



Between

136TACD2022

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a Notice of Amended Assessment to Capital Gains Tax dated 1 October 2018, issued by the Revenue Commissioners (“the Respondent”) in relation to the period 1 September 2015 to 31 August 2016 in the sum of €692,010.
2. On 30 September 2015, the Appellant received a gift of a residential property at ██████████ with a market value of €██████████ from ██████████ (“the Disponer”). The Appellant is the adult son of the Disponer and he took an absolute interest in the property.
3. This appeal relates to the question of the availability of an exemption in accordance with section 86 of the Capital Acquisitions Tax Consolidation Act 2003 (“CATCA 2003”) commonly referred to as “*dwelling-house exemption*”. The matter at issue in this appeal relates to whether the Appellant was, at the date of the gift of the ██████████

property, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house in accordance with section 86(3)(b) CATCA 2003.

4. The Appellant filed an IT38 form claiming a dwelling house exemption in respect of the gift of the [REDACTED] property. The Respondent, in disallowing the claim for an exemption, raised a Notice of Amended Assessment to CAT on 1 October 2018.
5. On 30 October 2018, the Appellant duly appealed to the Commission. On 4 July 2022, a hearing of the appeal took place and the Commissioner heard submissions from Counsel on behalf of the Appellant and the Respondent. The Commissioner appreciated the extensive preparation by both parties and the bundle of documents and authorities submitted.

Background

6. On 30 September 2015, the Appellant was gifted the [REDACTED] property from the Disposer and the Appellant claimed dwelling house exemption pursuant to section 86(3) CATCA 2003. The Appellant had taken up residence in the [REDACTED] property in January 2012.
7. Previously, the Appellant had purchased a dwelling on 1 July 2004, at [REDACTED] [REDACTED] [REDACTED]). On 28 March 2013, the Appellant disposed of the [REDACTED] property to [REDACTED] (“the Company”) for the sum of €165,000, the market value of the property. The Company paid the sum of €165,000 to the Appellant and the Company received the [REDACTED] property by way of consideration. The Company is a property holding/rental company involved in the letting of residential and commercial properties. The Appellant is a 33% shareholder in the Company, with his two brothers also being shareholders. The Appellant is not a Director of the Company.
8. The Appellant maintains that he has no beneficial interest in the [REDACTED] property and therefore satisfies the provisions of section 86(3)(b) CATCA 2003, such that a dwelling house exemption should have been afforded to him by the Respondent. He argues that section 43 CATCA 2003 has no application to the circumstances of his appeal and any beneficial interest he had in the [REDACTED] property, ceased on the sale of the property to the Company for market value. The Appellant asserts that the fundamental principles of company Law support this approach.
9. The Respondent argues that “*while the general law takes a certain approach to the assets of estates and companies, the CAT rules, on the other hand, include extensive look through provisions with respect to companies. These rules contained in Section 43 CATCA*

are not limited to any particular section of the Act and are expressly stated to apply to CATCA in general. For present purposes therefore, Section 43 has the effect that because the [REDACTED] was consideration received by the Family Company, the Appellant is deemed to have received this consideration and the acts of the Family Company in holding an interest in the [REDACTED] are deemed to be the acts of the Appellant”.

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:

11. Section 43 CATCA 2003, Disposition by or to a company, provides:-

(1) In this section -

“company” means a private company within the meaning of section 27

“market value” means –

(a) in the case of a person's beneficial interest in shares and entitlements, the market value of that interest on the date of the payment, disposition, gift or inheritance, as the case may be, ascertained by reference to the market value on that date of the shares and entitlements in which the interest subsists, and

(b) is not a company which would fall within section 431 of the Taxes Consolidation Act 1997 if the words “private company” were substituted for the words “close company” in subsection (3) of that section, and if the words “are beneficially held by a company which is not a private company” were substituted for the words of paragraph (a) of subsection (6) of that section;

“share”, in relation to a private company and in addition to the interpretation of “share” in section 2 (1), includes every debenture, or loan stock, issued otherwise than as part of a transaction which is wholly and exclusively a bona fide commercial transaction.

“specified amount”, in relation to a person's beneficial interest in shares and entitlements, means-

(a) in the case of consideration paid, or a disposition made, by the company, a nil amount or, if greater, the amount by which the market value of the beneficial interest was decreased as a result of the payment of the consideration or the making of the disposition, and

(b) in the case of consideration, or a gift, or an inheritance taken by the company, a nil amount or, if greater, the amount by which the market value of the beneficial

interest was increased as a result of the taking of the consideration, gift or inheritance.

