



130TACD2021

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. Following a Revenue investigation, the following Amended Notices of Assessment were raised against the Appellant dated 1st December 2015 in respect of years 2003 to 2014 inclusive based on income charged to tax pursuant to Taxes Consolidation Act, 1997 (TCA), section 58:

<u>Year</u>	<u>Assessed Tax</u>
2003	€36,351
2004	€24,245
2005	€5,477
2006	€27,768
2007	€34,411
2008	€27,679
2009	€25,975
2010	€6,651
2011	€19,632
2012	€20,255
2013	€41,958
2014	<u>€47,500</u>
	<u>€317,918</u>

2. The assessments raised by the Respondent, albeit inclusive of contras, did not take account of any potential additional rental income that the Appellant may have earned.
3. The Appellant appealed the Assessments on 17th December 2015, on the grounds that *"they have no basis in law; You cannot coerce me or my person into accepting and*



consenting to these incorrect amounts; Coercing in to contract is duress; Duress invalidates all contracts".

4. As the tax affairs of the Appellant and her life and business partner, Mr [REDACTED] are intrinsically linked, both individuals agreed that their appeals be heard together.

Legislation

5. The charge to tax under Schedule D is governed by TCA, section 18(1) and relates to:

"(a) the annual profits or gains arising or accruing to —

- (i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,*
- (ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,*
- (iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and*
- (iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State, ..."*

6. TCA, section 52 TCA identifies the person chargeable to tax and states:

"Income tax under Schedule D shall be charged on and paid by the persons ... receiving or entitled to the income in respect of which tax under that Schedule is directed in the Income Tax Acts to be charged."

7. TCA, section 58(1) charges profits and gains from an unknown source and provides:

"Profits or gains shall be chargeable to tax notwithstanding that at the time an assessment to tax in respect of those profits or gains was made —

- (a) the source from which those profits or gains arose was not known to the inspector,*
- (b) the profits or gains were not known to the inspector to have arisen wholly or partly from a lawful source or activity, or*



(c) *the profits or gains arose and were known to the inspector to have arisen from an unlawful source or activity,*

and any question whether those profits or gains arose wholly or partly from an unknown or unlawful source or activity shall be disregarded in determining the chargeability to tax of those profits or gains."

Material Findings of fact

8. The Appellant and [REDACTED] are life and business partners and have [REDACTED] children.
9. On 7 May 2009, an investigation commenced into the tax affairs of the Appellant and her partner, [REDACTED], covering the period 1 January 2003 to 7 May 2009. On 19 January 2012, the investigation was extended to cover the period up to the end of 2011. On 7 August 2015, this investigation was further extended to cover the 11.5 year period from 1 January 2003 to 30 June 2015.
9. In the absence of a full disclosure of information, notices pursuant to TCA, Section 906A issued to a number of financial institutions. An analysis of the information received identified lodgements into the following bank accounts:

[REDACTED]
[REDACTED]

10. Further TCA, section 906A notices issued to a number of financial institutions on 2nd September 2015 in light of the information from the first such notice and lack of co-operation from the Appellant.
11. On receipt of information provided by the financial institutions, an analysis of the lodgements to the bank statements was undertaken in relation to the following accounts:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



12. The total amount of monies lodged to the accounts of the Appellant for the period of time 2003 to 2014 was €894,747.
13. The Appellant and [REDACTED] have been involved in a range of businesses individually and jointly and have acquired the following properties:

[illegible]

