



119TACD2021

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APPELLANT

V

THE CRIMINAL ASSETS BUREAU

RESPONDENT

DETERMINATION

Introduction

1. This is a consolidated appeal against assessments to Income Tax for the tax years 2014 to 2016 and VAT for the tax years 2015 to 2017 raised by the Criminal Assets Bureau (CAB) (Respondent) on ██████████, trading under the name, ██████████ (Individual Appellant) and ██████████ (Company Appellant), in which ██████████ is a director. Prior to the incorporation of the trade into ██████████ in 2015, the ██████████ trade was carried on by ██████████ as ██████████.
2. Assessments to Income Tax and VAT were raised on the Appellants on 15 March 2018.
3. On 31 October 2018, the Respondent commenced enforcement proceedings and issued two certificates to the County Sheriff, pursuant to S.960L (1) TCA97 identifying the taxpayers as the Individual Appellant and the Company Appellant, respectively.



4. The TAC received Notices of Appeal on 1 February 2019 which was dated 16 January 2019 from the Appellants' agent.
5. On 12 April 2019, pursuant to S.949L TCA97, the Respondent objected to the admission of the appeal, on the grounds that the Appellants' returns were not up to date and the conditions for admitting a late appeal were not met. The Respondent did not refer to S.949P TCA97 in their objections at that time but subsequently submitted in their Outline of Arguments that as the two certificates had issued pursuant to S.960L TCA97 on 31 October 2018, the Appeal Commissioner cannot accept the late appeal until the enforcement action has been completed.
6. A remote hearing took place over two days on ■ May 2021 and ■ June 2021, at which the preliminary matter of the admissibility of the Appellant's Appeal was considered. The substantive issue relating to the liability of the Appellants to Income Tax and VAT was not discussed at the hearing.

Background

7. ■ is a director of ■ and carried on a ■ trade through that company.
8. The Respondent commenced an investigation in July 2017 into the affairs of the Appellants for the years covered by the assessments. Arising from these investigations the Respondent and the Individual Appellant, accompanied by his representatives, convened a meeting on 12 March 2018 to discuss the Appellants' outstanding tax liabilities.
9. Assessments to Income Tax and VAT were raised on the Appellants on 15 March 2018. The Appellants' agent contends that he did not receive these assessments until June 2018. The Respondent submits that the assessments were hand delivered to the agent on 15 March 2018.



10. Arising from the discussions between the parties on 12 March 2018, the Respondent prepared draft settlement agreements covering the outstanding taxes for both Appellants and delivered these to the agent on 10 April 2018. About this time the Respondent received bank drafts from the Appellant (the total value of these drafts is disputed between the parties) in part settlement of outstanding tax liabilities. The Individual Appellant requested that these bank drafts and the cash seized at the Company Appellant's business premises be set-off against the tax liability of the Individual Appellant. The Respondent submits that this was not what was agreed at the settlement meeting on 12 March 2018 and as a consequence the draft settlement agreements did not contain this stipulation.
11. The Individual Appellant, being in disagreement with the draft settlement agreement prepared by the Respondent, signed and returned this draft agreement with alterations to the set-off provisions on 29 June 2018. The Individual Appellant contended that the monies paid should be set-off against the Individual Appellant's liability and the Appellant claims that the Respondent unilaterally changed what had been agreed at the settlement meeting on 12 March 2018.
12. The Respondent denies that they agreed that the monies paid would be set-off against the Individual Appellant's outstanding tax and contend that the Individual Appellant had agreed at the settlement meeting held on 12 March 2018 that the monies should, in the first instance, be set against the outstanding taxes owing by the Company Appellant.
13. On 21 August 2018, the Respondent reissued their original draft version of the settlement proposals to the Appellant for signing along with final demand letters seeking payment of the arrears of tax. On 3 October 2018 the Appellants' Agent informed the Respondent that the Appellant would not sign the latest settlement agreement.

