



AC Ref: 12TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This case concerns matters arising in relation to an inheritance by the Appellant in relation to the estate of her father who passed away on DATE REDACTED 2009, as varied by Deed of family arrangement dated DATE REDACTED 2010. The Appellant inherited a property at X ADDRESS, an apartment at Y ADDRESS (hereafter 'the properties') and a share of the residue of the estate which included a share of the proceeds of a life assurance policy. An assessment was raised on 16 March 2015 which is disputed by the Appellant on grounds set out below.
2. The issues are as follows;
 - a) Whether the issue of dwelling-house relief pursuant to section 86 of the Capital Acquisitions Tax Consolidation Act 2003 ('CATCA2003') in respect of the property at X ADDRESS remains in dispute as between the parties.
 - b) Whether the sum assessed in respect of the life assurance policy is excessive





- c) Whether the provisions of section 957 of the Taxes Consolidation Act 1997 ('TCA1997') preclude the Appellant from disputing the valuation of the properties on the basis that the valuations contained in the Appellant's return have been accepted by the Inspector.
3. At the outset of the hearing the parties indicated that the matter of dwelling-house relief was no longer in issue and thus issues b) and c) above are the matters which fall to be determined in this case.

Legislation

Section 66 CATCA2003 - Appeals regarding value of real property.

66.(1) If a person is aggrieved by the decision of the Commissioners as to the market value of any real property, that person may appeal against the decision in the manner prescribed by section 33 of the Finance (1909-10) Act 1910¹, and the provisions as to appeals under that section of that Act shall apply accordingly with any necessary modifications.

(2) The particulars of any transfer or lease which are presented to or obtained by the Commissioners under section 12(2) of the Stamp Duties Consolidation Act 1999 shall, in any appeal under this section, be received as prima facie evidence of all matters and things stated in such particulars.

Section 67 CATCA2003 - Appeals in other cases.

67.(1) In this section—

"Appeal Commissioners" has the meaning assigned to it by section 850 of the Taxes Consolidation Act 1997;

"appellant" means a person who appeals to the Appeal Commissioners under subsection (2).

(2) Subject to the other provisions of this Act, a person who is called on by the Commissioners to pay an assessment of tax in respect of any property and who is aggrieved by the assessment may, in accordance with this section, appeal to the Appeal Commissioners against the assessment and the appeal shall be heard and determined by the Appeal Commissioners whose determination shall be final and conclusive unless the appeal is required to be reheard by a judge of the Circuit





Court or a case is required to be stated in relation to it for the opinion of the High Court on a point of law.

(3) An appeal shall not lie under this section in relation to the market value of real property.

(4) A person who intends to appeal under this section against an assessment shall, within 30 days after the date of the assessment, give notice in writing to the Commissioners of that person's intention to appeal against the assessment.

(5)(a) Subject to this section, the provisions of the Income Tax Acts relating to—

(i) the appointment of times and places for the hearing of appeals,

(ii) the giving of notice to each person who has given notice of appeal of the time and place appointed for the hearing of that person's appeal,

(iii) the determination of an appeal by agreement between the appellant and an officer appointed by the Commissioners in that behalf,

(iv) the determination of an appeal by the appellant giving notice of that appellant's intention not to proceed with the appeal,

(v) the hearing and determination of an appeal by the Appeal Commissioners, including the hearing and determination of an appeal by one Appeal Commissioner,

(vi) the publication of reports of determinations of the Appeal Commissioners,

(vii) the determination of an appeal through the neglect or refusal of a person who has given notice of appeal to attend before the Appeal Commissioners at the time and place appointed,

(viii) the extension of the time for giving notice of appeal and the readmission of appeals by the Appeal Commissioners and the provisions which apply where action by means of court proceedings has been taken,

(ix) the rehearing of an appeal by a judge of the Circuit Court and the statement of a case for the opinion of the High Court on a point of law,

(x) the payment of tax in accordance with the determination of the Appeal Commissioners notwithstanding that an appeal is required to be reheard by a judge of the Circuit Court or that a case for the opinion of the High Court on a point of law has been required to be stated or is pending,





(xi) the procedures for appeal,

(xii) the refusal of an application for an appeal hearing,

shall, with any necessary modifications, apply to an appeal under this section as if the appeal were an appeal against an assessment to income tax.

