32TACD2019

Between/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondents

DETERMINATION

A. Introduction

1. This is an appeal against an assessment to Capital Acquisitions Tax for the year 2012/2013, raised by the Respondent on the 12th of November 2013, in the amount of €36,804.

2. The Appellant has appealed against the assessment pursuant to section 67 of the Capital Acquisitions Tax Consolidation Act 2003 (hereinafter referred to as **"CATCA2003"**).

B. Facts giving rise to the Appeal

3. The Appellant is a nephew of the late **NAME REDACTED**, deceased, who died on the **DAY & MONTH REDACTED** 2012 (hereinafter referred to as **"the Deceased"**). By his last Will dated the **DAY & MONTH REDACTED** 2006, the Deceased bequeathed four named items to three of his friends and a nephew, and then bequeathed the rest, residue and remainder of his estate to be divided in equal shares between his two nieces and two nephews, all of whom were named in the Will, for their own use and benefit absolutely.

4. The Appellant's share of the residue amounted to some €156,180 and the Appellant filed a Form IT38 Capital Acquisitions Tax return in respect of this amount on the 30th of October 2013.

5. The Appellant has two children; **CHILD A**, who was born on the **DAY & MONTH REDACTED** 2006, and **CHILD B**, who was born on the **DAY & MONTH REDACTED** 2009. Both of the Appellant's children suffer from a rare condition called **NAME OF CONDITION REDACTED**, as does the Appellant's wife. This is an early-onset neurological condition and is progressive in nature.

6. The condition has greatly restricted the children's mobility and means that they must frequently be carried. **CHILD B** uses a walking frame to walk short distances but requires the use of a wheelchair to travel longer distances. Both children wear orthotics and receive intra-muscular injections to give relief from the increased muscle tone and stiffness caused by their condition. The children are also required to undergo serial casts in plaster boots, which restricts their mobility still further. Both children also require extensive physiotherapy which the Appellant and his wife have largely had to source privately and pay for themselves.

7. I heard evidence from the Appellant and his wife at the hearing of the appeal, which I found to be truthful and accurate. They testified that the monies inherited from the Deceased had been used to purchase and modify a new dwelling-house. Their former home had been a two-storey house with on-street parking, which was totally unsuitable for their needs. They had sold this house and purchased a more suitable dwelling, near to their children's schools and friends. They had sought to purchase a bungalow but this wasn't possible, so they had instead purchased a house which they could modify. They had installed in their new home a downstairs bathroom, a downstairs bedroom and a larger kitchen, which could accommodate the wheelchair and walker of their son, **CHILD B**. The purchase and modification of their new house was funded by the sale of their former home (which had been in negative equity), the inheritance received from the Deceased and a loan from their Credit Union. They indicated that the remainder of the inheritance would be used to fund additional private therapies and treatments for their children, such as an intensive two-week physiotherapy session in a UK rehabilitative treatment centre, which would increase their mobility.

8. The Appellant has claimed that as the monies he has inherited from his uncle have been and will be used to fund the needs and medical care of his children, he is entitled to relief pursuant to section 84 of CATCA2003. The Respondent denies that the Appellant is entitled to this relief.

C. Relevant Legislation

9. Section 84 of CATCA2003 provides as follows:-

> *"(1) In this section, "qualifying expenses" means expenses relating to medical care including the cost of maintenance in connection with such medical care.*
>
> *(2) A gift or inheritance which is taken exclusively for the purpose of discharging qualifying expenses of an individual who is permanently incapacitated by reason of physical or mental infirmity is, to the extent that the Commissioners are satisfied that it has been or will be applied to such purpose, exempt from tax and is not taken into account in computing tax."*

D. The Appellant's Submissions

10. The core of the Appellant's submissions was that it was always the Deceased's intention that the monies he was leaving to the Appellant in his Will would be used to provide for his children's needs . He submitted that the Deceased wrote his Will without the knowledge of the specific tax exemption available under section 84, and this was why the bequest was made to the Appellant and not to his children. However, he submitted that the Deceased was aware and sympathetic that both of the Appellant's children had physical disabilities, and in leaving money to the Appellant the Deceased intended that the monies would be used to put in place the facilities necessary to accommodate the Appellant's children's ongoing care needs.

