, coupled with, where appropriate, the benefit of the doubt”.

82. The Appellant submitted that the Respondent had assumed incorrectly that the Appellant did not have savings and money on deposit before he opened the account in ██████████ ██████████ in 1999. The Appellant submitted that he and his spouse had accumulated considerable savings over many years, as was evidenced from the list provided by the Appellant at sub-paragraph 39.8 above.
83. The Appellant submitted that as he and his wife had both worked for 40 years, it was reasonable to assume in 1999, that the funds on deposit had accumulated to them over the years. In noting that the Appellant and his wife’s earnings were supplemented by the various sources detailed at sub-paragraph 39.8 of this determination, the Appellant submitted that it was not unreasonable for him to have had the amount of money deposited into the ██████████ account in 1999.
84. Furthermore, the Appellant submitted that he was not required to maintain, nor maintained, “forensic records” of his private finances. The Appellant submitted this position was reinforced by his belief that he always maintained proper books and records of any trade he ever operated and the Respondent, who had numerous interactions with over the years, never failed to point to any weaknesses within his business records that would support their claims that his sales had ben under-declared for either the periods under appeal or prior years. The Appellant further submitted, as was evident from the Circuit court case held before Judge Buttimer that his business had suffered significantly over the years and as such to treat that lodgements into ██████████ as additional sales is inconsistent with that position.
85. The Appellant submitted that he had held substantial monies in an account in ██████████ ██████████ in 1999. The Appellant stated that he authorised his accountants to write to ██████████ (as the entity responsible for ██████████) requesting statements and records for the account which the Appellant had with the ██████████ throughout the period from the 1970s to 1999. Unfortunately, owing to the lapse in time in seeking that documentation, the Appellant advised that the bank was unable to assist him with the provision of any documentation.

86. The Appellant submitted that he transferred the money which was held in his account in the [REDACTED] to the [REDACTED] in 1999. As such, the Appellant submitted that the monies deposited by the Appellant into [REDACTED] and [REDACTED], which form the basis of the assessments, did not represent undeclared taxable income.
87. The Appellant submitted that this position was accepted by the Respondent in its letter of 11th April 2014, in which the Appellant stated that all his “*deposits were declared and accepted by revenue inspector [REDACTED] during the audit in 1999. I cannot understand why you want to re address these issues*”. The Appellant submitted given this position, it was incomprehensible that the Respondent proceeded to issue its Additional Notices of Assessments to income tax and Notices of Assessment to VAT for the periods under appeal.
88. The Appellant concluded his submissions by stating that his case is very straightforward and it is that the sums lodged did not represent undeclared taxable income. The Appellant submitted that he had explained the provenance of the sums lodged to the Respondent and as these explanations confirmed that the lodgements came from numerous sources which were not liable to taxation, then the Commission should allow the Appellant’s appeal.

Respondent

89. Conversely, the Respondent submitted that the Appellant’s appeal is very straightforward in that the sums lodged to the [REDACTED] and [REDACTED] accounts represented undeclared taxable income.
90. Turning to the Appellant’s submission that the deposits into those accounts were accepted by the Respondent as representing non-taxable income, the Respondent opened its letter dated 16th April 2014. Within that correspondence, the Respondent stated that as the [REDACTED] had not been disclosed at the time of the 1999 audit, then it was unaware of the existence of that bank account at the time and hence, the Respondent could not have made any representations in relation to that account as it did not form part of that audit. That letter also stated that the Respondent needed explanations of the source of funding into that account and absent same, it had no option but to assume the sources represented undisclosed receipts.
91. By way of reply, the Respondent submitted that the Appellant’s explanation was unsatisfactory. That reply, the Respondent stated was that the handwritten schedule of income sources provided by the Appellant which detailed that he had received funds of approximately €1.5 million over the years. While the Respondent accepted that income

schedule formed part of the lodgements in the 2010 audit, the Respondent submitted that this did not extend to those assessments currently before the Commission.

92. The Respondent explained that its position was that any representations issued by it in relation to the 2010 audit, only extended to bank accounts which the Appellant had disclosed during the course of that audit or those that were made available as a result of the first section 906A TCA 1997 application in June 2010. As the Appellant had not disclosed the existence of the [REDACTED] bank account at the time of that audit then, the Respondent submitted, it was not possible for the Respondent to have issued any representations in relation to those bank accounts which the Appellant had failed to disclose and which were only made available to the Respondent following receipt of its second 906A TCA 1997 application in June 2013.
93. The Respondent noted the Appellant's submissions in which he stated that he often withdrew sums from his various bank accounts and kept those sums in his home safe before re-lodging them. The Respondent submitted that this explanation as to the source of the lodgements to the [REDACTED] and [REDACTED] bank accounts for the periods under appeal was simply not credible and unsupported by any documentation.
94. The Respondent stated that the Appellant offered different versions of where the source of funding into the [REDACTED] bank account came from. Within his evidence, the Respondent submitted that the Appellant originally said these came from the €400,000 he had in his home safe, only to later say that the funds came from the sources of income he and his spouse had accumulated over the years (as detailed at sub-paragraph 39.8 above). The Respondent submitted that these inconsistencies in the Appellant's evidence should be considered by the Commissioner in assessing his credibility.
95. In conclusion, the Respondent submitted that the Appellant had failed to include substantial deposit interest earned on his tax returns for the periods under appeal. In addition, the Respondent submitted that it had become aware, as a result of a (second) section 906A TCA 1997 request, of a bank account held by the Appellant which he had not disclosed to the Respondent during the course of an audit conducted in 2010. As that bank account was not disclosed to the Respondent during the course of that audit, and as the Appellant had failed to prove that the lodgements to that bank account, and two additional lodgements to [REDACTED] bank account, did not consist of untaxable income, then the Respondent submitted that it was incumbent on the Commission to refuse the Appellant's appeal.

