



05TACD2021

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim pursuant to section 1025 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax years of assessment 2013-2017.
2. The Appellant initially filed his Income Tax returns in respect of tax years 2013-2016 on the basis that he was entitled to relief in respect of maintenance payments to his children.
3. Following a Revenue desk audit it was established, in the view of the Respondent, that the Appellant had incorrectly claimed that he was entitled to such relief for the tax years 2013, 2014, 2015, 2016 and 2017. Assessments to tax issued in respect of the years 2013 to 2016 on 29 December 2017 and in respect of the year 2017 on 24 May 2018. These assessments showed a liability to tax in the cumulative sum of €19,929.66. These are the subject of this appeal.

4. This appeal was heard by remote hearing by the Tax Appeals Commission on 28 October 2020.

Background

5. The Appellant, REDACTED was taxed under the PAYE system and was jointly assessed with his wife for the years 2013, 2014, 2015, 2016 and 2017. The respondent issued PAYE balancing statements for the years 2013 to 2016 inclusive to the Appellant on 29 December 2017 showing underpayment of tax which arose as a result of the withdrawal of relief in respect of maintenance payments to which he was not entitled in accordance with section 1025 TCA 1997. The total underpayment of tax according to the Respondent is €17,049.60 for the four years 2013 to 2016 inclusive broken down as follows:

2013: €4262.40

2014: €4262.40

2015: €4262.40

2016: €4262.40

6. Subsequently it was determined by the Respondent that there was an additional underpayment arising in respect of year 2017 in the amount of €2880.06.

The Respondent issued an amended P21 Balancing Statement for 2017 on 24 May 2018 showing this amount being due.

7. The background to the appeal is the Appellant's claim for tax relief in respect of payments made by him pursuant to an order of the Circuit Family Court, DATE REDACTED 2012, in respect of divorce proceedings as between the Appellant and his former wife ("the 2012 Order"). Pursuant to the 2012 Order, the appellant was obliged to pay:

"maintenance for (his former wife) and the dependent children of the marriage in the sum of... €1600 per month apportioned 50% for (the Appellant's former wife) and 50% for the children into the (appellant's former wife's) bank account.... "

8. Therefore, pursuant to the 2012 order, the Appellant was to make payments of €800 per month in respect of his former wife and €800 per month in respect of his children.

9. The Appellant had made claims, pursuant to S.1025 TCA97, in respect of the full amount paid under the 2012 Order and the Respondent had initially granted relief on the full amount and issued refunds to the Appellant accordingly. After the commencement of the verification check and review of the 2012 Order the Respondent amended the relevant P21 statements, denying relief on the maintenance payment made in respect of his children, and sought the repayment of the refunds from the Appellant.

Relevant Legislation

10. The relevant legislation is reproduced in Appendix 1.

Submissions

11. The **Appellant** submitted the following at the hearing :

"I mean, just factually they (the Revenue Commissioners) were not providing me with the information as they state in their charter and as their Press release discussed, you know, that they are the facility which people go to from PAYE purposes to lodge their tax returns in the expectation of having clear and definitive information."

COMMISSIONER: "So is that the breach as you would see it of the contract?"

MR. REDACTED: "Yes..."

I notice by interfacing with their (Revenue Commissioners) website on the current basis that they actually put in a box which is a caveat that basically you are to be fully informed about any of the submissions that you make. So they have possibly revised their website subsequently so that people, the onus is on the individual to educate themselves on the specific facts of each claim that they're making.

COMMISSIONER: But you're saying that such a box didn't exist when you were filing, is that correct?

MR. REDACTED: "Correct"

12. The Appellant cited the case of Keogh v. CAB and Lee v. Revenue Commissioners in support of his position.

13. The **Respondent** made the following submission:

“In my respectful submission, Keogh v. CAB is a different case all together from this one and I can illustrate that distinction...it was a case where an individual had income which was of interest to CAB and tax assessments were raised on him by CAB acting in place of the Revenue Commissioners. The Appellant in that case appealed the assessments but he had not filed returns or made payments on those returns, which was a requirement in order for him to have made a valid appeal. So he lodged his appeal without having filed returns or made payments and the Respondent in that case, Revenue/CAB, wrote back to him noting that he had filed an appeal but what they did not do was to tell him that he needed to file his returns and make payments in the time which was left of the 30 days that he had to appeal. So in other words if he had lodged his appeal in 15 days, they didn't tell him that he had only 15 days left to file his return and make a payment. So they left him in a position where his ability to appeal was compromised and Mr. Justice Keane said that that was wrong and couldn't be allowed on the basis that Revenue had a duty to provide timely information. But the information that it was obliged provide, Commissioner, was information which enabled the taxpayer to appeal the notices of assessment and then compromised his right to do that.