14. Other than the property, [REDACTED] their principal residence, all other residential properties were rented.
15. From a review of the Appellant's bank accounts, there was no evidence that any of the rental income derived from the rented properties was lodged into the bank accounts held by the Appellant and her partner [REDACTED]. Furthermore, during the hearing [REDACTED] explained that he *"had plenty of money in me account, I probably didn't need to put more in, as you see, I kept plenty of money in my house"*. The Appellant's agent when pressed also confirmed that *"it will be a difficult task"* to identify any lodgements that related to rental income. Furthermore, the documentation to verify the deductible expenses was not provided to the Respondent including the PRTB documentation to confirm entitlement to the sizeable interest expense claimed against rental income.
16. In 2003, the Appellant opened an [REDACTED] and a launderette/dry cleaning business, [REDACTED] in 2009. In 2010, the Appellant opened up a child minding business which lasted for a period of 2 years. The Appellant also ran a tiling business for a short period. The Appellant did not maintain proper books or records for any of her business activities and had little recollection of the income derived from and monies expended by those businesses.
17. There was uncertainty in the Appellant's evidence as to how several vehicles were financed. Furthermore the majority of the Appellant's living expenses and utility bills were discharged by way of cash payments.
18. At the hearing on 29th July 2021, the Appellant's agent calculated that undeclared income for all years under appeal was €296,194 and proposed a tax settlement figure of €71,782.



Submissions – Appellant

19. The Amended Assessments issued on foot of alleged Miscellaneous Income in various years total €494,140 for the 12 years under review. The alleged sums for Miscellaneous Income derive from lodgements to the bank accounts in the sole name of the Appellant. Those bank accounts were

[REDACTED]

20. The total amount of monies lodged to the accounts in the period of time, 2003 to 2014, amounted to:

	€
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Total **894,747.54**

21. Analysis of transactions discloses that the sum of €160,527.14 comprised direct bank transfers from bank accounts held by, the Appellant's partner, [REDACTED]. On this basis, it is deemed acceptable to disregard that sum of €160,527.14 as trade income in the hands of the Appellant.
22. Taking account of theses sums, it is deemed realistic, reasonable and accurate to regard the net amount arising of €734,220.40 as trade and rental income earned by the Appellant in the 12-year period of time 2003 to 2014.
23. The total of net income after PAYE on the 12-year period of time amounted to €1,014,167 and was derived from the following activities:

	€
[REDACTED]	298,150
[REDACTED]	155,781
[REDACTED]	495,041
[REDACTED]	14,647
Sch E Salary (net)	<u>50,548</u>
Total	<u>1,014,167</u>



24. Of the total sum of €1,014,167, the amount of €908,372 has been declared on filed income tax returns. The difference of €105,795 relates to the income tax year 2006 where nil income was shown for the [REDACTED] activity, tax year 2010 where joint rental income earned with [REDACTED] was accounted for in the tax return of the Appellant in full, and income tax years 2013 and 2014 where nil income was declared for rental income arising from the partnership activities conducted with [REDACTED]. There is no immediate explanation as to why this income was not declared on the filed income tax returns other than to advise that the relevant financial data was made available to the then appointed accountant/tax agent and omitted from the data entered onto the tax returns. Nonetheless, the year 2006 proved financially at break-even point and the years 2013 and 2014 should have included taxable income of €18,000 for each year. The proposed tax settlement sum as already advanced of €101,044 is affected in that the previously determined overall difference in cash for the years 2006, 2010, 2013 and 2014 of €37,857, €10,038 and €20,928 respectively is now eliminated by the inclusion of the Sales Income in 2006 for the [REDACTED] and Rental Income for 2013 and 2014. The correction assists in reconciling cash management over the year 2003 to 2014 inclusive, which now stands at some 7 to 18 years old.
25. Taking account of the financial data set out above, in respect of which full data became available during the course of the Revenue Investigation, determines an underpayment of Income Tax, PRSI and USC of €71,782.
26. It is to be noted that during the course of the hearing on the 22nd July 2021, the Appellant argued that a sum of €160,527.14 being sums lodged to bank accounts maintained by the Appellant represented money transfers from [REDACTED] to the Appellant.
27. In the course of the appeal hearing a questionable response was advanced by the Respondent that if the transfer sums from [REDACTED] to the Appellant are not treated as taxable income, then the Respondent will deem that there are further funds of €160,527.14 lying elsewhere and not identifiable which will serve to mitigate against this argument. This is wholly unacceptable and flies in the face of factual evidence. The Respondent, in its deliberations of investigating the finances of the Appellant failed to uncover the account transfer sums, identifiable for date, amount and bank account number. The financial detail of same is now brought to the attention of The Respondent where an expectation is offered to the Tax Appeals Commission that such bank account transfer should be treated as taxable income in the hands of the recipient. This is unjust enrichment as defined in the Value Added Tax Consolidations Act 2010, Section 100. This is unjust, inequitable and must fail.