(2) For the purposes of this Act-

(a) consideration paid by, or a disposition made by, a company is deemed to be consideration, or a disposition, as the case may be, paid or made, and

(b) consideration, or a gift, or an inheritance taken by a company is deemed to be consideration, or a gift or an inheritance, as the case may be, taken,

by the beneficial owners of the shares in the company and the beneficial owners of the entitlements under any liability incurred by the company (otherwise than for the purposes of the business of the company, wholly and exclusively) in the same proportions as the specified amounts relating to their respective beneficial interests in the shares and entitlements bear to each other.

(3) For the purposes of subsection (2) all acts, omissions and receipts of the company are deemed to be those of the beneficial owners of the shares and entitlements, referred to in subsection (2), in the company, in the proportions mentioned in that subsection.

(4) Where the beneficial owner of any shares in a company or of any entitlement of the kind referred to in subsection (2), is itself a company, the beneficial owners of the shares and entitlements, referred to in subsection (2), in the latter company, are deemed to be the beneficial owners of the latter company's shares and entitlements in the former company, in the proportions in which they are the beneficial owners of the shares and entitlements in the latter company.

(5) So far as the shares and entitlements referred to in subsection (2) are held in trust and have no ascertainable beneficial owners, consideration paid, or a disposition made, by the company are deemed to be paid or made by the disponent who made the disposition under which the shares and entitlements are so held in trust.

12. Section 86 CATCA 2003, Exemption relating to certain dwellings, provides:-

(1) In this section—

“dwelling house” means—

(a) a building or part (including an appropriate part within the meaning of section 5(5)) of a building which was used or was suitable for use as a dwelling, and

(b) the curtilage of the dwelling house up to an area (exclusive of the site of the dwelling house) of one acre, but if the area of that curtilage (exclusive of the site of the dwelling house) exceeds one acre, then the part which comes within this definition is the part which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the dwelling house;

“relevant period”, in relation to a dwelling-house comprised in a gift or inheritance, means the period of 6 years commencing on the date of the gift or the date of the inheritance.

(3) Subject to subsections (4), (5), (6) and (7), a dwelling-house comprised in a gift or inheritance which is taken by a donee or successor who-

(a) has continuously occupied as that donee or successor's only or main residence—

(i) that dwelling-house throughout the period of 3 years immediately preceding the date of the gift or the date of the inheritance, or

(ii) where that dwelling-house has directly or indirectly replaced other property, that dwelling-house and that other property for periods which together comprised at least 3 years falling within the period of 4 years immediately preceding the date of the gift or the date of the inheritance

(b) is not, at the date of the gift or at the date of the inheritance, beneficially entitled to any other dwelling-house or to any interest in any other dwelling-house, and

(c) continues to occupy that dwelling-house as that donee or successor's only or main residence throughout the relevant period

is exempt from tax in relation to that gift or inheritance, and the value of that dwelling-house is not to be taken into account in computing tax on any gift or inheritance taken by that person unless the exemption ceases to apply under subsection (6) or (7).

Submissions

13. Both Counsel for the Appellant and the Respondent indicated that no factual dispute arises and the facts in relation to this appeal are agreed as per Tab 1 of the Appellant's bundle of documents. Both Counsel confirmed that the appeal relates to a legal point namely, the exemption provided for under section 86(3)(b) CATCA 2003 and the application of section

43 CATCA 2003. Consequently, the appeal would be dealt with by way of legal submissions only.

Appellant

14. Counsel for the Appellant made the following legal submissions:-

- (i) The basis of the Appellant's argument is that the Respondent has incorrectly interpreted the statute. The interpretation suggested is far too broad and indeed, is unsupported by the actual wording of section 43.
- (ii) "*Beneficially entitled*" is not defined in the Act and is used in both sections 86 and 43 CATCA 2003. However, "entitled in possession" is defined in section 2 CATCA 2003 and is a present right to the enjoyment of the property as opposed to having a future such right. Reference was also made to the definition of "share" under section 2 CATCA 2003.
- (iii) Reference was made to section 43 CATCA 2003 and that the Respondent's reading of the section is not appropriate. Reference was made to section 43(1) CATCA 2003 and "specified amount" which it is submitted is the value of a gift taken by a company or given by a company. Where the amount by which the market value of the beneficial interest was decreased, or the amount by which the value was increased, if there is consideration, or a disposition, or a gift, or an inheritance and as a result the market value of the interest is increased or decreased, as the case may be, then there can be a charge to tax.
- (iv) What section 43 CATCA 2002 is designed to achieve, in the context of the scheme of the Act and on a straight reading of it, rather than a convoluted reading, is a situation where there is some kind of dealing, which results in an increase or a decrease in the value of a beneficial interest in shares in a company and that is liable to tax. It states that if you pay money it is deemed to be, for the purposes of taxing that money, that amount of money, in the same proportion as the specified amounts.
- (v) The wording of this section is very clear as to what the section is designed to achieve, it is anti-avoidance, gifts by companies and gifts to companies, that is the four walls of it. There is no question of anything broader than that and were it to be suggested that there is, it would fall foul of the principles of statutory interpretation as they are well established.

