



148TACD2020

BETWEEN/

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against assessments for Income Tax and Value Added Tax for 2014.
2. The Appellant sought an oral hearing, which took place at the Tax Appeals Commission on 9 March 2020.
3. The amount of tax in dispute is €33,314.79

Background

4. The Appellant is a self-employed florist carrying on the business of selling flowers, the provision of floral services for weddings, churches, schools, public places, graveyards and the provision of training/instruction. He also wrote, published and sold a book in the year of assessment, 2014.
5. The Respondent carried out an audit of the Appellant's tax return for 2014 and raised additional assessments for Income Tax and Value Added Tax.



6. The Respondent computed a revised Case I profit assessable for 2014 in the amount of €68,037 and a VAT liability for 2014 of €7,154.79.
7. The figures were based on estimated figures computed by an Inspector of Taxes in accordance with Section 959AA Taxes Consolidation Act (TCA) 1997. The Appellant duly appealed.

Legislation

8. **Section 959AA Taxes Consolidation Act (TCA) 1997**

See the full text in the appendix

9. **Section 886 TCA 1997. Obligation to keep certain records**

See the full text in the appendix.

10. **Section 84 VATCA 2010 Duty to keep records**

See the full text in the appendix

11. **Regulation 27 VATCA 2010.**

See the full text in the appendix

Submissions by the Appellant

12. The Appellant in evidence submitted that:

- a) His main business as a trader ceased in 2012 and that he was in business in a very small way in 2014;
- b) 2014 and 2015 were bad years in his business
- c) During 2014 he was studying for a senior qualification in which he travelled to London once a month;
- d) He carried out pro-bono work for **ADDRESS REDACTED** during 2014;
- e) He worked under an employment contract with **EMPLOYER REDACTED** during 2014.
- f) He wrote a book during 2013 which he published and sold in 2014;
- g) He had 1,500 books printed but he still has 600 books in stock that were unsold
- h) He is now a full-time carer for his parents;
- i) He carried out about 20 lectures and demonstrations in 2014;



- j) His average wedding fee including flowers supplied from weddings (8-12) amounted to €600 in 2014;
- k) His net income from preparing wreaths in 2014 was about €5 per wreath;
- l) He did not maintain accurate books and records for 2014;
- m) He kept another diary during 2014 that was not presented to the Respondent;
- n) Fresh flower purchases details, obtained by the Respondent from his supplier, contained cash purchases made by his students rather than by him;
- o) He had no bank accounts other than those presented to the Respondent.

Submissions by the Respondent

13. The Respondent detailed how the Assessments were arrived at as follows:

Income	Net Sales €	VAT on Sales €
Flowers	38,269	5,215
Book Sales	26,400	0
Weddings	19,119	2,581
Credit Union Lodgements	8,937	1,206
Talks/Demonstrations	1,683	387
Totals	94,408	9,389
Expenditure		VAT on Purchases
Flowers Purchased	12,876	1,738
Books Printed	11,250	0
Other	2,246	496
Total Expenditure	26,372	
VAT Deductible		2,234
New Case I/Vat due	68,037	7,155

14. The Respondent advised the detail of how these figures were arrived at including the mark-up used (200%) on flower sales, the estimates used for arriving at book sales and wedding income as well as the logic for adding lodgements to arrive at the gross and net income above.
15. The Respondent advised that after arriving at an estimate for turnover for the Appellant it considered also that the Appellant had a consequent VAT liability, having exceeded the turnover limit specific to the Appellant's business. The Respondent calculated the consequent VAT liability as above.



16. The Respondent submitted that the Appellant was in fact paid a sum of €4,775 for the work carried out at ADDRESS REDACTED in 2014.
17. The Respondent pointed out the failure of the Appellant to keep records, his failure to provide the wedding diary and to the fact that an estimate of €500 was used to compute the Appellants income for 2014 from his activity as a florist.
18. The Respondent also pointed to the fact that the book printer's statement showed cheque numbers opposite payments indicating the possibility of another undisclosed bank account.
19. The Revenue Commissioners submitted that the difference between the parties is that the Revenue Commissioners consider that the records presented by the Appellant were not adequate to verify the accuracy of the income returned for 2014.
20. During the Appeal hearing I raised the question of whether or not the Appellant had sought Artists' Exemption in accordance with Section 195 TCA 1997 in relation to the book published and sold in 2014. The exemption, (which was not sought by the Appellant) does not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim. In addition, no evidence was adduced by either party to consider if the Guidelines, drawn up under Section 195(2) of the Taxes Consolidation Act 1997 for the Artists Exemption Scheme by an Chomhairle Ealaíon and the Minister for Arts, Heritage and the Gaeltacht, was met even if such a claim had been made on time. Accordingly, I have given no further consideration to the matter of exemption from the estimated income derived from the book in my determination.