Material Facts

96. The Commissioner finds the following material facts:

- 96.1. As at the date of the conclusion of the Appellant's appeal, he was 83 years old.
- 96.2. The Appellant, self-described as a frugal individual, worked from the age of 12 years old, and was by any account a hard-working individual.
- 96.3. During his career, the Appellant operated a number of successful businesses which included an oil delivery service, a garage and a pub/nightclub.
- 96.4. In 1999, the Appellant was selected for an audit ("the 1999 audit") by the Respondent in respect of the tax years 1997/98, 1998/99 and 1999/2000.
- 96.5. In October 2008, following a Circuit Court hearing, the Appellant settled his additional tax liabilities arising from the 1999 audit with the Respondent for an agreed sum of €7,272. This sum excluded interest and penalties.
- 96.6. In June 2010, the Respondent received details from various financial institutions under a section 906A TCA 1997 order. This documentation did not contain any information on an account the Appellant had with ■■■ nor a separate account held with ■■■■
- 96.7. On 28th March 2011, the Respondent issued correspondence to the Appellant. This correspondence referenced a schedule of income sources provided by the Appellant (see sub-paragraph 39.8) during the course of the 1999 audit. Within the issued correspondence, the Respondent stated that it had accepted the lodgements into the Appellant's bank accounts during the course of the audit had been derived from the provided schedule of income sources.
- 96.8. On 27th April 2011, the Respondent issued correspondence to the Appellant. Within that correspondence, it stated that it was prepared to conclude the 1999 audit subject to the Appellant paying an amount of €7,272, with interest and penalties.
- 96.9. Subsequently, on 24th June 2013, the Respondent received information from financial institutions under a (second) section 906A TCA 1997 order. That information showed that a sum in excess of £500,000 was lodged into ■■■■■ bank account between the periods 1999 to 2002 and two lodgements totalling IR£40,000 were lodged into a separate ■■■ account on 31st March 1999 and 14th April 1999.

- 96.10. The Appellant did not provide his accountant with the [REDACTED] income for the periods 1999 to 2002 when the Appellant's accountant was preparing and submitting the Appellant's income tax and VAT returns for those periods. In addition, the Appellant did not provide his accountant with details of the [REDACTED] lodgements totalling IR£40,000 lodged during those periods.
- 96.11. As a result, the lodgements into the [REDACTED] account and the [REDACTED] bank account for the years 1999 to 2002 were not included or explained in the Appellant's income tax returns for those years.
- 96.12. A number of the income sources in the [REDACTED] account related to deposit interest earned on sums within that account. The Appellant did not return these amounts of deposit interest for the years 1999 to 2002.
- 96.13. Based, on the provided [REDACTED] bank accounts, the Respondent requested the Appellant to provide an explanation on the non-deposit interest lodgements into that account for the years 1999 to 2002.
- 96.14. As part of that enquiry, the Respondent also queried the two lodgements totalling IR£40,000 into [REDACTED] bank account.
- 96.15. In order to explain the lodgements into the [REDACTED] and [REDACTED] bank accounts, the Appellant provided the Respondent with a schedule of income sources. Much of the alleged sources of income on that schedule did not contain any supporting documentation.
- 96.16. For the periods under appeal, the Appellant provided evidence of three payments received by him (£25,258.92 from [REDACTED] in February 2000 and the sums of €21,000 and €5,081.92 in respect of a defamation settlement purportedly received in the periods under appeal). The Appellant's expert witness could not trace these receipts to the Appellant's bank accounts.
- 96.17. The Respondent conducted a separate appeal into the Appellant's taxation affairs in respect of the tax years 2003, 2004, 2005, 2008 and 2009. During the course of that appeal, the Appellant claimed that the source of funds in respect of amounts deposited into his bank accounts held during those years was derived from the provided schedule of income.
- 96.18. During the course of that appeal, the Appellant also stated the source of funds for those years came from an amount of cash he held in his home safe in 2002 in the amount of €400,000.

96.19. The Appellant's appeal in respect of the tax years 2003, 2004, 2005, 2008 and 2009 found in favour of the Respondent who obtained summary judgment against the Appellant for the sums due for those years. The Appellant appealed the summary judgment to the Court of Appeal. Included within those grounds of appeal, was that the summary judgment should be withheld pending the conclusion of this appeal, on grounds which included that a failure to do so could amount to 'double assessment'. The Court of Appeal rejected those grounds and dismissed the Appellant's appeal.

96.20. The Appellant operated his bank accounts in an unorthodox manner and did not maintain any records of transactions lodged and withdrawn into and from those accounts.

Analysis

97. As noted, the appropriate starting point for analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in *Menolly Homes* where Charleton J held at paragraph 22:-

"The burden of proof in this appeal process is ... 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."

