



AC Ref: 02TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Background

1. The issue in this case involved the question of the availability of business relief as contained at Chapter 2 Part 10 of the Capital Acquisitions Consolidation Act 2003 as amended ('CATCA2003').
2. During the tax year of assessment the Appellant claimed business relief pursuant to Chapter 2 Part 10 of the CATCA2003 in respect of an inheritance from the disponent, the Appellant's uncle, who died on 16 July 2009. The inheritance comprised a pharmacy business including a retail shop premises. The Respondent accepted that business relief was available in relation to the pharmacy retail shop which was located on the ground floor of the premises however the Respondent disallowed the relief in respect of the first floor of the premises on the basis of section 100(5) CATCA2003.
3. An amended assessment was raised on 3 October 2014 disallowing the relief in relation to the first floor of the premises.



Legislation

Section 93 – Relevant business property

93(1); *“In this Chapter and subject to the following provisions of this section and to sections 94, 96 and 100(4) “relevant business property” means, in relation to a gift or inheritance, any one or more of the following, that is;*

Property consisting of a business or interest in a business, ..”

Section 100 – Exclusion of value of excepted assets

100(1) *“In determining for the purposes of this Chapter what part of the taxable value of a gift or inheritance is attributable to the value of relevant business property, so much of the last mentioned value as is attributable to –*

- (a) Any excepted assets within the meaning of subsection (2), or*
- (b) Any excluded property within the meaning of [subsection (8)]*
is disregarded.”

100(2) *“An asset is an excepted asset in relation to any relevant business property if it was not wholly or mainly for the purposes of the business concerned throughout the whole or the last 2 years of the relevant period”*

....

100(5) *“Where part but not the whole of any land or building is used exclusively for the purposes of any business and the land or building would, but for this subsection, be an excepted asset, or, as the case may be, prevented by subsection (4) from being relevant business property, the part so used and the remainder are for the purposes of this section treated as separate assets, and the value of the part so used shall (if it would otherwise be less) be taken to be such proportion of the value of the whole as may be just”.*

....



100(7) *“For the purposes of this section an asset is deemed not to have been used wholly or mainly for the purposes of the business concerned at any time when it was used wholly or mainly for the personal benefit of the disponent or of a relative of the disponent.”*

Submissions

4. The Respondent contended that the Appellant was not entitled to the relief based on section 100(5) CATCA 2003. The Respondent’s position was that the pharmacy retail unit and the first floor of the premises should be treated as separate assets, with business relief being available only in respect of the pharmacy retail unit. The Respondent submitted that the pharmacy premises taken as a whole would comprise an excepted asset within the meaning of section 100(2) CATCA2003 on the basis that the premises would not satisfy the test of being *‘used wholly or mainly for the purposes of the business concerned throughout the whole or the last 2 years of the relevant period’* on account of, the Respondent submitted, the first floor of the premises not being in use for business purposes. The Respondent also contended that section 100(7) may apply to disallow the relief. The Respondent accepted that the asset was comprised in the disposition within the meaning of sections 94 CATCA2003 and 100(6) CATCA2003 and that the minimum period of ownership requirements had been met.
5. The Appellant claimed that the first floor of the premises was used *“wholly or mainly”* for the purposes of the business and that he/she was entitled to claim retirement relief in respect of the whole of the premises on the basis that the premises constituted *‘relevant business property’* within the meaning of section 93 CATCA2003. Separately, the Appellant challenged the sum attributed to goodwill, of **AMOUNT REDACTED**.

