



25TACD2021

BETWEEN/

REDACTED

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against assessments for value added tax for the Years 2011, 2012 and the period January to August 2013.
2. The amount of tax concerned is €37,000.
3. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 24 November 2020.

Background

4. The Appellant, **REDACTED**, was a trading partnership, for a number of years as at 1 January 2011.
5. The Appellant had made VAT returns up to and including the year 2010.
6. The partnership cancelled its VAT registration with effect from 30 April 2011 on the basis that it had ceased trading.
7. The Respondent took the view that the partnership was still trading and restored its VAT registration number.

8. The Respondent raised VAT assessments the subject of this appeal in accordance with S. 111 VAT Consolidation Act 2010 as follows:

2011 €15,000

2012 €15,000

2013 €7,000 (for the period 1 January 2013 to 31 August 2013)

Legislation

9. Section 111 of the VAT Consolidation Act 2010:

(1) Where, in relation to any period, the inspector of taxes, or such other officer as the Revenue Commissioners may authorise to exercise the powers conferred by this section (in this section referred to as “other officer”), has reason to believe that an amount of tax is due and payable to the Revenue Commissioners by a person in any of the following circumstances:

(a) the total amount of tax payable by the person was greater than the total amount of tax (if any) paid by that person;

(b) the total amount of tax refunded to the person in accordance with section 99(1) was greater than the amount (if any) properly refundable to that person;

(c) an amount of tax is payable by the person and a refund under section 99(1) has been made to the person,

then, without prejudice to any other action which may be taken, the inspector or other officer—

(i) may, in accordance with regulations but subject to section 113, make an assessment in one sum of the total amount of tax which in his or her opinion should have been paid or the total amount of tax (including a nil amount) which in accordance with section 99(1) should have been refunded, as the case may be, in respect of such period, and

(ii) may serve a notice on the person specifying—

(I) the total amount of tax so assessed,

(II) the total amount of tax (if any) paid by the person or refunded to the person in relation to such period, and



(III) the total amount so due and payable (referred to subsequently in this section as “the amount due”).

(2) Where notice is served on a person under subsection (1), the following provisions shall apply:

(a) the person may, if he or she claims that the amount due is excessive, on giving notice to the inspector or other officer within the period of 21 days from the date of the service of the notice, appeal to the Appeal Commissioners, and

(b) on the expiration of the said period, if no notice of appeal is received or, if notice of appeal is received, on determination of the appeal by agreement or otherwise, the amount due or the amended amount due as determined in relation to the appeal, shall become due and payable as if the tax were tax which the person was liable to pay for the taxable period during which the period of 14 days from the date of the service of the notice under subsection (1) expired or the appeal was determined by agreement or otherwise, whichever taxable period is the later.

(3) Where a person appeals an assessment under subsection (1), within the time limits provided for in subsection (2), then—

(a) he or she shall pay to the Revenue Commissioners the amount which he or she believes to be due, and

(b) if-

(i) the amount paid is greater than 80 per cent of the amount of the tax found to be due on the determination of the appeal, and

(ii) the balance of the amount found to be due on the determination of the appeal is paid within one month of the date of such determination,

interest in accordance with section 114 shall not be chargeable from the date of raising of the assessment.



Submissions

Appellant

10. The Appellant's agent submitted that the assessments should be cancelled as the partnership ceased on 30 April 2011.
11. The Appellant's agent submitted that it was self-evident that the partnership had ceased as **NAME REDACTED**, for the period of the assessments, had availed of maternity benefit and job seekers allowance.
12. The Appellant's agent submitted that the Respondent had failed to turn up for a scheduled meeting on September 5, 2013 but subsequently re-registered the partnership for VAT and raised the instant assessments on the partnership.
13. The Appellant's agent further submitted that **NAME REDACTED** was the licence nominee for the **NAME REDACTED** for the purposes of a publican's licence only. The Appellant asserted that she was basically the nominee in interim.
14. The Appellant's agent submitted that the public house was operated by a third party called **NAME REDACTED** (described as the investor) from 1 May 2011 and it is he who should be assessed for VAT for 2011, 2012 and part of 2013.
15. The Appellant's agent submitted that the Respondent took the view that **NAME REDACTED** was the assessed party and not a nominee for the investor. The Appellant submitted that her function changed on 30 April 2011.