E. The Respondent's Submissions

11. In response to the points advanced by the Appellant, the Respondent submits that in order for the section 84 exemption to apply to a gift or inheritance, the gift or inheritance must be taken by a person who is permanently incapacitated by

reason of a physical or mental infirmity. The Respondent further submitted that the exemption will only be available where there is evidence from the Disponer, either in the Will or otherwise, that he or she has provided the benefit exclusively for the purpose of discharging qualifying expenses.

12. In support of this position, the Respondent pointed to Part 22 of the Respondent's CAT Operational Manual, which then stated as follows:-

> *"In order for the exemption to apply, a person who is permanently incapacitated by reason of a physical or mental infirmity must take the gift or inheritance.*
>
> *Also, the gift or inheritance must be taken* ***exclusively*** *for the purpose of discharging qualifying expenses.*
>
> *It is Revenue's position that the phrase "taken exclusively for the purpose of discharging qualifying expenses" refers to the intention in the mind of the disponer who provides the gift or inheritance.*
>
> *Accordingly, in order for the exemption to apply, there must be evidence from the disponer, either by will or otherwise, that he or she has provided the benefit exclusively for these purposes."*

13. The Respondent further pointed out that it is the Appellant who received the inheritance in the instant appeal, but it is his children who are incapacitated, and that the Deceased's Will made no reference whatsoever to making provision for the Appellant's children's needs. They further pointed out that the Deceased made his Will on the **DAY & MONTH REDACTED** 2006, when the Appellant's daughter was only 5 months old, and almost three years prior to the birth of the Appellant's son.

14. The Respondent further submitted that, in deciding whether or not the Appellant was entitled to relief under section 84, it was necessary for them to be seen to fair and impartial to all four beneficiaries of the residue of the Deceased's estate.

15. In response to my asking the Revenue representatives as to what precisely the work "*taken*" meant in the context of section 84, it was submitted that this was a technical phrase, and a reference to the mechanism by which a gift or inheritance was received by a beneficiary.

F. Analysis and Findings

16. In considering whether or not the Appellant is entitled to an exemption from CAT pursuant to section 84, I believe that the test to be applied is that set out in the oft-cited decision of Kennedy C.J. in ***Revenue Commissioners –v- Doorley*** **[1933] IR 750**, where he stated:-

> *"The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.*
>
> *I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."*

17. Having carefully considered the evidence given by the Appellant and the medical reports he submitted in advance of the hearing, I am satisfied and find as a material fact that, by reason of their suffering from **NAME OF CONDITION**

REDACTED, the Appellant's children are permanently incapacitated by reason of a physical infirmity.

18. Having further carefully considered the evidence of the Appellant and his wife in relation to how they had spent a significant portion of the Appellant's inheritance to fund in part the acquisition of their new home and its modification to accommodate the needs of their children, and their evidence in relation to their intention to apply the remainder of the inheritance to fund additional medical care (such as additional orthotics and intensive physiotherapy) in addition to what their children receive from the HSE, I am satisfied and find as a material fact that the Appellant has always intended to use his inheritance from the Deceased to pay for the medical care and maintenance of his children. I further find that the inheritance received by the Appellant has been or will be applied exclusively for the purpose of discharging qualifying expenses of the Appellant's children, within the meaning of section 84.

19. On the Respondent's case, however, these findings would not of themselves entitle the Appellant to relief pursuant to section 84. As outlined above, the Respondent submits that relief would only be available if **(a)** the inheritance was taken by the Appellant's children, and not by the Appellant, and **(b)** there was evidence, either in the Will or elsewhere, that the Deceased had made the bequest exclusively for the purpose of providing for the cost of medical care and maintenance of the Appellant's children.

20. Dealing with the first of these points, I do not accept as correct the Respondent's interpretation of section 84 as requiring the gift or inheritance to be received by a permanently incapacitated person in order for the relief afforded by that section to be available. The section is silent on the question of the identity of the recipient; it simply requires the recipient to take the gift or inheritance exclusively for the purpose of discharging qualifying expenses of an individual who is permanently incapacitated.

21. I therefore find that the Respondent was incorrect in law in refusing the Appellant relief pursuant to section 84 on the grounds that he, and not his children, was the recipient of the inheritance from the Deceased's estate.