- (vi) In relation to subsection 4, this is a look through provision, as if the shares are held by another company, you look through that company to the company behind to see who the shareholders are. That is a very specific provision and if there was an intention to look through, for whatever reason to underlying shareholders, then the legislation would say that and it does not, it simply deals with companies.
- (vii) Reference was made to the decisions of *The Cape Brandy Syndicate v The Commissioners of Inland Revenue* [1921] I KB 64, *The Revenue Commissioners v Doorley* [1933] IR 750, *Inspector of Taxes v Kiernan* [1981] IR 117, *Bookfinders Limited v The Revenue Commissioners* [2019] IECA 100 and *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 in the context of statutory interpretation.
- (viii) Reference was made to section 86(3) CATCA 2003 and that the Appellant has resided in the [REDACTED] property for three years prior to the gift and he satisfies the requirements on that front. Reference was made to Appeal Case 191/07, a decision of Commissioner Kelly and to the decision of *Leanne Deane V the Revenue Commissioners* [2018] IEHC 519. Whilst *Deane* is not on point in relation to the facts of the case, it illustrates the thinking of the Superior Courts in terms of a beneficiary having received a number of properties under a will, in the context of dwelling house relief. Costello J held that the Appellant was entitled to the relief as “*Where a Will makes no specific bequests and where all the property passes to the residue and is left to more than one beneficiary, it cannot be said that any one person has any right to any particular asset in the estate prior to the date when the net value of the estate is established*”.
- (ix) Reference was made to the general principles of company law, the nature of the shareholders' interests of the company, various decisions and textbooks in support of the general principles. If section 43 CATCA 2003, is to upset or change the general law relating to companies, then it must do so specifically and clearly and not through some sort of sideways interpretation. Nothing in section 43 CATCA 2003 displaces general law, a shareholder has no interest beneficial or otherwise in the property owned by the Company. The Appellant has a beneficial interest in the shares of the Company only. The Company is a separate legal person with its own rights and liabilities. The legal and beneficial interest is held by the Company.
- (x) If there is any ambiguity in section 43 CATCA 2003, it must be construed strictly in favour of the Appellant. A tax must be imposed expressly and in clear and

unambiguous terms. It was open to the legislature to include a provision to look through a company in relation to a beneficial interest in property, but it did not. You must read subsections (1), (2), (3) and (4) together.

Respondent

15. Counsel on behalf of the Respondent made the following legal submissions:-

- (i) Reference was made to the decision of *O'Flynn v Revenue Commissioners* [2011] IESC 47, *Bookfinders, Dunnes Stores v Revenue Commissioners* [2019] IESC 50, *Perrigo, Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449 and *Howard v Commissioners of Public Works* [1994] 1 IR 101 in relation to statutory interpretation. Reference was made to paragraph 54 of *Bookfinders* and you apply the ordinary meaning of the words and then when all else fails, you apply a strict interpretation and in between you have all of the other rules including the purposive approach and that then is the newly clarified regime for statutory interpretation.
- (ii) This appeal is in relation to a relieving provision. It is a matter for the taxpayer to bring himself within the relieving provision and there is not a corresponding rule in relation to relieving provisions, which says that reliefs must be interpreted broadly in favour of a taxpayer. Strict interpretation has no application to a relieving provision.
- (iii) Section 43 CATCA 2003 is a look through provision and applies to all of the Act due to the words "*For the purposes of the Act*". The Appellant had an interest in the [REDACTED] property then transferred that to the Company owned by himself and his family, essentially retaining it on a lease, but presenting to the Respondent that he has no interest in the property.
- (iv) "*Disposition*" is very broadly defined in section 2 CATCA 2003. There is a very clear look through provision within section 43 CATCA 2003 subsection (2) and (4). There is a look through provision in (2) followed by a look through of all the companies of the structure in (4). Subsection (3) then enhances subsection (2) as it says that all acts are going to be treated as those of the shareholders. "*All acts*" is very clear and the ordinary wording of section 43(2) makes it very clear that we must look through the Company to the shareholders of the Company, to see if the Company holds this property and has received the property and has made a disposition, or received a disposition, or has made a payment, or has had a receipt, then that is a disposition, that is within the meaning of 43(2) and then attribute that back to the

shareholders as all of the acts of the shareholders, including the act of holding an interest, or having a beneficial interest in it.