(b) The Commissioners shall, subject to their giving notice in writing in that behalf to the appellant within 10 days after the determination of an appeal by the Appeal Commissioners, have the same right as the appellant to have the appeal reheard by a judge of the Circuit Court.

(c) The rehearing of an appeal under this section by a judge of the Circuit Court shall be by a judge of the Circuit Court in whose circuit the appellant or one of the appellants resides or (in the case of a body corporate) has its principal place of business, but—

(i) in any case where no appellant is resident in or (in the case of a body corporate) has a place of business in the State, or

(ii) in any case where there is a doubt or a dispute as to the circuit,

the appeal shall be reheard by a judge of the Circuit Court assigned to the Dublin Circuit.

(6)(a) Where a notice or other document which is required or authorised to be served by this section is to be served on a body corporate, such notice shall be served on the secretary or other officer of the body corporate.

(b) Any notice or other document which is required or authorised by this section to be served by the Commissioners or by an appellant may be served by post and in the case of a notice or other document addressed to the Commissioners, shall be sent to the Secretaries, Revenue Commissioners, Dublin Castle, Dublin 2.

(c) Any notice or other document which is required or authorised to be served by the Commissioners on an appellant under this section may be sent to the solicitor, accountant or other agent of the appellant and a notice thus served shall be deemed to have been served on the appellant unless the appellant proves to the satisfaction of the Appeal Commissioners, or the Circuit Court, as the case may be, that that appellant had, before the notice or other document was served, withdrawn the authority of such solicitor, accountant or other agent to act on that appellant's behalf.





(7) Prima facie evidence of any notice given under this section by the Commissioners or by an officer of the Commissioners may be given in any proceedings by the production of a document purporting—

(a) to be a copy of the notice, or

(b) if the details specified in the notice are contained in an electronic, photographic or other record maintained by the Commissioners, to reproduce those details in so far as they relate to that notice,

and it shall not be necessary to prove the official position of the person by whom the notice purports to be given or, if it is signed, the signature, or that the person signing and giving it was authorised to do so.

(8)(a) The Commissioners may serve notice in writing, referring expressly to this subsection, on any person whom they have reason to believe to be accountable for the payment of tax, of any decision they have made which is relevant to such tax.

(b) Any person who is informed of a decision in accordance with paragraph (a) may appeal to the Appeal Commissioners against the decision.

(c) The Appeal Commissioners shall hear and determine an appeal to them under this subsection as if it were an appeal to them against an assessment to tax, and the provisions of this section relating to an appeal or to the rehearing of an appeal or to the statement of a case for the opinion of the High Court on a point of law shall, with any necessary modifications, apply accordingly.

Section 68 CATCA2003 - Conditions before appeal may be made.

68. No appeal shall lie under section 66 or 67 until such time as the person aggrieved by the decision or assessment (as the case may be) complies with section 46(2) in respect of the gift or inheritance in relation to which the decision or assessment is made, as if there were no time-limit for complying with section 46(2) and that person were a person primarily accountable for the payment of tax by virtue of section 45(1) and required by notice in writing by the Commissioners to deliver a return.

Section 46 CATCA2003 - Delivery of returns.

46.(1) In this section—



(a) notwithstanding anything contained in sections 6 and 11 a reference, other than in subsection (13) or (14), to a gift or a taxable gift includes a reference to an inheritance or a taxable inheritance, as the case may be, and

(b) a reference to a donee includes a reference to a successor.

(2) Any person who is primarily accountable for the payment of tax by virtue of paragraph (c) of section 16, paragraph (c) of section 21...

(a) deliver to the Commissioners a full and true return of—

(i) every gift in respect of which that person is so accountable,

(ii) all the property comprised in such gift on the valuation date,

(iii) an estimate of the market value of such property on the valuation date, and

(iv) such particulars as may be relevant to the assessment of tax in respect of such gift;

(b) notwithstanding section 49, make on that return an assessment of such amount of tax as, to the best of that person's knowledge, information and belief, ought to be charged, levied and paid on that valuation date, and

(c) duly pay the amount of such tax.