Legislation



14. Section 949J TCA 1997 - Valid appeal and references in this Part to acceptance of an appeal

- (1) For the purposes of this Part, an appeal shall be a valid appeal if—*
- (a) it is made in relation to an appealable matter, and*
 - (b) any conditions that are required (by the provisions of the Acts relevant to the appeal concerned) to be satisfied, before an appeal may be made, are satisfied before it is made.*

15. Section 949O TCA 1997 - Late appeals

- (1) The Appeal Commissioners may accept a late appeal where—*
- (a) they are satisfied that—*
 - (i) the appellant was prevented by absence, sickness or other reasonable cause from making the appeal within the period specified by the Acts for the making of that appeal, and*
 - (ii) the appeal is made thereafter without unreasonable delay,*
 - and*
 - (b) the appeal is made within a period of 12 months after the end of the period specified by the Acts for the making of that appeal.*

16. Section 960L TCA 1997 - Recovery by sheriff or county registrar

- (1) Where any person does not pay any sum in respect of tax for which he or she is liable under the Acts, the Collector-General may issue a certificate to the county registrar or sheriff of the county in which the person resides or has a place of business certifying the amount due and outstanding and the person from whom that amount is payable.*

17. Section 949P TCA 1997 - Effect of enforcement action for collection of tax

- (1) Where action for the recovery of any tax has been taken by means of the institution of proceedings in any court or the issue of a certificate under section 960L, as the case may*



be, the Appeal Commissioners shall not accept a late appeal in relation to the tax until such action has been completed.

(2) Where a late appeal is accepted following the completion of the action referred to in subsection (1), the appellant shall not be entitled to repayment of any sum paid or borne by the appellant in respect of the costs of any court proceedings or, as the case may be, of any fees or expenses charged by the county registrar or sheriff executing a certificate under section 960L.

WITNESS TESTIMONY

Sworn testimony was given by the Appellant's Agent, [REDACTED], on Day 1 of the Hearing. Sworn testimony was given by the Individual Appellant, on Day 2 of the Hearing.

Sworn testimony was given on behalf of the Respondent by [REDACTED] and [REDACTED] on Day 2 of the Hearing.

MATERIAL FINDINGS OF FACT

18. Based on the sworn testimony of the Appellant and his Agent given over two days on [REDACTED] May 2021 and [REDACTED] June 2021, coupled with the documents and submissions presented to me by both the Appellant and the Respondent, I have established the following material findings of fact;

- The Respondent and the Appellant, accompanied by his representatives, convened a meeting on 12 March 2018 to discuss the Appellants' outstanding tax liabilities.
- Assessments to Income Tax and VAT were raised on the Appellants on 15 March 2018. The assessments were hand delivered to the Appellants' Agent on 15 March 2018 by [REDACTED]. The Respondent submitted credible evidence,



in the form of contemporary notes of the service of these assessments, which notes also indicated that [REDACTED], acting for the Respondent, advised the Appellants' Agent, at that time, of the Appellants' right to appeal the assessments within 30 days.

19. The Appellants' Agent confirmed during 2018 that the Appellants did not intend to appeal the assessments as they were in settlement discussions with the Respondent.
20. On 31 October 2018, the Respondent commenced enforcement proceedings and issued two certificates to the County Sheriff, pursuant to S.960L (1) TCA97 in respect of the Individual Appellant and the Company Appellant, respectively.
21. The TAC received a Notice of Appeal on 1 February 2019 which was dated 16 January 2019 from the Appellants' Agent.
22. The Sherriff proceedings initiated and related to the issue of the two certificates under section 960L by the Respondent in respect of the Appellants and the action for recovery of the taxes had not been completed.

APPELLANT'S SUBMISSIONS

23. The Appellant acknowledges that the Notice of Appeal was submitted to the TAC after the expiration of the 30 day time limit. However, the Appellant submits that the appeal ought to be admitted on the basis that the provisions of S.9490 TCA97 – Late Appeals, have been satisfied.
24. The Appellant submits that the assessments raised on 15 March 2018 were not received by them until June 2018, by which time the 30 day deadline for making an appeal had already passed and that the only option available to the Appellant was under the late appeal provisions contained in S.9490 TCA97.