*... the information which is said should have been conveyed here is of a different order all together. The information that is complained of here, the absence of information complained of, isn't information that Revenue is obliged to provide because in fact it is information which taxpayers are obliged to have regard to under the self-assessment system. And it would be impractical and in fact I think probably impossible for a tax form online or physically to take account of every circumstance and every detail of a taxpayer's financial affairs in order to prevent them claiming a relief to which they're not entitled...the key distinction in relation to **REDACTED***

argument, without of course prejudice to the fact that I say it's one that you don't have jurisdiction to consider, Commissioner.

*On that second point, the jurisdiction point, can I refer to Lee v. Revenue Commissioners ... **REDACTED** is right insofar as he says Lee is a case which identifies that the Tax Appeals Commission can have regard to the existence of a contract, but in fact what it means is that the Tax Appeals Commission can have regard to the existence of a contract as an ancillary fact and not as the entire basis for the appeal, which in any case on Mr. Keogh's arguments would be a matter of public law. He isn't identifying a private law contract that he says exists and which forms part of the factual matrix, he's identifying a public law kind of contract or a social contract as the basis of his appeal. And if I could take you to paragraphs 68 and 69 at the very end of the judgment, there Mr. Justice Keane says:*

"68. In my judgment, in circumstances where the Oireachtas has enacted elaborate procedures for the determination of a taxpayer's liability by assessment and appeal to the appeal commissioners, accompanied by a right of appeal to the Circuit Court, it would be unwarranted and, indeed, unfair to adopt an artificially narrow construction of the powers and authority of those bodies to determine incidental questions of fact and law that may arise in that regard... thereby requiring taxpayers who wish to raise such questions to risk the attendant costs, and to incur the additional stress, of prosecuting or defending separate proceedings instead.

69. As the decision of Charleton J in Menolly Homes Ltd demonstrates, there are plainly some questions that it is more appropriate to raise by application for judicial review. The appellant's claims that he has a legitimate expectation that his income tax liability for the assessment period(s) in question has been settled in the amount of €12,500 or, obversely, that the Respondent is estopped from asserting otherwise both raise questions of that kind. The doctrine of legitimate

expectation is a creature of public law; that of promissory estoppel one of equity. Neither the Appeal Commissioners nor the Circuit Court have the necessary public law jurisdiction to consider them. And, in the words of Charleton J in Menolly Holmes Ltd (At para. 12), revenue law has no equity."

*...when you're considering the arguments of **REDACTED**, and they're very clearly and eloquently expressed, you have to consider whether they are arguments which are grounded in questions of fact or incidental questions of law or are they arguments which are, in reality, grounded in public law which could only be decided by the High Court by way of judicial review. And in my respectful submission, having regard to the substance and the scope of those arguments and the fact that we're not here dealing with a private law contract but a public law contract, a very fundamental and far reaching kind, they are matters that could only be determined by way of judicial review and they are matters which, respectfully, you don't have jurisdiction to determine within the proper scope of this appeal. And I note in that connection that the tax issue, that is the meaning and the application of section 1025 of the Taxes Consolidation Act, isn't actually disputed by Mr. **REDACTED**. Rather, he raises wider, indeed very wide and fundamental public law argument based on a duty of care by the State and by the Revenue Commissioners which is owed to him and a duty to provide information which he says is owed to him by the Revenue Commissioners and the State, and that simply isn't something that you have jurisdiction to determine..."*

Analysis and findings

14. The facts in this appeal are not in dispute. Both parties accepted that section 1025 of the Taxes Consolidation Act applies so that the Appellant is not entitled to relief in respect of maintenance payments to his children. What is in dispute is that having obtained relief in error, the Appellant disputes the Revenue's right to withdraw the relief by seeking a repayment of the tax relief granted.
15. I agree with the arguments put forward by the Respondent denying the Appellant's argument that the State and Revenue have breached a social contract which he argues exists between them and him, as a taxpayer, by seeking a refund of the incorrectly claimed relief from him.



16. I also agree with the Respondent when he argues that I have no jurisdiction to adjudicate on any dispute about any perceived breach of a public contract between the State/Revenue and the Appellant, as a taxpayer.

Conclusion

17. As a result, I have no alternative but to determine that the assessments to tax issued in respect of the years 2013 to 2016 on 29 December 2017 and in respect of the year 2017 on 24 May 2018, showing a liability to tax in the cumulative sum of €19,929.66 should stand.

18. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of tax relief based on an alleged unfairness, such grounds of appeal do not fall within the jurisdiction of the TAC and thus do not fall to be determined as part of this appeal.

19. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

Designated Public Official

3 DECEMBER 2020

Appendix 1

Section 1025 - Maintenance in case of separated spouses - TCA97

(1) In this section –

“maintenance arrangement” means an order of a court, rule of court, deed of separation, trust, covenant, agreement, arrangement or any other act giving rise to a legally enforceable obligation and made or done in consideration or in consequence of –

(a) the dissolution or annulment of a marriage, or

(b) such separation of the parties to a marriage as is referred to in section 1015(2), and a maintenance arrangement relates to the marriage in consideration or in consequence of the dissolution or annulment of which, or of the separation of the parties to which, the maintenance arrangement was made or arises;

“payment” means a payment or part of a payment, as the case may be;

a reference to a child of a person includes a child in respect of whom the person was at any time before the making of the maintenance arrangement concerned entitled to [relief under section 465]1.

(2)(a) This section shall apply to payments made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage for the benefit of his or her child, or for the benefit of the other party to the marriage, being payments –

(i) which are made at a time when the wife is not living with the husband,

(ii) the making of which is legally enforceable, and

(iii) which are annual or periodical;

but this section shall not apply to such payments made under a maintenance arrangement made before the 8th day of June, 1983, unless and until such time as one of the following events occurs, or the earlier of such events occurs where both occur –

(I) the maintenance arrangement is replaced by another maintenance arrangement or is varied, and

(II) both parties to the marriage to which the maintenance arrangement relates, by notice in writing to the inspector, jointly elect that this section shall apply,

and where such an event occurs in either of those circumstances, this section shall apply to all such payments made after the date on which the event occurs.

(b) For the purposes of this section and of section 1026 but subject to paragraph (c), a payment, whether conditional or not, which is made directly or indirectly by a party to a marriage under or pursuant to a maintenance arrangement relating to the marriage (other than a payment of which the amount, or the method of calculating the amount, is specified in the maintenance arrangement and from which, or from the consideration for which, neither a child of the party to the marriage making the payment nor the other party to the marriage derives any benefit) shall be deemed to be made for the benefit of the other party to the marriage.

(c) Where the payment, in accordance with the maintenance arrangement, is made or directed to be made for the use and benefit of a child of the party to the marriage making the payment, or for the maintenance, support, education or other benefit of such a child, or in trust for such a child, and the amount or the method of calculating the amount of such payment so made or directed to be made is specified in the maintenance arrangement, that payment shall be deemed to be made for the benefit of such child, and not for the benefit of any other person.

(3) Notwithstanding anything in the Income Tax Acts but subject to section 1026, as respects any payment to which this section applies made directly or indirectly by one party to the marriage to which the maintenance arrangement concerned relates for the benefit of the other party to the marriage –

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts to be profits or gains arising to the other party to the marriage, and income tax shall be charged on that other party under Case IV of Schedule D in respect of those profits or gains, and

(c) the party to the marriage by whom the payment is made, having made a claim in that behalf in the manner prescribed by the Income Tax Acts, shall be entitled for the purposes of the Income Tax Acts to deduct the payment in computing his or her total income for the year of assessment in which the payment is made.

(4) Notwithstanding anything in the Income Tax Acts, as respects any payment to which this section applies made directly or indirectly by a party to the marriage to which the maintenance arrangement concerned relates for the benefit of his or her child –

(a) the person making the payment shall not be entitled on making the payment to deduct and retain out of the payment any sum representing any amount of income tax on the payment,

(b) the payment shall be deemed for the purposes of the Income Tax Acts not to be income of the child,

(c) the total income for any year of assessment of the party to the marriage who makes the payment shall be computed for the purposes of the Income Tax Acts as if the payment had not been made, and

(d) for the purposes of [section 465(6)]², the payment shall be deemed to be an amount expended on the maintenance of the child by the party to the marriage who makes the payment and, notwithstanding that the payment is made to the other party to the marriage to be applied for or towards the maintenance of the child and is so applied, it shall be deemed for the purposes of that section not to be an amount expended by that other party on the maintenance of the child.

(5)(a) Subsections (1) and (2) of section 459 and section 460 shall apply to a deduction under subsection (3)(c) as they apply to any allowance, deduction, relief or reduction under the provisions specified in the Table to section 458.

(b) Subsections (3) and (4) of section 459 and paragraph 8 of Schedule 28 shall, with any necessary modifications, apply in relation to a deduction under subsection (3)(c).