98. This burden of proof was reiterated in the recent High Court case of *O'Sullivan v Revenue Commissioners* [2021] IEHC 118, ("*O'Sullivan*") where Sanfey J. held at paragraph 90:

"...The burden of proof is on the taxpayer to prove his case, and for good reason. Knowledge of the facts relevant to the assessment, and retention of appropriate documentation to corroborate the taxpayer's position, are solely matters for the taxpayer. The appellant knew, from the moment he submitted his return, that it could be challenged by Revenue and he would have to justify his position..."

99. The Commissioner notes that the Notices of Additional Assessment to income tax raised by the Respondent in respect of the tax years 1999/2000 to 2002 inclusive derive from two separate and distinct income streams. Those income streams consist of the amount of deposit interest received by the Appellant and taxed by the Respondent under Schedule D, Case IV as follows:

1999/2000

IR£1,297

2000/01	IR£18,404
2001	IR£27,030
2002	€32,336

100. As the Appellant did not disclose those amounts of deposit interest on his tax returns for the tax years 1999/2000 to 2002, and as the Appellant's Counsel made no submissions to the Commission regarding these assessments, it follows that the Commissioner is required to uphold those assessments in full.

101. Turning to the balance of the assessments issued by the Respondent, the Commissioner notes that the assessments to Income Tax and Vat are based upon lodgements to two bank accounts held by the Appellant that is the [REDACTED] bank account and the [REDACTED] bank account.

102. It is evident from the submissions received from the parties that the Appellant did not provide his accountant with information on either of these bank accounts when he submitted and prepared his tax returns for the period under appeal. Hence, it follows that the lodgements into these accounts were not disclosed by the Appellant when he completed his tax returns nor to the Respondent when it conducted an audit of his business affairs for the periods under appeal.

103. Within his submissions, the Appellant submits that the Respondent is effectively estopped from accessing the Appellant on sums lodged into these accounts, for the periods under appeal, by virtue of the Respondent's letters of 28th March 2011 and 27th April 2011 in which it respectively stated that-

103.1. It was prepared to accept the source of lodgements into the Appellant and his spouse's bank accounts, which came to light following a section 906A TCA 1997, derived from the provided schedule of income.

103.2. It accepted the Appellant's offer of €17,031 in settlement of the additional liabilities which arose during the 1999 audit in respect of the tax years 1997, 1998 and 1999.

104. In *Lee*, the taxpayer argued that the liability reflected in the assessments was compromised by the agreement Revenue entered on cashing the cheque and/or Revenue were estopped from enforcing the assessed liability. The Court of Appeal in considering that submission held that the Commission's jurisdiction did not extend to findings otherwise relevant to dealings between taxpayers and the Respondent, and

therefore that the Commission were not entitled to adjudicate on whether a liability to tax had been contractually settled. In line with *Lee*, the Commissioner finds that he is unable to consider those submissions.

105. If the Commissioner is mistaken in this regard, he finds those submissions to be without substance. The Commissioner notes at the time the Respondent issued the comments relied upon by the Appellant, it (the Respondent) was not in possession of the [REDACTED] and [REDACTED] bank statements which were subsequently received in 2013 and which form the basis of this appeal.

106. As section 956 and 959Z TCA 1997 permits the Respondent to make enquiries and issue additional assessments at “any time” when a negligent return was submitted by the Appellant, and as the Appellant failed to disclose complete details of his income for the periods under appeal, it follows that the Respondent acted in a lawful manner in enquiring into matters and the subsequent issuance of its notices of additional assessment.

107. The balance of tax sought in those assessments are calculated with reference to a number of lodgements into an [REDACTED] and [REDACTED] bank account in the name of the Appellant and his spouse.

108. It is the Respondent’s submission that those lodgements relate to untaxed income, while the Appellant contends that the lodgements were derived from monies held in his home safe and/or monies he received over his lifetime as per his provided schedule of income at sub-paragraph 39.8.

109. During the course of the appeal, the Commissioner noted the Appellant’s detailed recollection of his working history and events which occurred over the years. In coupling this evidence with the multitude of legal proceedings instigated by the Appellant, It is clear to the Commissioner that the Appellant is an astute and capable individual who had access to professional advice over the course of his interactions with the Respondent.

110. The Commissioner further notes that the Appellant’s taxation affairs for the period under appeal first came under scrutiny from the Respondent in 1999. The Commissioner notes that the Appellant elected to withhold information during the course of that audit in relation to the [REDACTED] and [REDACTED] accounts which were in operation at that time.

111. In considering the Appellant’s position and Sanfey J’s comments in *O’Sullivan* (that the Appellant should have known from the moment he submitted his tax returns, that it could have been challenged by the Respondent), the Commissioner finds it unconvincing that the Appellant did not seek copies of the [REDACTED] and [REDACTED] bank accounts, together with

such supporting documentation as would have been available at that stage, when the 1999 audit commenced.

112. In place, the Appellant and his expert accountant submit that as the enquiry into the Appellant's taxation affairs, which cumulated into the matters under appeal, did not commence until 10th May 2012, and as the Appellant's advisors did not seek copies of those bank accounts until 29th June 2014, then regard should be had by the Commissioner in relation to documents, in particular the [REDACTED] statements, which were no longer available.