Burden of Proof

21. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 22) Charleton J. stated: "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*".
22. The Appellant, being the person with access to the facts and documents relating to their tax affairs, and the taxation system developed on the premise of self-assessment, must present evidence in support of the appeal in order to meet the burden of proof. If an Appellant cannot demonstrate that an assessment is incorrect, the assessment stands.



There is a legislative requirement to retain records in accordance with the requisite statutory provisions.

Analysis and Findings

23. At the hearing, the Appellant's representative submitted that the assessments made by the Revenue Commissioners were not in accordance with the business model of his client. It was submitted that the Respondent used the incorrect figure for purchases, overstated wedding income, overstated book sales and incorrectly included the lodgements as additional income. The Appellant was unable to demonstrate this, as he had failed to retain or present the necessary documentary evidence in support of this contention. The statutory obligations are that all transactions are capable of being produced or reproduced for a period of six years. However, because the Appellant did not produce the records, he was unable to prove the accuracy of the return submitted. As a result, the Appellant did not succeed in discharging the burden of proof in this appeal.
24. There is no dispute that the Appellant had a cost and selling price for flowers and books as well as a defined price for services provided that could enable a reasonably accurate reconstruction of his records to arrive at a fair liability to tax for the Appellant.
25. The parties failed to agree on a liability arising from the failure of the Appellant to keep proper books and records and this has been compounded by the failure of the Appellant to provide the clearly available diary of wedding services provided.
26. The Appellant provided credible evidence of his book sales and of his closing stock of books on hand which were not disputed in the Respondent's submissions or in the evidence provided by the Respondent's witness. The Appellant also provided credible evidence of not having an undisclosed bank account and pointed out that the cheque references on the book printer's statement of account did not conclude that he had another bank account.
27. The Appellant pointed to the fact that he is in receipt of a carers allowance from the Department of Employment Affairs and Social Protection who had carried out a detailed analysis of his means before granting this allowance.

Conclusion

28. I have concluded that the Appellant failed to make a true and accurate return of income for 2014. However, having considered the submissions and evidence from both parties I



have determined the following approach to the revision of the Appellant's income for 2014 as follows:

Income	€	€
Flower Purchases as Per the Records	12,876	
Mark up 200%	25,752	
Flower Sales Income		38,628
Book sales (900) As advised by the Appellant		18,000
Wedding Services in addition to flower sales (10 weddings)		5,000
Talks and Demonstrations		1,683
Other income		4,775
Total Turnover 2014		68,086
Expenditure		
Flowers purchased		12,876
Book Printing as Per Printer's statement	11,250	
Closing stock of books (600 Per Appellant)	4,500	
Net Cost of books sold		6,750
Other Expenditure as Per Respondent		2,246
VAT costs incurred as per Respondent		2,234
Total Expenditure		24,106
Revised Case I for 2014		43,980

29. I consider that the revised turnover of €68,086 does not give rise to a breach of the VAT registration threshold and consequently I will allow the Appellant's appeal against the VAT liability.

Determination

30. Having considered the facts and circumstances of this appeal, together with the documentary evidence and submissions, I determine that the Appellant's Case I income for 2014 to be €43,980 and the assessment should be amended accordingly. The VAT appeal is allowed and the assessment to VAT should be vacated.

31. This Appeal is hereby determined in accordance with Part 40A TCA 1997 and in particular, s.949AK thereof.



29 May 2020

APPENDIX

Section 959AA Taxes Consolidation Act (TCA) 1997

(1) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period —

(a) an assessment for that period, or

(b) an amendment of an assessment for that period,

shall not be made by a Revenue officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and —

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(2) Nothing in this section prevents a Revenue officer from, at any time, amending an assessment for a chargeable period —

(a) where the return for the period does not contain a full and true disclosure of all material facts necessary for the making of an assessment for that period,

[(b) to give effect to—

(i) a determination of an appeal against an assessment,

(ii) a determination of an appeal, other than one made against an assessment, that affects the amount of tax charged by the assessment, or

(iii) an agreement within the meaning of *section 949V*.]²

(c) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,



(d) to correct an error in calculation in the assessment, or

(e) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid (notwithstanding any limitation in *section 865(4)* on the time within which a claim for a repayment of tax is required to be made) where appropriate in accordance with any such amendment.