.....

Section 957 TCA 1997 Appeals [deleted by FA12 s. 129 and Schedule 4 as of 1 January 2013]

(1) No appeal may be made against –

(a) [...]

(b) The amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on a chargeable person for a chargeable period, where the inspector has determined that amount by accepting without the alteration of and without departing from the statement or statements or the particular or the particulars with regard to income, profits or gains or, as respects capital gains tax, chargeable gains, or allowances, deductions or reliefs specified in the return delivered by the chargeable person for the chargeable period, or

(c)



Submissions

Life assurance policy

4. The Respondent assessed the Appellant to CAT on the aggregate proceeds of a life assurance policy in circumstances where the Appellant submitted that the policy was divided equally between the Appellant and her siblings and that she received a fractional one-quarter share thereof. The Appellant submitted that the assessment was excessive in this regard and should be reduced to reflect the actual amount inherited by the Appellant in respect of the life assurance policy.

Property valuations

5. The Respondent states that valuations were obtained by the Appellant and furnished to the Respondent on or about June 2014 in respect of the property at X ADDRESS (carried out by AGENT 1) and on or about November 2009 in respect of the apartment at Y ADDRESS (carried out by AGENT 2). The Appellant denies the AGENT 1 valuation and cites valuations by AGENT 3 and AGENT 4 as appropriate valuations for the calculation of capital acquisitions tax ('CAT'). The Appellant in correspondence has set out a number of reasons in support of the alternative valuations proposed.
6. The Tax Appeals Commission wrote to the parties on 6 April 2016 on the basis that this case involved the issue of an appeal in respect of the market value of real property, citing the appeal mechanism pursuant to section 66 CATCA2003. Shortly prior to the hearing the Respondent replied submitting that section 957 TCA 1997 precluded such an appeal where the Appellant was seeking to appeal against figures contained in her own return and where those figures had been accepted by the Respondent.



Analysis

Life assurance policy

7. The Respondent assessed the Appellant to CAT on the proceeds of a life assurance policy in the sum of € SUM REDACTED. The Appellant submitted that this assessment was incorrect and excessive on the basis that the policy totalling €SUM REDACTED was divided equally among four siblings wherein she received a one-quarter share thereof. Shortly prior to the hearing the Respondent stated in writing, by e-mail, that matters as to the life assurance policy remained in dispute as between the parties. However, after some discussion and submission at hearing, the Respondent conceded that the life assurance policy was in fact divided among the siblings and thus the Appellant would be liable to CAT only in respect of her one-quarter share of the policy proceeds.
8. The actual sum to be taken into account for inheritance tax purposes has not been clarified however the Respondent has accepted, and there can be no dispute but that the Appellant is liable only to CAT on the sum received and not the full amount of the policy.
9. It appears to me that the matter of taxation of the proceeds of the policy could have been conceded by the Respondent in advance of the hearing. It is not clear why the Respondent took the view, shortly before the hearing, that this matter remained in dispute and then accepted at hearing the following day, that it was not in contention.
10. For the avoidance of any doubt, I determine that the sum to be included in the CAT computation for the purposes of calculating inheritance tax is the one-quarter fractional share of the policy received as an inheritance by the Appellant.

Property valuations

11. Part 41 TCA 1997 containing section 957 TCA 1997 was deleted by Finance Act 2012 with effect from 1 January 2013. The relevant tax year in issue in this case predates the statutory





deletion and thus I will deal with the points raised by the Respondent in relation to the relevance or otherwise of this provision.