25. The Appellant submits that at a settlement meeting between the parties on 12 March 2018 it was agreed that a sum of €750,000 would be paid as full and final settlement of the liabilities due up to and including 2018. Following the meeting, a settlement agreement was received by the Appellant on 10 April 2018, which the Appellant says was “unilaterally altered by the Respondent”. As a result, prior to signing the agreement the Appellant made their own amendments to the documents and returned them to CAB, with the amendments on 29 June 2018. The Appellant submits that the finalisation of the settlement remained stalled despite their attempts to progress matters.
26. The Appellant further submits that, in June 2018, a number of vehicles owned by the Appellant and included in his stock in trade, were detained under S.140(3) of Finance Act 2001 (VRT legislation) and not returned to the Appellant after appropriate ‘notices of claim’ were lodged. The Appellant contends that this action rendered his business unviable and meant that he was unable to discharge the remainder of the taxes agreed in the tax settlement.
27. The Appellant submits that the assessments raised “have no basis in the reality” of the Individual Appellant’s or the Company Appellants’ “actual financial earnings” and that they have sought clarification on numerous occasions from CAB, by email and telephone, on how the assessments were arrived at.
28. The Appellant submitted a late tax appeal to the TAC on 16 January 2019. At the time of submitting the appeal, the Appellant submits that “he had not received copies of the warrants issued by the Sheriff, notifying him of any enforcement proceedings against him”.
29. It was submitted by the Appellants’ Agent, under sworn testimony during the hearing that when it was realised that the Respondent were not going to agree the settlement proposals, notices of late appeal were filed on 19 January 2019. He also stated that he became aware of the enforcement proceedings initiated with the County Sheriff, pursuant to S.960L (1) TCA97, while preparing the notices of late appeal. Furthermore, he stated that he did not receive copies of the Sherriff’s Certificates until March 2021.



RESPONDENT'S SUBMISSIONS

30. The Respondent submits that the appeals should not be admitted as the conditions for acceptance of a late appeal contained in S.949P TCA97, where a certificate under S.960L TCA97 has been issued, have not been met.
31. The Respondent submits that arising from discussions between the parties on 12 March 2018, the Respondent prepared draft settlement agreements and delivered these to the Appellants' agent on 10 April 2018. The Respondent submits that it was agreed at the meeting of 12 March 2018, that the bank drafts and cash seized would be applied against the outstanding tax liabilities of the Company Appellant.
32. Having received the signed settlement agreements back from the Appellant on 29 June 2018, the Respondent noted that alterations had been made to the agreement unilaterally by the Appellant, namely that the monies paid to date would be offset against the outstanding tax liabilities of the Individual Appellant. As a result the Respondent reissued the original draft settlement agreements to the Appellant on 21 August 2018 and on 3 October 2018 the Respondent received a letter from the Appellant's Agent informing them that the Appellant would not sign the agreement as drafted.
33. The Respondent submits that as the Appellant refused to sign the agreement as drafted, had unilaterally altered the settlement agreement and as the Appellant had not submitted a Notice of Appeal to the TAC, the Respondent commenced enforcement action against the Appellants and issued two certificates pursuant to S.960L (1) TCA97 to the Sheriff on 31 October 2018, in respect of the Individual Appellant and the Company Appellant, respectively.
34. The Respondent submits that the Appellant wrote to the Sheriff on 14 January 2019, acknowledging receipt of the S.960L notices and stating that an appeal had been



“launched with the tax appeal commissioner”. The TAC received a Notice of Appeal, which was dated 16 January 2019, from the Appellants’ agent on 1 February 2019.