Finance Act 2013 S886 TCA 1997

(1) In this section-

“linking documents” means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

“records” includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to-

(a) all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,

(b) all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,

(c) the assets and liabilities of the trade, profession or other activity referred to in paragraph (a) or (b), and

(d) all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.

(2)(a) Every person who-

(i) on that person’s own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,

(ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or

(iii) is chargeable to capital gains tax in respect of chargeable gains,

shall keep, or cause to be kept on that person’s behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person’s behalf, linking documents.



(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity.

(3) Records required to be kept or retained by virtue of this section shall be kept-

(a) in written form in an official language of the State, or

(b) subject to section 887(2), by means of any electronic, photographic or other process.

(4)(a) [Notwithstanding any other law]¹, linking documents and records kept in accordance with subsections (2) and (3) shall be retained by the person required to keep the records-

(i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or

(ii) in the case of a person who fails to comply with [Chapter 3 of Part 41A] requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered showing the profits or gains or chargeable gains derived from those transactions, acts or operations.

[...]

[(4A) For the purposes of this section—

(a) where a company is wound up, the liquidator, and

(b) where a company is dissolved without the appointment of a liquidator, the last directors, including any person occupying the position of director by whatever name called, of the company,

shall keep or retain the linking documents and records of the company for the period specified in subparagraph (i) or (ii), as appropriate, of subsection (4)(a).]

(5) [Any person who fails to comply with subsection (2), (3), (4) or (4A)] in respect of any records or linking documents in relation to a return for any year of assessment or accounting period shall be liable to a penalty of [€3,000]; but a penalty shall not be imposed under this subsection if it is proved that no person is chargeable to tax in respect of the profits or gains for that year of assessment or accounting period, as the case may be.

Finance Act 2013 S84 VATCA 2010

(1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.

(2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business.

(3) The following:



- (a) records kept by a person pursuant to this Chapter or section 124(7) and that are in the power, possession or procurement of the person;
 - (b) any books, invoices, copies of customs entries, credit notes, debit notes, receipts, accounts, vouchers, bank statements or other documents whatsoever which relate to the supply of goods or services, the intra-Community acquisition of goods, or the importation of goods by the person and that are in the power, possession or procurement of the person; and
 - (c) in the case of any such book, invoice, credit note, debit note, receipt, account, voucher, or other document, which has been issued by the person to another person, any copy thereof which is in the power, possession or procurement of the person, shall, subject to subsection (4) [and notwithstanding any other law], be retained in that person's power, possession or procurement for a period of 6 years from the date of the latest transaction to which the records, invoices, or any of the other documents, relate.
- (4) Notwithstanding the retention period specified in subsection (3), the following retention periods shall apply:
- (a) where a person acquired or developed immovable goods to which section 4 of the repealed enactment applied, the period for which the person shall retain records pursuant to this Chapter in relation to that person's acquisition or development of those immovable goods shall be the duration that such person holds a taxable interest in such goods plus a further period of 6 years;
 - (b) where a person exercised a waiver of exemption from tax in accordance with section 7 of the repealed enactment, the period for which the person shall retain records pursuant to this Chapter shall be the duration of the waiver plus a further period of 6 years.
- [5] This Chapter shall not require the retention of records or invoices or any of the other documents in respect of which the Revenue Commissioners notify the person concerned that retention is not required.]

Regulation 27 VATCA 2010

- (1) The full and true records of all transactions that affect or may affect the accountable person's liability to tax and entitlement to deductibility, which every accountable person is required to keep in accordance with Chapter 7 of Part 9 and section 124(7) of the Act, shall be entered up to date and include—
- (a) in relation to consideration receivable from registered persons—
 - (i) the amount receivable from each such person in respect of each transaction for which an invoice or other document is required to be issued under Chapter 2 of Part 9 of the Act, and
 - (ii) a cross-reference to the copy of the relevant invoice or other document,
 - (b) in relation to consideration receivable from unregistered persons—
 - (i) a daily total of the consideration receivable from all such persons,



(ii) a cross-reference from that daily total to the relevant books or other documents which are in use for the purposes of the business, and

(iii) where the accountable person uses an electronic cash register or point of sale system, the complete record of each entry on that register or system, uniquely identified by sequential number, date and time of such entry,

...

(l) in relation to discounts allowed, or price reductions made, to unregistered persons—

(i) a daily total of the amount so allowed, and

(ii) a cross-reference to the goods returned book, cash book or other record used in connection with the matter,

...”