28. The amount of lodgements for the 12-year period of time amounts to €734,220. Thus, by reasonable deduction and conclusion therefrom, in total there is no undeclared income arising.
29. It cannot be denied that for the years 2003 and 2004, there is a significant cash difference when comparing total income with lodgements. For those years, the differences arising are set out as follows:

	€
2003	72,095
2004	42,477

30. Whilst 2003 appears to have been the inauguration year when the activities commenced, momentum driving the activities to encompass five different sources of income to include a reasonably extensive portfolio of rented property, there is an inexplicable reality that the additional funds of €72,095 arising in 2003 must have been other income derived from activities potentially not accounted for, save for proof to the contrary being available. Likewise in 2004. The principles adopted are applied rigidly each year and thus the declared income versus funds lodged to bank accounts discloses differences arising.
31. On the basis of the statistical analysis thus far, taking account of income tax, PRSI and USC rates applicable for the years 2003 to 2014, a liability to taxation of €72,499 arises, of which €717 has been computed per filed Income Tax returns resulting in an additional liability of €71,782.
32. The point is made that the subject of the Amended Assessments was on foot of a Revenue Investigation, initially focusing on the financial affairs of [REDACTED], and then extended to the Appellant.
33. There exists a difference in financial data between the amounts deemed by the Respondent to be Miscellaneous Income in the sum of €494,140, and the reconciliation of bank lodgements.
34. The point has to be made that the financial data set out and used to determine the argument of the Appellant is documentation provided by the Respondent on the 9th March 2021. Thus, there is nothing new arising by way of financial data that the Respondent did not already have in its possession and in its possession for a number of years.



35. There is a requirement now for the Respondent to set out the basis of its computation of the sums classified as Miscellaneous Income, so that differing financial data, what the Respondent contend versus what the Appellant has proven, can be reconciled in the interests of equity and fairness.
36. There exists no record of where the Respondent set out details of sums lodged to bank accounts giving rise to the Amended Assessments. Reference is made to a letter written to the Respondent on the 19th February 2021 where this point was made to which there was no reply.
37. It is acknowledged that the Appellant and [REDACTED] were in partnership in terms of rental income and ownership of property. Clearly, there was a requirement to register the partnership with the Respondent and account for the partnership profits and losses, income and expenses. This does not appear to have happened. Nonetheless, the Respondent and the Exchequer should not suffer adversely on foot of same as the partnership taxable profits would be apportioned between the respective partners who would individually be assessed on such profit share and taxed accordingly. This observation is set out for the sake of completeness.
38. A matrix of The Property Portfolio is set out as follows for completeness:

Item	Address	Date Purchased	Cost €	Mortgage Amount €	Date Sold	Sale Proceeds €	CGT Exposure €
1	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	190,000	267,750	[REDACTED]	285,000	25,000
2	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	255,000	323,000	[REDACTED]	255,000	Nil
3	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	120,000				
4	[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	210,000	200,000			
5	[REDACTED] [REDACTED]	[REDACTED]	180,000	228,000			



6			313,000	313,000			
7			415,000	525,000			

All properties are jointly owned with [REDACTED]

39. By way of conclusion, the Respondent, in the conduct of the Remote CMC Hearings suggested that the Appellant was at liberty to make an offer in connection with the total of the Amended Assessments. There is merit in advising the Appellant that the sum of €71,782 is indicative of a fair and realistic settlement sum, reflecting the totality of the financial transactions as deemed representative of the business transactions of the Appellant. The Respondent's acceptance of this offer would bring to a close the apparent nine-year history of the investigation by the Respondent, wherein there are unquestionable weaknesses on both sides. For completeness the Appellant would require time to pay, herein indicated five years. The Appellant's ability to generate the levels of income heretofore earned is diminished no less than the experience of properties being subjected to Receivership. The offer is based on forbearance of any interest and penalty cost and any contribution to the Respondent legal costs. The Appellant sought consent to reduce the current amended assessments to the following amounts:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
2003	€ 30,665	2009	€ Nil
2004	€ 17,278	2010	€ Nil
2005	€ 738	2011	€ 9,491
2006	€ 743	2012	€ 3,238
2007	€ 415	2013	€ 4,421
2008	€ Nil	2014	€ 4,792