113. As the [REDACTED] statements are no longer available, the Appellant requests that the Commissioner consider as reasonable that the funds ultimately lodged into the [REDACTED] bank account on 9th November 1999 derived from the schedule of income sources provided and the accumulation of deposit interest over the years on those sums.

114. The third-party documentation provided to the Commission which purports to support that position is obtained from the provided [REDACTED] statements as follows:

114.1. Account number [REDACTED], which was opened on 14/10/1988 when the sum of IR£112,000 was lodged into it. This account accumulated interest on that balance before the sum of IR£113,428.97 was transferred from it when the account was closed on 24th January 1989.

114.2. Account number [REDACTED], which was opened when the 29th January 1990 when the sum of IR£113,428.97 was transferred into it. This transfer came from the above bank account. Following receipt of deposit interest on that sum, the account balance of IR£119,427.17 was transferred or withdrawn from it on 29th January 1990.

114.3. The next set of statements provided to the Commission were dated 2nd August 1996 when the sum of IR£250,000 was lodged into bank account number [REDACTED]. The Appellant contends that the opening balance on this account derived from the funds that he withdrew on 29th January 1990 (IR£119,427.17), together with deposit interest that would have been paid on this sum for the period 30th January 1990 to 1st August 1996 and such sums as would have been paid to the Appellant during that period, which did not attract a tax liability, such as the encashment of his [REDACTED] policy on 14th March 1991 in the sum of IR£5,223.97. That account was closed on 24th April 1998, following a number of deposit interest credits, when the sum of IR£268,709.13 was transferred or withdrawn from it.

114.4. The next bank statements received by the Commission relate to account number [REDACTED] dated 11th January 1999 when the sum of IR£306,095.77 was lodged into it. It is the Appellant's position that this sum derived from the closure of the previous bank account, where IR£268,709.13 was derived from, with the balance, presumably, being derived from deposit interest for the period 25th April 1998 to 10th January 1999. That account was closed on 28th March 1999 when the sum of IR£306,097.77 was transferred or withdrawn from it.

114.5. Lastly, the Commission was provided with bank statements on the [REDACTED] account number [REDACTED] when the sum of IR£351,008.52 was deposited into it on 9th November 1999. It is the Appellant's position that this balance came from the closure of the above bank account (IR£306,097.77) with the resulting amount representing presumed interest earned on that sum for the period 29th March 1999 to 8th November 1999.

115. On first examination, and in considering the Appellant's age and work ethic/career, it may appear that the Appellant's position (that the original income lodged into the bank account was derived from those sources detailed at 39.8 above, other tax exempt amounts received over the years and deposit interest earned) is plausible. However, the Commissioner has a number of concerns in considering that conclusion.

116. In adjudicating upon the Appellant's appeal, the Commissioner is required to base his findings on the evidence provided. While the Appellant asserts that he received a number of tax exempt sums over the years or sums which tax had been paid on, in his provided schedule at 39.8 above, the Commissioner notes, with the exception of the payments received from the life assurance payments (IR£5223.97 from [REDACTED] on 14th March 1991 and IR£25,584.92 from [REDACTED] in February 2000) and the sums paid in respect of the defamation actions (€21,000 plus €5,081.92), that no evidence was provided to the Commission to support these submissions. Furthermore, the provided earnings statement appears to have been prepared on the basis of sums purportedly received by the Appellant and his spouse over the years with no deductions from sums necessarily required for expenditure, such as food, utility bill payments, etc.

117. The Commissioner also notes that contradictory evidence provided by the Appellant in which he originally stated that the lodgements into the [REDACTED] bank account derived from the €400,000 he had stored in his home safe in 2002 to later changing the source to accumulated savings he had invested in his deposit accounts over the years. The Commissioner further notes that the "gaps" in the provided bank statements which the

Appellant sought to explain by deposit interest earned on the sums held is not consistent with deposit interest rates during that duration.

118. The Commissioner has further concerns in accepting the Appellant's submissions having regard to the mortgage obtained on 2nd January 2002 in the sum of IR£85,600. These concerns derive from the Appellant's submissions in which he stated that he was always "watching" deposit interest rates to ensure that he got the best available return and that he was "careful" with money. As the Appellant had a sum exceeding IR£500,000 in the [REDACTED] account at that time and a purported €400,000 in cash in his some safe, it appears inconceivable that he would have obtained a mortgage at that time and paid interest to the bank. Furthermore, the Commissioner notes that the Appellant detailed that he had the sum of IR£190,000 in the [REDACTED] in his mortgage application form which is further inconsistent with his evidence and the provided bank statements which related to that time.

119. Furthermore, the Commissioner has cognisance of the contradiction inherent in the Appellant's submission and an examination of the [REDACTED] bank statement [**Appendix 1**] for the year 2000 which details numerous lodgements into that bank account. Within the Appellant's evidence, he stated that those lodgements were either derived from the provided income schedule or from sums of cash which he lodged from his household safe. This evidence is contradicted by the number of relatively small, in proportion to the account balance, cheque lodgements in denominations ranging from IR£10 to IR£1957.39 as set out in Appendix 1. In addition, from that appendix, the Commissioner notes the evidence of multiple lodgements of the cheques on the same day.