22. Turning to the second point, I believe that the Respondent is correct in arguing that there is not sufficient evidence before me which would enable me to conclude that the Deceased intended when making his Will that his bequest to the Appellant would be applied exclusively for the medical care and maintenance of the Appellant's children. The Will itself contains no reference to the inheritance being used for that purpose, and the Appellant was simply named as one of four nieces and nephews who were to receive equal shares of the residue of the estate for their own use and benefit absolutely.

23. I also note and accept the Respondent's submission that the fact that the Deceased made his Will shortly after the birth of the Appellant's first child, and a number of years prior to the birth of his second child, means that the Deceased could not then have had the future medical care and maintenance of the children in mind as his motivation for making the Appellant one of the beneficiaries of the residue of his estate. In this regard, I note from an assessment of the Appellant's daughter by the Central Remedial Clinic on the 8th of April 2013 that the Appellant's daughter was not diagnosed as suffering from **NAME OF CONDITION REDACTED** until she was 18 months old, some 13 or 14 months after the Deceased had made his Will.

24. Accordingly, while I fully accept the evidence of the Appellant that the Deceased was aware and sympathetic of the health difficulties suffered by the Appellant's children, I cannot find on the evidence before me that his intention in **MONTH REDACTED** 2006 in making the Appellant a one-quarter beneficiary of the residue of his estate was to ensure that the Appellant would have funds available to provide for the medical care and maintenance of the Appellant's children.

25. However, I do not accept as correct the Respondent's submission that section 84 relief will only be available where there is evidence that the disponer provided the gift or inheritance exclusively for the purpose of discharging qualifying expenses. I believe that this is an overly restrictive interpretation of section 84, and is not borne out by the wording of the section.

26. In considering this issue, I have had regard to the decision of the Supreme Court in ***Inspector of Taxes –v- Kiernan*** **[1981] 1 I.R. 117**, which was more recently applied by Donnelly J in ***Coleman –v- Revenue Commissioners*** **[2014] IEHC 662**, that:-

> *"Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily",*
> and
> *"*[W]*hen the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed."*

27. For the purposes of deciding this issue, I believe that the key word in section 84 is "*taken*". Applying the statements of principle cited in the paragraph above, I find that the word is simple and unambiguous and would be generally understood in this context as meaning "*acquiring the ownership or possession of…*"

28. It is of significance, in my opinion, that this word was used instead of "*given*" or "*made*". While the Respondent's submission on this point might succeed if one of the latter words had been used by the legislature when enacting section 84, I find that the fact that neither of those words was used, and "*taken*" was used instead, means that it is the intention of the recipient of the gift or inheritance, and not that of the disponer, that is relevant to determining eligibility for the relief.

29. I therefore find that the Respondent was incorrect in law in refusing the Appellant relief pursuant to section 84 on the grounds that there was no evidence that the Deceased intended his bequest to the Appellant to be used for the purpose of discharging qualifying expenses of the Appellant's children.

G. <u>Determination</u>

30. For the reasons outlined above, I find that:-

(a) the Appellant's children are individuals who are permanently incapacitated by reason of physical infirmity;

(b) it is the intention of the recipient of a gift or inheritance in receiving that gift or inheritance, and not the intention of the disponer in making the gift or inheritance, that is relevant to determining eligibility for relief from Capital Acquisitions Tax pursuant to section 84 of the Capital Acquisitions Tax Consolidation Act 2003;

(c) it has always been the Appellant's intention to use the inheritance received from the Deceased to discharge expenses relating to medical care, including the cost of maintenance in connection with such medical care, for his children;

(d) the inheritance received by the Appellant from the Deceased has been or will be applied exclusively for the purpose of discharging expenses relating to medical care, including the cost of maintenance in connection with such medical care, for his children; and,

(e) the Appellant is therefore entitled to relief from Capital Acquisitions Tax pursuant to section 84.

31. I therefore find that the Appellant has, by reason of the Assessment dated the 12th of November 2013, been overcharged to Capital Acquisitions Tax for the year 2012/2013 and determine, in accordance with section 949AK(1), that the Assessment should accordingly be reduced to nil.

Dated the 17th day of June 2019

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MARK O'MAHONY
Appeal Commissioner