Submissions Respondent

40. The substantive issue in this case is the fact that the funds lodged to the Appellant's accounts exceed the amount declared for the relevant years and no explanation or no adequate explanation has been provided to date as to what these lodgements relate to.
41. Because of the linkages and movements of monies between the various bank accounts of [REDACTED] and the Appellant, the analysis was completed on both parties together. As such there were no large withdrawals in 2011 for the purchase of the Appellant's vehicle for €26,995 and there were no repayments for any related financing arrangement that the Respondent can identify from the bank statements. At the hearing, the Appellant gave various and inconsistent explanations at hearing as to the funding of this vehicle specifically the degree of vagueness in her testimony.
42. There were no payments from any of the bank accounts for weekly groceries until 2013. The amount spent in 2013 and 2014 totalled €2,512. There were no expenses for clothing or shoes including school uniforms. There was only one year where Respondent could identify expenditure on possible Christmas presents.
43. The purchases for petrol or diesel only relate to 2014 and total just over €75, despite each having their own vehicle. The evidence of the Appellant was that *"But if I give cash out how is it going to be on any evidence there"*. Similarly, despite payments for Motor Tax being made, the Respondent can only identify from the bank statements one motor tax payment in 2014 for €308.
44. There were very little expenses for entertainment, leisure activities or medical expenses. The Appellant conceded at the hearing that he paid cash for living expenses. However, this cash is not reflected in his tax returns or the financial matrix in his submissions.
45. [REDACTED] amended his evidence under cross-examination to concede that the apartment [REDACTED], the [REDACTED], [REDACTED] and the properties on [REDACTED] were purchased without mortgages. These properties were acquired at a total cost of €663,000 excluding incidental costs such as legal fees, stamp duty fees, etc and were funded fully from his own sources. Given that [REDACTED] was purchased in 2015. As such it was likely purchased with undeclared income from unknown sources relating to the period under the appeal.



46. The couple purchased a Principal Private Residence in 2005 but there are no payments for any expenses that you would expect to see following the acquisition of a new home or the maintenance of this property.
47. There were monthly direct debit payments from the Appellant's bank account to [REDACTED] from June 2004 until April 2011. The total amount transferred is €45,476.41. It is not known what these payments related to but it seems implausible that they related to the purchase of vehicle worth €26,995 which on the Appellants oral evidence was partly funded from the sale of another vehicle and / or money from a relative.
48. The Appellant gave oral [REDACTED] bank account.
49. There was a significant discrepancy in the business and rental expenses but not including interest claimed in tax returns versus the payments made from the business accounts. This may suggest that these were funded through cash payments or through another unknown bank account. It was possible that some may have been funded from the cheque payments made from their individual personal accounts but the Appellant has not provided any information for the Respondent to verify this and was unable to explain this discrepancy under cross examination.
50. An intervention took place on a third party during 2016 which was unrelated to this Revenue Investigation. This person was [REDACTED] cousin [REDACTED] who confirmed that [REDACTED] gave him €31,960 in cash to lodge to [REDACTED] on his behalf. [REDACTED] bank statement showed the cash lodgement and also a number of transfers from the Appellant's account totalling €12,000. There were transfers to [REDACTED] amounting to €45,644.44. These events took place in July 2014 and are not in dispute.
51. Requests for information regarding offshore assets have not been responded to. There is considerable information online to suggest that [REDACTED] owns foreign property ([REDACTED]) and has been involved in the development of a complex in [REDACTED]. Information suggests that there were [REDACTED] villas in two phases with prices ranging from €90k to €110k. [REDACTED] provided the Respondent with information regarding [REDACTED] based in [REDACTED] but the documentation is in [REDACTED]. There is mention of [REDACTED] 'set' in places though. Furthermore, the mutual assistance request with the [REDACTED] authorities which related to the Appellant advised that she was the general manager of this entity since 2005. The information obtained under the TCA, section 906A notice includes an application for funds to purchase a property in [REDACTED] in 2005.