12. Section 957 TCA 1997 precludes an individual pursuing an appeal against matters specified in his/her self-assessment return of income where an inspector has accepted the details specified in the return. The Respondent submitted that the Appellant in this case was disputing the figures in her own IT38 and submitted that he accepted the valuation of the property contained in the Appellant's CAT return (as per section 957 TCA 1997) and thus she could not avail of an appeal on the matter of valuation of the properties.
13. While section 67(5) CATCA2003 applies the provisions of the TCA in respect of the hearing and determination of appeals by the Appeal Commissioners, these provisions are applied "*subject to this section*" and "*subject to any necessary modifications*". Section 957 TCA 1997 is not contained at Part 40 of the Taxes Acts, which deals with appeal hearings and determinations but is contained at Part 41 of the Taxes Acts, which deals with self assessment. There is a distinction to be drawn between the hearing and determination of appeals by the Appeal Commissioners and an inspector's decision to refuse an appeal pursuant to section 957 TCA1997 based on matters specified in a return of income in circumstances where the refusal itself can be appealed pursuant to section 933(1)(c) TCA1997. Capital Acquisitions Tax is a tax on capital and the CATCA2003 contains its own provisions as to the statutory rules governing returns and assessments (Part 6 CATCA2003) and its own preconditions in relation to the filing of an appeal (Section 68 CATCA2003).
14. Turning to the wording of section 67 CATCA2003, subsection 67(3) provides that "*An appeal shall not lie under this section in relation to the market value of real property.*" Notably, subsection 67(5) opens with the wording "*Subject to this section...*" prior to providing for the application to the CATCA2003 of the appeal and determination provisions of the TCA 1997. Therefore, the provisions of the TCA applicable to the hearing and determination of appeals by the Appeal Commissioners apply only to the extent that the section itself does not provide otherwise. The section does provide otherwise. It provides



that *“An appeal shall not lie under this section in relation to the market value of real property.”*

15. The position is that an appeal in relation to the market value of real property is specifically legislated for pursuant to section 66 CATCA2003. The stipulation in subsection 67(5) of *“subject to this section...”* in circumstances where the section itself provides that *“an appeal shall not lie under this section in relation to the market value of real property”* means that section 67(5) CATCA2003 in applying the TCA provisions, applies these provisions subject to section 67(3) CATCA2003. The legislation as drafted at s.66 CATCA2003 provides for a specific and distinct statutory mechanism in respect of appeals regarding the market value of real property. The TCA provisions re the hearing and determination of appeals does not override this statutory mechanism but exist in parallel.
16. Section 68 CATCA2003 provides that no appeal shall lie under sections 66 or 67 CATCA2003 unless the taxpayer has complied with section 46(2) CATCA2003. Section 46(2) CATCA2003 stipulates time limits for the filing of a CAT return. The sub-section provides that a full and true return must be filed and that the return must include *“an estimate of the market value of such property on the valuation date”*. Therefore, the Appellant was required by the CAT legislation, within 4 months of the valuation date, to include estimates of the market value of the properties in her CAT return. This does not, as the Respondent alleges, preclude the Appellant from pursuing an appeal in respect of the values of property to be adopted by the Respondent, for the purposes of the calculation and assessment of CAT. On the contrary, pursuant to section 68 CATCA2003, the Appellant could not have pursued an appeal in the absence of compliance with section 46(2) CATCA2003.
17. In short, section 957 TCA 1997 does not preclude an appeal on the issue of valuation as contended for by the Respondent and thus the appeal in relation to the market value of real property may be pursued by the Appellant in accordance with section 66 CATCA2003. I determine that the Appellant is entitled to pursue an appeal pursuant section 66 CATCA2003 in respect of the matter of the valuation of the properties.



Group threshold

18. I was not furnished with a computation in relation to the calculation of the sums cited on the assessment however I note that the group threshold contained on the assessment is stated to be '*Group Threshold (B)*' in circumstances where the disponer is the father of the Appellant and the applicable group threshold between father and daughter is group threshold (A). I was not informed as to whether group threshold A had been heretofore fully utilised by the Appellant or whether the deed of family arrangement was such that group threshold (B) was invoked. However it appears that the parties should review the calculations so that clarity can be achieved in relation to the sums to be assessed.

Conclusion

19. For the reasons set out above, I determine that the Appellant is entitled to pursue an appeal pursuant section 66 CATCA2003 in respect of the matter of the valuation of the properties and I determine that the sum to be included in the CAT computation as regards the life assurance proceeds is the one-quarter share received by the Appellant as an inheritance pursuant to the estate of her father and deed of family arrangement dated DATE REDACTED 2010, and not the full amount of the policy.

20. Accordingly the appeal is determined in accordance with section 933(5) TCA 1997 as applied by section 67(5) CATCA2003.

APPEAL COMMISSIONER

July 2016