ANALYSIS & CONCLUSIONS

35. The background to this appeal and my material findings of fact are outlined above. From these it is clear that there is no dispute between the parties that the notices of appeal against the income tax and VAT assessments raised on the Appellants are outside the statutory time limit for the making of such appeals.
36. During the hearing I sought to establish the reasons why no notice of appeal had been filed on time by the Appellant. Initially it appears that the Appellants chose not to submit a notice of appeal because they believed that the negotiations with the Respondent with a view to tax settlement would have a positive outcome. However, it is also clear that there was a significant impasse during 2018 between the Appellants and the Respondent in concluding those negotiations. Yet still no notice of appeal was submitted in 2018.
37. It was submitted by the Appellants’ Agent, under sworn testimony during the hearing that when it was realised that the Respondent were not going to agree the settlement proposals, notices of late appeal were filed on 19 January 2019 (dated 16 January 2019) (although the TAC date stamp shows these appeals were received by TAC on 1 February 2019). He also stated that he became aware of the enforcement proceedings initiated by the County Sheriff, pursuant to S.960L (1) TCA97 while preparing the notices of late appeal. Furthermore, he stated that he did not receive copies of the Sherriff’s Certificates until March 2021, although an email from the Appellants’ Agent, put before me and dated 14 January 2019, refers to the Agent having sight of a notification from the Sheriff.
38. The Respondent submits that the late notices of appeal should not be admitted as the conditions for acceptance of a late appeal contained in S.949P TCA97, where a certificate under S.960L TCA97 has been issued, have not been met.



39. The Respondent further submitted that as the Appellant refused to sign the agreement as drafted, had unilaterally altered the settlement agreement and as the Appellant had not submitted a Notice of Appeal to the TAC, the Respondent commenced enforcement action against the Appellants and issued two certificates pursuant to S.960L (1) TCA97 to the Sheriff on 31 October 2018, in respect of the Individual Appellant and the Company Appellant, respectively.

40. Section 949P TCA 1997 sets out the effect on the tax appeal process of Revenue enforcement action for collection of tax through the issue of certificates under section 960L as follows:

(1) Where action for the recovery of any tax has been taken by means of the institution of proceedings in any court or the issue of a certificate under section 960L, as the case may be, the Appeal Commissioners shall not accept a late appeal in relation to the tax until such action has been completed.(emphasis added)

41. We know that both Certificates issued by the Respondent's to the County Sheriff under section 960L, in respect of taxes assessed on the Appellants, were dated 31 October 2018, which predates the late notices of Appeal in January 2019. Accordingly, section 949 P TCA1997 precludes me, under statute, from accepting the Appellants late appeals.

42. In any event, throughout the appeal, the Appellants offered no cogent reason why they had waited until 2019 to file an appeal against income tax and VAT assessments raised in March 2018. That is not to say that I do not have some considerable sympathy for the Appellant in relations to the conduct of a possible settlement with the Respondent throughout 2018. However, as the Respondent correctly pointed out, the Tax Appeals Commission does not have jurisdiction over tax settlements, quoting from the recent Court of Appeal case *Kenny Lee and Revenue Commissioners* 28 January 2021:

"(...The Jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA... do not accordingly have the power to adjudicate upon whether



a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment render it invalid...

... A Judge of the circuit Court, hearing an appeal from the appeal Commissioner, does not have jurisdiction under s. 942 (3) of the Taxes Consolidation Act, 1997 (as amended), or pursuant to his inherent jurisdiction, to determine whether the parties to an appeal have entered into a settlement in respect of the liability at issue in the said appeal"

DETERMINATION

43. I determine and direct that the late appeals against Assessments to Income Tax and VAT raised on the Appellants on 15 March 2018 cannot be accepted at this time, as the conditions for the acceptance of a late appeal contained in S.949P TCA97, pursuant to the issues of certificates under S.960L TCA97, have not been met.



PAUL CUMMINS
TAX APPEALS COMMISSIONER

Designated Public Official

13 July 2021