52. The Appellant did not include [REDACTED] assets in her Statement of Affairs, even though she had those at the time and notwithstanding the consequences of a false disclosure.
53. At the CMC heard on 28 May 2021, it was conceded on behalf of [REDACTED] and the Appellant that additional income was not declared by them. On that occasion, a direction was made for the Appellants' submissions to be delivered by 25 June, however, this was not done.
54. Even though she ran a number of businesses ([REDACTED] in respect of which company she was a director), the [REDACTED], the Appellant was not able to give an indication of the money made by her each month. The Appellant gave oral evidence of till receipts and stated that all income in the launderette came via the till. However, the Appellant has not provided books and records in relation to the day to day records for her businesses including till receipts or others such as wage payments, ledgers, rental income documents etc. Indeed, even though she contended in evidence that there was always a part-time member of staff at the [REDACTED], there is only evidence of wage payments in the relevant bank accounts from 2012 on indicating that cash payments must have been used prior to that. Indeed, the Appellant accepted that she did pay her staff cash "sometimes".
55. There is no evidence of business insurance or wages being paid in the relevant accounts prior to 2012. The Appellant was obliged to keep these records given that she was under Revenue investigation within four years of the impugned returns being filed. The Appellant indicated that there was no merchant acquirer or credit card machine in use at the launderette and that it was a cash or cheque only business. When asked what she did with the funds in cash received in the launderette business, the Appellant initially stated that it was all lodged to the bank account:
- A. Yes, lodge it to the bank account.
Q. Which bank account?
A. [REDACTED]
Q. Did you lodge all of it?
A. Yes.
56. Later, on, she stated:
- Q. So you said that you paid cash for the rent, where did that cash come from?
A. From [REDACTED].



- Q. But you said you put all the cash into the bank accounts?
- A. After the bills that I would have paid, yes.
- Q. Okay. So some cash didn't go to the bank accounts, that's correct?
- A. If it was going to the rent, the rent didn't go to the bank accounts, correct.
- Q. Any other cash that didn't go to the bank account?
- A. I think there was some sundries as well that were paid for by cash.

57. The following properties were acquired by the Appellant (and, in some cases, [REDACTED]) and this information obtained from the Respondent records was put in evidence at the hearing, some of which have recently sold:-

	Address	Category	Date of Instrument	Transaction Assignment Amount
1	[REDACTED]	Purchaser	[REDACTED]	(€45,000 per [REDACTED] at hearing, see transcript Page 65, lines 13 to 17)
		Vendor	[REDACTED]	€325,000
2	[REDACTED]	Purchaser	[REDACTED]	€328,000
3	[REDACTED]	Purchaser	[REDACTED]	€120,000
4	[REDACTED]	Purchaser	[REDACTED]	€32,000
		Vendor	[REDACTED]	€500,000
5	[REDACTED]	Purchaser	[REDACTED]	€135,000
		Vendor	[REDACTED]	€230,000
6	[REDACTED]	Purchaser	[REDACTED]	€180,000
7	[REDACTED]	Purchaser (joint with [REDACTED])	[REDACTED]	€190,000



		Vendor (joint with [REDACTED])	[REDACTED]	€285,000
8	[REDACTED]	Purchaser	[REDACTED]	€255,000
		Vendor (joint with [REDACTED])	[REDACTED]	€255,000
9	[REDACTED]	Purchaser	[REDACTED]	€415,000
10	[REDACTED]	Purchaser	[REDACTED]	€165,000
11	[REDACTED]	Purchaser (joint with [REDACTED])	[REDACTED]	€313,000
12	[REDACTED]	Purchaser (joint with [REDACTED])	[REDACTED]	€210,000
13	[REDACTED]	Purchaser ([REDACTED])	[REDACTED]	€0.00

58. There was no evidence of Electronic Fund Transfers (EFTs) in the relevant bank accounts that would constitute monthly rental income transferred by tenants for the period. Indeed, there was no evidence of rental payments being lodged in cash in the relevant bank accounts that would constitute monthly rental income lodged by tenants for the period. It was admitted by [REDACTED] that some rental income was paid in cash, however, it was apparent that the vast majority was paid over in cash and not lodged directly to the bank accounts.
59. After a lengthy exchange about the rental income not evident from the bank accounts, the [REDACTED] stated then went to explain:

“A. Well sure, I had plenty of money in me account, I probably didn't need to put more in, as you see, I kept the cash in my house, or whatever.