120. As the Appellant has not provided details of those bank cheques, or any evidence that the sums lodged into the [REDACTED] bank account for the period under appeal do not represent undisclosed taxable income, the Commissioner finds that the funds lodged into that bank account did not come from the schedule of income sources provided by the Appellant and/or cash withdrawn from his safe but rather from unexplained sources of income. This unexplained income finding is further supported from the unorthodox manner in which the Appellant operated his bank accounts for the periods under appeal with the lodging of sums into his bank and credit union accounts with same day withdrawals and the withdrawal by cash/"Society cheques" of large sums in favour of himself, his spouse and his presumed children.

121. As the Commission were provided with no evidence which explained the source of the lodgements into the [REDACTED] Bank Account, (" [REDACTED] ") in the sum of £29,000

on 31/3/1999 and the second lodgement described as "██████" in the sum of IR£11,000 is on 14/4/1999), the Commissioner is left with no option but to conclude that they most likely derived over the years from the same pattern of cheque and cash lodgements as those in the ██████ account. As such, the Commissioner further finds that the source of funds lodged into that account did not derive from the purported sources detailed in the Appellant's provided schedule but rather from unexplained sources.

122. As no evidence was provided to the Commission that the Case IV assessments raised by the Respondent were incorrect and as the Appellant failed to prove that the lodgements into the ██████ and ██████ bank accounts were derived from untaxable sources, it follows that the Commissioner is required to refuse the Appellant's appeal and uphold the Respondent's assessments.

123. However, in examining the Respondent's assessments the Commissioner notes that they contain an error. This error was caused by the Respondent assessing the sum of IR£22,480 lodged into the ██████ bank account on 30th January 2001 in the tax year 2001, rather than the correct tax year which was 2000/01.

124. Therefore, the Commissioner upholds the Respondents assessments for the periods under appeal with the variation that the 2001 assessment to income tax be reduced by the amount of income tax referable to the sum of IR£22,480 wrongly included within that assessment. Owing to the misclassification of that income, the Commissioner finds that the notice of assessment to income tax for 2000/01 should be increased by the amount of income tax due on the omitted receipt of IR£22,480.

125. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes*, the burden of proof ...is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."

126. The burden of proof has not been discharged to satisfy the Commissioner that the taxation liabilities sought by the Respondent are not due.

Determination

127. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the tax is not payable.

128. Therefore, the Notice of Additional Assessments to Income Tax issued by the Respondent on 15th December 2015, are upheld subject to the variation as provided at

paragraph 124 above. The final calculation of the income tax liability for 2000/01 is for the Respondent to compute. In addition, the Commissioner determines that the Notices of Assessment to additional VAT for the periods 1999 to 2001, in the euro equivalent of €76,418 are upheld.

129. The Commissioner appreciates that the Appellant will be disappointed with this determination but he was correct to seek legal clarity on his appeal. The Commissioner commends the conduct of the parties in the course of the appeal hearing.

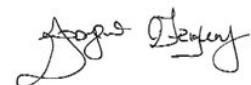
130. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

131. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ (5) and section 949AJ (6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ (6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

132. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Andrew Feighery

Appeal Commissioner

13th October 2023

Appendix 1 – Summary of IBRC (non-deposit transactions)

IBRC Account Number [REDACTED]

Summary Of Account Transactions for 1999-2002 (excluding deposit interest)

		<i>Withdrawal</i>	<i>Lodgement</i>
		IR£	IR£
09/11/1999	Bank Draft		100,000.00
09/11/1999	Bank Draft		100,000.00
09/11/1999	Bank Draft		100,000.00
09/11/1999	Bank Draft		9,484.56
09/11/1999	Bank Draft		10,000.00
09/11/1999	Bank Draft		10,000.00
09/11/1999	Bank Draft		10,000.00
09/11/1999	Bank Draft		3,000.00
09/11/1999	Bank Draft		3,000.00
09/11/1999	Bank Draft		5,523.96
30/11/1999	Internal Transfer	667.64	
30/12/1999	Internal Transfer	985.57	
31/01/2000	Internal Transfer	926.40	
29/02/2000	Internal Transfer	866.62	
31/03/2000	Internal Transfer	926.40	
Total 1999/2000		4,372.63	351,008.52

		<i>Withdrawal</i>	<i>Lodgement</i>
		IR£	IR£
28/04/2000	Internal Transfer	920.10	
31/05/2000	Internal Transfer	950.78	
30/06/2000	Internal Transfer	920.10	
31/07/2000	Internal Transfer	1,275.42	
31/08/2000	Internal Transfer	1,275.42	
26/09/2000	Bank Draft		10,000.00
27/09/2000	Bank Draft		1,000.00
27/09/2000	Bank Draft		10,000.00
27/09/2000	Bank Draft		14,000.00
27/09/2000	Bank Draft		60,000.00
29/09/2000	Internal Transfer	1,268.87	
02/10/2000	Internal Transfer		10,987.59
28/12/2000	Cash		15,000.00
28/12/2000	Bank Cheque		290.39
28/12/2000	Bank Cheque		791.64
28/12/2000	Bank Cheque		348.80
28/12/2000	Bank Cheque		879.62
28/12/2000	Bank Cheque		488.33
28/12/2000	Bank Cheque		402.15