Evidence

6. Section 93(1)(a) provides that *‘relevant business property’ means ... property consisting of a business or interest in a business, ..”*



7. The Respondent accepted that the pharmacy premises located at ground level of the business comprised '*relevant business property*' but did not accept that the first floor of the premises comprised '*relevant business property*'. The Respondent was of the view that the first floor of the premises had not been "*used wholly or mainly for the purposes of the business concerned*"
8. In evidence the Appellant stated that since 1999, the first floor of the premises was used primarily as a store unit for the shop i.e. for storage for stock, storage of invoices and accounting records, for use regarding confidential calls to doctors and hospitals and as a changing area for staff of the pharmacy. There was a toilet and washing facilities on this floor and the area was also used to store bicycles for those employees who cycled to work.
9. The Appellant gave evidence that nobody resided on the first floor of the premises. This evidence was corroborated by the brother/sister of the Appellant, **NAME REDACTED**. The Appellant also stated that the upstairs of the premises was in need of modernisation and did not have a kitchen. **NAME REDACTED** for the Respondent accepted that nobody had resided in the upstairs of the premises for several years. The Respondent did not adduce any evidence as to use of the premises, other than to contend that the first floor did not satisfy the '*wholly or mainly*' test. Both the Appellant and his/her brother/sister each gave evidence that there was no separate entrance to the upstairs but that there was a shared entrance from the pharmacy shop premises below.

Analysis

10. I accept the evidence of the Appellant and I hold that the first floor of the premises was "*used wholly or mainly for the purposes of the business concerned...*". As a result, the premises comprising the first floor does not constitute an excepted asset within the meaning of section 100(2) CATCA2003.
11. Section 100(5) applies where only part of the building is used for business purposes however, based on the evidence of the Appellant, the entire building was used for business purposes. No alternative evidence was offered by the Respondent. As a result, it appears to



me that the first floor of the premises was used for business purposes and that section 100(5) does not apply.

12. Section 100(7) CATCA2003 provides that where an asset is used wholly or mainly for the personal benefit of the disponer or a relative of the disponer, it will not be regarded as relevant business property. While the Respondent did suggest that section 100(7) may apply, the evidence provided on behalf of the Appellant (much of which was accepted by the Respondent) did not support the Respondent's position that the first floor of the premises was used wholly or mainly for the personal benefit of the disponer or any of his/her relatives. Therefore in my view, section 100(7) CATCA2003 does not apply.

13. In relation to the matter of the valuation of goodwill, the Respondent accepted the value placed on goodwill as contained in the valuation report of **NAME REDACTED**, which was furnished to the Respondent by agents for the Appellant. While the Appellant contested this value as unduly high, the Appellant adduced no alternative valuation on the matter of goodwill, therefore I accept the valuation in respect of goodwill in the report of **NAME REDACTED**.

Conclusion

14. In tax appeals before the Appeal Commissioners, the burden of proof rests on the Appellant. The Appellant must prove his case on the balance of probabilities and the authority for this is contained expressly in Part 40 of the TCA 1997 at section 934(3), which provides;

"Where on appeal it appears to the Appeal Commissioners by whom the appeal is heard, or to a majority of such Appeal Commissioners, by examination of the appellant on oath or affirmation or by other lawful evidence that the appellant is overcharged by any assessment, the Appeal Commissioners shall abate or reduce the assessment accordingly, but otherwise the Appeal Commissioners shall determine the appeal by ordering that the assessment shall stand."

15. This section applies to the CATCA2003 by means of section 67(5) of the CATCA2003.





16. In my view, the evidence adduced at hearing on behalf of the Appellant was sufficient to establish, on the balance of probabilities, that the first floor of the premises was *“used wholly or mainly for the purposes of the business concerned”* for the relevant tax years of assessment. The Respondent did not present any alternative evidence in this regard.
17. As a result, the provisions of Chapter 2 of Part 10 CATCA2003 entitle the Appellant to claim business relief in relation to both the retail pharmacy premises and the first floor of the pharmacy premises on the basis that the premises comprises *“relevant business property”* within the meaning of section 93(1)(a) CATCA2003.
18. As stated above, as regards the matter of the valuation of goodwill, while the Appellant contested the value as unduly high, the Appellant adduced no alternative valuation and therefore I accept the valuation contained in the report of **NAME REDACTED**.
19. Accordingly the appeal is determined in accordance with section 933(5) TCA 1997 as applied by section 67(5) CATCA2003.

APPEAL COMMISSIONER

February 2016