COMMISSIONER: The rent is not in these bank accounts, is that correct?

A. As I said, Commissioner, it wasn't always transfers. It could have been cash.”



60. When asked how he kept track of the rent each month, [REDACTED] stated:

"A. We kept a ledger and we gave it to the accountant every year to submit.

Q. And where is that ledger now?

A. I'd imagine it's with the accountant.

Q. And did you ask the accountant if he could provide it to [REDACTED] or to TAC for the purpose of this appeal, or to Revenue?

A. I don't know is the answer. [REDACTED] were dealing with it and our accountant. [REDACTED] is on a special assignment here.

Q. So you don't know if you asked for that?

A. You're asking me did I ask for something, is it, the ledger to be provided to [REDACTED], is it?

Q. Yeah, of your rental income?

A. I don't know, can I ask him? Was that given to you, [REDACTED]

[REDACTED]: It wasn't, no. I didn't receive any rents ledger, no."

61. There was no evidence in the bank accounts showing expenditure on costs related to the rental properties indicating that same were paid in cash. [REDACTED] referred to "doing up" the properties that he purchased/owned, but there was no evidence of expenditure on same (even acknowledging that [REDACTED] may have been able to do the labour, materials would still have been required). He also claimed that he borrowed €100,000 from a bank to do up his family home but no evidence of this was seen in the bank accounts. The Appellant admitted that if costs were required to be spent, say on a washing machine, cash would be used.

62. The Appellant indicated in her Statement of Affairs that she had a €19,000 credit card debt in June 2009, however, the Respondent's analysis of documented repayments to MBNA from June 2009 do not meet this sum meaning that a figure of €9,162.34 is unaccounted for. It is submitted that the balance was paid in cash. Neither the Appellant nor [REDACTED] were able to explain where this money came from in evidence.

63. When asked about how he paid for living expenses (in particular, fuel, given that only one transaction was identified for the period), [REDACTED] stated:

"A. Do you want an answer? If it's not by one of my credit cards it could have been by cash. So there's your answer.

[REDACTED]?

A. Which year?



- Q. All years?
A. Credit and debit cards, who knows, four or five."

64. It is asserted in [REDACTED] Statement of Affairs that [REDACTED] was purchased for circa €37,000 in 2009. When asked to explain what this relates to, [REDACTED] stated: "It was a tile business I had, I imported [REDACTED]. However, he later asserted that it was in fact the Appellant's business. Indeed, she stated in evidence:

- "Q. And then there was one final business, which was the [REDACTED] business?
A. Yeah, that was very small.
Q. And did you run that on your own?
A. I did.
Q. I just want to be clear, did you run [REDACTED] on your own or was [REDACTED] involved?
A. On my own.
Q. That was totally on your own?
A. Yeah."

65. Later, the following exchanged occurred with the Appellant:

- "Q. And this business, the tiling business that [REDACTED] says was your business, that was acquired, according to his Statement of Affairs, for about €37,000 in or about 2009, what was that acquisition cost related to?
A. I actually have -- I can't remember. I don't really remember anything about the tiling business. It was very short lived.
Q. You don't remember anything, neither you nor [REDACTED] can explain what the figure of €37,000 relates to at all?
A. No. "

66. The recorded sales of the years the business operated were €13,462 yet, the balance of stock is not accounted for.

67. There was minimal evidence of regular day-to-day living expenses in the accounts, such as payments for food, medical, fuel, clothes, shoes and school uniforms, entertainment, childcare, household, leisure, communions, Christmas, etc. Likewise, there was limited evidence of business costs/expenses being debited from the bank accounts.