28/12/2000	Bank Cheque	285.11
28/12/2000	Bank Cheque	454.69
28/12/2000	Bank Cheque	242.58
28/12/2000	Bank Cheque	332.31
28/12/2000	Bank Cheque	306.18
28/12/2000	Bank Cheque	50.00
28/12/2000	Bank Cheque	50.00
28/12/2000	Bank Cheque	51.02
28/12/2000	Bank Cheque	424.66
28/12/2000	Bank Cheque	324.80
28/12/2000	Bank Cheque	620.61
28/12/2000	Bank Cheque	449.51
28/12/2000	Bank Cheque	484.78
28/12/2000	Bank Cheque	654.65
28/12/2000	Bank Cheque	20.00
28/12/2000	Bank Cheque	25.00
28/12/2000	Bank Cheque	16.00
28/12/2000	Bank Cheque	24.00
28/12/2000	Bank Cheque	25.00
28/12/2000	Bank Cheque	25.00
28/12/2000	Bank Cheque	70.00
28/12/2000	Bank Cheque	50.00
28/12/2000	Bank Cheque	80.00
28/12/2000	Bank Cheque	20.00
28/12/2000	Bank Cheque	642.00
28/12/2000	Bank Cheque	1,579.94
28/12/2000	Bank Cheque	1,331.00
28/12/2000	Bank Cheque	1,957.39
28/12/2000	Bank Cheque	1,000.00
28/12/2000	Bank Cheque	20.00
28/12/2000	Bank Cheque	10.00
28/12/2000	Bank Cheque	40.00
28/12/2000	Bank Cheque	40.00
28/12/2000	Bank Cheque	40.00
28/12/2000	Bank Cheque	160.00
28/12/2000	Bank Cheque	250.00
28/12/2000	Bank Cheque	300.00
28/12/2000	Bank Cheque	450.00
28/12/2000	Bank Cheque	400.00
28/12/2000	Bank Cheque	150.00
28/12/2000	Bank Cheque	170.00
28/12/2000	Bank Cheque	152.00
28/12/2000	Bank Cheque	282.00
28/12/2000	Bank Cheque	144.00
28/12/2000	Bank Cheque	330.93
28/12/2000	Bank Cheque	298.12
28/12/2000	Bank Cheque	221.67

28/12/2000	Unpaid Cheque	150.00	
30/01/2001	Cash		22,480.00

Total 2000/01

6,760.69	161,723.47
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		<i>Withdrawal</i> IR£	<i>Lodgement</i> IR£
18/06/2001	Society Cheque "██████████"	5,000.00	
18/06/2001	Society Cheque "██████████"	2,500.00	
18/06/2001	Society Cheque "██████████"	2,500.00	
04/12/2001	Society Cheque "██████████"	5,000.00	
04/12/2001	Society Cheque "██████████"	5,000.00	
04/12/2001	Society Cheque "██████████"	5,000.00	
04/12/2001	Society Cheque "██████████"	5,000.00	
04/12/2001	Society Cheque "██████████"	5,000.00	
18/12/2001	Society Cheque "██████████"	3,629.54	
18/12/2001	Society Cheque "██████████"	3,629.54	

Total 2001

37,259.08	0.00
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		<i>Withdrawal</i> €	<i>Lodgement</i> €
06/02/2002	Society Cheque "██████████"	4,232.46	
06/02/2002	Society Cheque "██████████"	4,232.46	
06/02/2002	Society Cheque "██████████"	4,232.46	
07/05/2002	Society Cheque "██████████"	4,000.00	
07/05/2002	Society Cheque "██████████"	3,000.00	
07/05/2002	Society Cheque "██████████"	3,000.00	
26/08/2002	Society Cheque "██████████"	2,500.00	
26/08/2002	Society Cheque "██████████"	2,500.00	
11/10/2002	Society Cheque "██████████"	5,000.00	
11/10/2002	Society Cheque "██████████"	5,000.00	
11/10/2002	Society Cheque "John ██████████"	5,000.00	
11/10/2002	Society Cheque "██████████"	5,000.00	
11/10/2002	Society Cheque "██████████"	5,000.00	
11/10/2002	Society Cheque "██████████"	5,000.00	

11/10/2002	Society Cheque [REDACTED]	5,000.00
18/12/2002	Cash	10,000.00

Total 2002

67,697.38	0.00
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Appendix 2 – Legislation

Taxes Consolidation Act 1997

Section 906A TCA 1997 – Information to be furnished by financial institutions.

(1) *In this section and in sections 907, 907A and 908—*

“the Acts” has the meaning assigned to it by section 1078(1);

“authorised officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred by this section, or, as the case may be, section 907, 907A or 908;

“books, records or other documents” includes—

(a) any records used in the business of a financial institution, or used in the transfer department of a financial institution acting as registrar of securities, whether—

(i) comprised in bound volume, loose-leaf binders or other loose-leaf filing system, loose-leaf ledger sheets, pages, folios or cards, or

(ii) kept on microfilm, magnetic tape or in any non-legible form (by the use of electronics or otherwise) which is capable of being reproduced in a legible form,

(b) every electronic or other automatic means, if any, by which any such thing in non-legible form is so capable of being reproduced,