Respondent

16. The Respondent submitted that the Appellant was a partnership which was engaged in a public house business. The partnership was formed by two partners, **NAMES REDACTED**.
17. The Respondent submitted that the partnership was trading in the **NAME REDACTED** licensed premises up until June 2013.



18. The Respondent submitted that the publican's licence was renewed in the name of the partnership for the years ending 30 September 2011, 30 September 2012 and 30 September 2013.
19. The Respondent submitted that the partnership comprising NAMES REDACTED declared turnover of €198,656 and €201,942 in their application for renewal of the publican's licences expiring on 30 September 2011 and 30 September 2012 respectively.
20. The Respondent submitted copies of the signed applications and copies of the actual cheques for payment, for publican's licences on behalf of NAMES REDACTED trading as NAME REDACTED. These applications were made to the Respondent in the years 2010, 2011 and 2012.
21. The Respondent submitted that these applications were signed by NAME REDACTED in respect of the 2011 application on 1 November 2010 and by NAME REDACTED for the 2012 and 2013 applications on 4 October 2011 and 15 October 2012 respectively.
22. The Respondent submitted that the Appellant was in fact trading up to June 2013.
23. The Respondent submitted photographs from social media and an advertisement in a local paper in support of its assertion that the public house was trading during the period of the assessments.
24. The Respondent submitted the basis on which the assessments were raised. In this the Respondent submitted that the assessments were based on the average of the VAT declarations made by the partnership in the years 2008 to 2010.
25. The Respondent submitted that accordingly the VAT amounts in the assessments are correctly chargeable, were raised in accordance with the best judgement of the inspector and done so in the absence of full information.



Analysis

26. The Appellant's agent has asserted that the partnership was not in business at all after 30 April 2011. However, the Appellant has provided no evidence to support the assertion that the partnership ceased on this date.
27. The Appellant's agent suggested that as **NAME REDACTED** had availed of maternity benefit and job seekers benefit during the assessment period, she could not have been in partnership running a public house.
28. The Appellant's agent asserted that the partnership ceased to trade on 30 April 2011 and that the participation of the partners in the trade of the Appellant changed at that time as an investor had commenced operating the public house.
29. The Appellant's agent offered no evidence in support of this contention.
30. The Respondent has provided evidence of the partnership having applied for and obtained publican's licences for all the periods of the assessments the subject of this appeal.
31. The documents presented by the Respondent in support of its assertion that the partnership was trading, include signed applications for publican's licences by the partnership and copies of the cheques made payable to the Revenue Commissioners in respect of these applications.
32. The Respondent has also provided a copy of a letter from the Appellant's agent, displaying the names of the partners in the title, enclosing a cheque on behalf of the Appellant in part payment of the publican's licence for one of the years.
33. The Respondent has based the assessments the subject of this appeal on the average VAT liability of the partnership in earlier years. I find that this is consistent with the turnover declared by the Appellant in its application for publican's licences in the years of assessment.



Conclusion

34. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation.
35. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments to tax are incorrect.
36. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 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.'*
37. The onus in this appeal rests on the Appellant and the question is whether the Appellant has shown that the partnership did not trade and is therefore not liable to VAT for the years of assessment, 2011, 2012 and Jan to Aug 2013.
38. The Appellant has failed to discharge the onus of proof required to substantiate its claim that it was not trading for the periods of the assessments. On the contrary the Respondent has provided contemporaneous evidence from its records of the partnership having applied for, paid for and being granted a publican's licence for the period of the assessments.

Determination





39. For the reasons set out above, the Appellant has failed to discharge the onus of proof and is thereby unable to succeed in this appeal. As a result, I determine that the VAT assessments the subject of this appeal, shall stand.

40. This appeal is hereby determined in accordance with section 949AK TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
9 DECEMBER 2020