68. When it was put to the Appellant that using TCA, section 906A, the Respondent sought information in respect of the properties and the mortgages and was not able to obtain any mortgage evidence for the Apartment [REDACTED], the Apartment [REDACTED]



██████████ the property ██████████ and the properties on ██████████
██████████ conceded that there were none for those properties were
mortgaged. However, ██████████ had earlier stated that all of his properties had
mortgages taken out:

"A. Yeah, all mortgages taken out. Go on.

Q. Sorry, I beg your pardon, I didn't hear that, ██████████?

A. There was all mortgages taken out on these properties.

69. In summary, there was a significant amount of cash floating around in view of the
██████████ cash not accounted for in the bank transfers, the cash businesses, in particular
the ██████████ the ██████████ and the rental income from the Appellants'
substantial property portfolio.

Conclusions

70. It was submitted that the Respondent's approach is correct and the amended
assessments should be upheld. The Respondent was entitled to raise the amended
assessments given the undeclared income evident from the Appellant's bank accounts
pursuant to TCA, section 58(1). The onus of proof that the amounts due are excessive
rests on the Appellant and nothing has been put forward to date which establishes that
the figures are excessive. Indeed given the cash available to the Appellants based on the
evidence, the assessments should be increased to a sum considered to be correct. Both
Appellants have made concessions of monies owed to the Respondent in their
submissions, which proves that the returns to date are underdeclared. Further, in the
course of oral evidence, the Appellant conceded receipt of significant sums of cash and
has not made returns in respect of that income.



Analysis

Jurisdiction of the Appeal Commissioners

71. An appeal conducted by way of hearing pursuant to TCA, 949AH, is adjudicated by examination of the appellant. Thereafter the Appeal Commissioner, in accordance with TCA, section 949AK, is required to determine whether the assessment should be:
- (a) reduced,
 - (b) increased, or
 - (c) where neither paragraph (a) nor (b) applies, determine that the assessment stand.
72. In compliance with these obligations, this appeal proceeded by way of several case management conferences and 2 days of hearings.

Burden of Proof

73. The general principle of “*he who asserts must prove*” is the civil burden of proof imposing an obligation to sustain an assertion or proposition by positive argument. The default position in tax litigation, accepted by the agent for Appellant during the hearing, requires the taxpayer to provide sufficient evidence to reduce or displace a tax assessment. In *Menolly Homes Ltd. v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, 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"

74. The agent for the Appellant correctly acknowledged in his closing submission that “*this was a matter of getting information, if basic information had of been supplied we may not be here today. The whole thing became frustrated for a number of reasons, change of staff, change of taxations and so forth and we are here today. Unfortunately I don't have a lot of documentary evidence so I am, as in trying to present this case I obviously do struggle ... I am unclear at this moment in time as to whether it is unaccounted for income taxable in the hand of the Irish authorities or taxable in the hand of the [REDACTED] authorities so that point has to be, is certainly there and cannot be dispensed with ... We have come here and we said hands up, we have a million quid that is unaccounted for and we said let's tax that at 25%. It is a hard bullet to swallow*”. As such, it is quite



apparent that Appellant's agent had a difficult task in attempting to reduce or abate the assessments.

Determination

75. The Appellant was unable to provide any cogent evidence for the purposes of reducing or displacing the assessments raised by the Respondent and as such has frustrated her own appeal. Furthermore, while the assessments raised by the Respondent were based on bank lodgements that included €160,527 of bank transfers to the Appellant's account from her partner [REDACTED], there were no lodgements in respect of substantial rental income or indeed the large sums of cash remitted from [REDACTED] and therefore it would not be appropriate to reduce the assessments. As such and in accordance with TCA, section 949AK, I have determined that the assessments raised by the Respondent in respect of the years 2003 to 2014 inclusive as set out at paragraph 1, shall stand.



Conor Kennedy
Appeal Commissioner
26th August 2021

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended. However this request has been refused as the Appellant failed to "state in what particular respect the determination is alleged to be erroneous on a point of law", pursuant to TCA, section 949AP(3)(b).