(c) documents in manuscript, documents which are typed, printed, stencilled or created by any other mechanical or partly mechanical process in use from time to time and documents which are produced by any photographic or photostatic process, and

(d) correspondence and records of other communications between a financial institution and its customers;

“connected person” has the same meaning as in section 10; but an individual (other than in the capacity as a trustee of a settlement) shall be connected with another individual only if that other individual is the spouse or civil partner of, or a minor child or minor child of the civil partner of, the first-mentioned individual;

“deposit” and “interest” have, respectively, the meaning assigned to them by section 256(1);

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

“EEA state” means a state which is a contracting party to the EEA Agreement;

“financial institution” means—

(a) a person who holds or has held a licence under section 9 or an authorisation granted under section 9A of the Central Bank Act 1971, or a person who holds or has held a licence or other similar authorisation under the law of an EEA state, other than the State, which corresponds to a licence granted under the said section 9,

(b) a person referred to in section 7(4) of the Central Bank Act, 1971, or

(c) a credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992)) which has been authorised by the Central Bank of Ireland to carry on business of a credit institution in accordance with the provisions of the supervisory enactments (within the meaning of those Regulations);

“liability” in relation to a person means any liability in relation to tax to which the person is or may be, or may have been, subject, or the amount of such liability;

“tax” means any tax, duty, levy or charge under the care and management of the Revenue Commissioners;

“taxpayer” includes any person whose identity is not known to the authorised officer and includes a group or class of persons whose individual identities are not so known to the authorised officer.

(2) Notwithstanding any obligation as to secrecy or other restriction upon disclosure of information imposed by or under statute or otherwise, and subject to this section, an authorised officer may, for the purpose of enquiring into a liability in relation to a person (in this section referred to as the “taxpayer”), serve on a financial institution a notice in writing requiring the financial institution, within such period as may be specified in the notice, not being less than 30 days from the date of the service of the notice, to do either or both of the following, namely—

(a) to make available for inspection by the authorised officer such books, records or other documents as are in the financial institution’s power, possession or

procurement and as contain, or may (in the authorised officer's opinion formed on reasonable grounds) contain, information relevant to a liability in relation to the taxpayer,

(b))to furnish to the authorised officer, in writing or otherwise, such information, explanations and particulars as the authorised officer may reasonably require, being information, explanations and particulars that are relevant to any such liability,

and which are specified in the notice.

(3) Where, in compliance with the requirements of a notice under subsection (2), a financial institution makes available for inspection by an authorised officer, books, records or other documents, it shall afford the authorised officer reasonable assistance, including information, explanations and particulars, in relation to the use of all the electronic or other automatic means, if any, by which the books, records or other documents, in so far as they are in a non-legible form, are capable of being reproduced in a legible form and any data equipment or any associated apparatus or material.

(4) An authorised officer shall not serve a notice on a financial institution under subsection (2) without the consent in writing of a Revenue Commissioner and without having reasonable grounds to believe that the financial institution is likely to have information relevant to a liability in relation to the taxpayer.

(5) Without prejudice to the generality of subsection (2), the books, records or other documents which a financial institution may be required by notice under that subsection to deliver or to make available and the information, explanations and particulars which it may likewise be required to furnish, may include books, records or other documents and information, explanations and particulars relating to a person who is connected with the taxpayer.

(6) The persons who may be treated as a taxpayer for the purposes of this section include a company which has been dissolved and an individual who has died.

(7) ...

(8) Where an authorised officer serves a notice under subsection (2), the taxpayer concerned shall be notified in writing by the authorised officer of the service of the notice and of the name of the person upon whom it was served—

- (a) *in a case where the identity of the taxpayer is known to the authorised officer at the time the notice is served under subsection (2), at that time or as soon as is practicable thereafter, and*
- (b) *in any other case, as soon as is practicable after the time the identity of the taxpayer becomes known to the authorised officer.*
- (9) *Where, in compliance with a notice served under subsection (2), a financial institution makes books, records or other documents available for inspection by an authorised officer, the authorised officer may make extracts from or copies of all or any part of the books, records or other documents.*
- (10) *A financial institution which fails or refuses to comply with a notice issued under subsection (2) or which fails or refuses to afford reasonable assistance to an authorised officer as required under subsection (3), shall be liable to a penalty of €19,045 and, if the failure or refusal to comply with such notice continues after the expiry of the period specified in the notice served under subsection (2), a further penalty of €2,535 for each day on which the failure or refusal continues.*

Section 942 – Appeals to Circuit Court.

- (1) *Any person aggrieved by the determination of the Appeal Commissioners in any appeal against an assessment made on that person may, on giving notice in writing to the inspector or such other officer as the Revenue Commissioners shall authorise in that behalf (in this section referred to as “other officer”) within 10 days after such determination, require that the appeal shall be reheard by the judge of the Circuit Court (in this section referred to as “the judge”) in whose circuit is situate, in the case of—*
- (a) a person who is not resident in the State,*
 - (b) the estate of a deceased person,*
 - (c) an incapacitated person, or*
 - (d) a trust,*
- the place where the assessment was made and, in any other case, the place to which the notice of assessment was addressed, and the Appeal Commissioners shall transmit to the judge any statement or schedule in their possession which was delivered to them for the purposes of the appeal.*
- (2) *At or before the time of the rehearing of the appeal by the judge, the inspector or other officer shall transmit to the judge the prescribed form in which the Appeal Commissioners’ determination of the appeal is recorded.*

- (3) *The judge shall with all convenient speed rehear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all consequent matters, as the Appeal Commissioners might have and exercise, and the judge's determination shall, subject to section 943, be final and conclusive.*
- (4) *)Section 934(2) shall, with any necessary modifications, apply in relation to a rehearing of an appeal by a judge of the Circuit Court as it applies in relation to the hearing of an appeal by the Appeal Commissioners.*
- (5) *The judge shall make a declaration in the form of the declaration required to be made by an Appeal Commissioner as set out in Part 1 of Schedule 27.*
- (6) *Where an appeal is determined by the judge, the inspector or other officer shall, unless under the Tax Acts a case is required to be stated for the opinion of the High Court, give effect to the judge's determination and thereupon, if the determination is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.*
- (7) *...*
- (8) *Where following an application for the rehearing of an appeal by a judge of the Circuit Court in accordance with subsection (1) there is an agreement within the meaning of paragraphs (b), (c) and (e) of section 933(3) between the inspector or other officer and the appellant in relation to the assessment, the inspector shall give effect to the agreement and, if the agreement is that the assessment is to stand or is to be amended, the assessment or the amended assessment, as the case may be, shall have the same force and effect as if it were an assessment in respect of which no notice of appeal had been given.*
- (9) *Every rehearing of an appeal by the Circuit Court under this section shall be held in camera.*

Section 949H – Flexible proceedings.

- (1) *The Appeal Commissioners shall, subject to the provisions of this Part, endeavour to the best of their ability to manage and conduct proceedings in a way that will meet the reasonable expectations of members of the public (and in particular tax payers) with regard to—*
 - (a) *undue formality being avoided, and*

- (b) a flexible approach being adopted by the Commissioners in respect of procedural matters.
- (2) Without prejudice to the generality of subsection (1), the Appeal Commissioners shall—
 - (a) provide an opportunity to the parties to settle the matter under appeal by agreement with each other, and
 - (b) avoid delay insofar as this is compatible with the proper consideration of a matter under appeal

Section 949AK (1) – Determinations in relation to assessments.

- (1) In relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that—
 - (a) an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly,
 - (b) an appellant has, by reason of the assessment, been undercharged, determine that the assessment be increased accordingly, or
 - (c) Neither paragraph (a) nor (b) applies, determine that the assessment stand.

””

Section 956 – Inspector’s right to make enquiries and amend assessments.

- (1) (a) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector—
 - (i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and
 - (ii) may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.
- (b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in paragraph (a) (i) shall not preclude the inspector—
 - (i) from making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to section 955 (2), from amending or further amending an assessment in such manner as he or she considers appropriate.

(c) Any enquiries and actions referred to in paragraph (b) shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 6 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at that time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.

(2) (a) A chargeable person who is aggrieved by any enquiry made or action taken by an inspector for a chargeable period, after the expiry of the period referred to in subsection (1) (c) in respect of that chargeable period, on the grounds that the chargeable person considers that the inspector is precluded from making that enquiry or taking that action by reason of subsection (1)(c) may, by notice in writing given to the inspector within 30 days of the inspector making that enquiry or taking that action, appeal to the Appeal Commissioners, and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment.

(b) Any action required to be taken by the chargeable person and any further action proposed to be taken by the inspector pursuant to the inspector's enquiry or action shall be suspended pending the determination of the appeal.

(c) Where on the hearing of the appeal the Appeal Commissioners—

(i) determine that the inspector was precluded from making the enquiry or taking the action by reason of subsection (1)(c), the chargeable person shall not be required to take any action pursuant to the inspector's enquiry or action and the inspector shall be prohibited from pursuing his enquiry or action, or

(ii) decide that the inspector was not so precluded, it shall be lawful for the inspector to continue with his or her enquiry or action.

Section 959Z – Right of Revenue officer to make enquiries.

(1) A Revenue officer may, subject to this section, make such enquiries or take such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to—

(a) whether a person is chargeable to tax for a chargeable period,

(b) whether a person is a chargeable person as respects a chargeable period,

(c) the amount of income, profit or gains or, as the case may be, chargeable gains in relation to which a person is chargeable to tax for a chargeable period, or

- (d) the entitlement of a person to any allowance, deduction, relief or tax credit for a chargeable period.*
- (2) The making of an assessment or the amendment of an assessment in accordance with subsection (2) of section 959Y by reference to any statement or particular referred to in paragraph (a) of that subsection does not preclude a Revenue officer from, subject to this section, making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular.*
- (3) Subject to subsection (4), any enquiries or actions to which either subsection (1) or (2) applies shall not be made in the case of a chargeable person for a chargeable period at any time after the expiry of the period of 4 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period.*
- (4) Enquiries and actions to which either subsection (1) or (2) applies may be made at any time in relation to a person or a return for a chargeable period where—*
- (a) any of the circumstances referred to in paragraph (a), (b) or (c) of section 959AC(2) apply, or*
 - (b) a Revenue officer has reasonable grounds for believing, in accordance with section 959AD (3), that any form of fraud or neglect has been committed by or on behalf of the person in connection with or in relation to tax due for the chargeable period.*