- (v) Reference was made to the decisions of *Gilchrist (as trustee of the JP Gilchrist 1993 Settlement) v Revenue Customs Commissioners* [2014] 4 All ER 943 and *Marshall (Inspector of Taxes) v Kerr* [1993] STC 360, 67 TC 56 in relation to deeming provisions.
- (vi) The timing of the transfer must be taken into account and also that the property was transferred into a vehicle owned together with the Appellant's family. The purpose of CAT legislation is to ensure that individuals would not have to sell the property in order to pay tax but to permit that individual to stay in the property and inherit it.
- (vii) Reference was made to the decision of *Menolly Homes Ltd v Appeal Commissioners and Another* [2010] IEHC 49 in relation to the burden of proof.

Material Facts

16. The Commissioner makes the following findings of material fact:

- (i) On 30 September 2015, the Appellant received a gift of a residential property at [REDACTED] with a market value of € [REDACTED] from his mother, [REDACTED] (“the Disposer”).
- (ii) The Appellant is the adult son of the Disposer and he took an absolute interest in the property.
- (iii) The Appellant took up residence in the [REDACTED] property in January 2012.
- (iv) Prior to taking up residence in the [REDACTED] Property, the Appellant resided at [REDACTED]
- (v) The Appellant purchased the [REDACTED] property on 1 July 2004.
- (vi) The Appellant disposed of his interest in the [REDACTED] property to the Company on 28 March 2013, for the sum of € [REDACTED], being the market value.
- (vii) The Appellant did not reside in the [REDACTED] property prior to the sale of the property on [REDACTED] to the Company or prior to taking up residence at the [REDACTED] property in January 2013.
- (viii) The Appellant is a 33% shareholder in the Company, with his two brothers also being shareholders. The Appellant is not a Director of the company.

- (ix) The Company holds a large portfolio of properties.

Analysis

17. Before addressing the competing arguments in relation to whether the criteria under section 86(3) CATCA 2003 has been met, the appropriate starting point is to consider and identify the approach which the Commissioner is required to take in relation to the interpretation of taxation statutes. The principles are well settled and the Commissioner had the benefit of eloquent and learned submissions from both Counsel, on how the Commissioner should read, understand and apply the various sections that were opened.

Statutory Interpretation

18. The Commissioner notes the various decisions opened to the Commissioner in relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point of which is generally accepted as being the judgment of Kennedy CJ in *Doorley* at page 765 who held that:

"The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms...for no person is to be subject to taxation unless brought within the letter of the taxing statute, that is...as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament."

19. The Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores* and the judgment of O'Donnell J. in *Bookfinders*, as helpfully set out by McDonald J. in *Perrigo* at page 74:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:

“... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.

20. The Commissioner is of the view that this is the most recent decision of the Courts in this jurisdiction, in relation to the approach to be taken to statutory interpretation and as such, is authoritative in this regard. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning. In addition, context is critical. Both parties argue a literal interpretation will suffice in terms of section 43 CATCA 2003.
21. The Appellant argues that where there is an ambiguity in a tax statute it must be interpreted in the tax payer's favour. That is not incorrect. In *Bookfinders*, O'Donnell J. explained that this rule against doubtful penalisation, also described as the rule of strict construction, means that if, after the application of general principles of statutory interpretation, there is a genuine doubt as to whether a particular provision creating a tax liability applies, then the taxpayer should be given the benefit of any doubt or ambiguity as the words should be construed strictly "*so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language*". However, the Commissioner agrees with the Respondent's suggested qualification that this applies only to the extent that there is in fact a doubt or ambiguity present. O'Donnell J. stated that "*it would be a mistake to come to a statute, even a tax statute, seeking ambiguity*".
22. It could be reasonably interpreted by the Commissioner as regret by O'Donnell J regarding his obiter comments in *O'Flynn Construction & others* at paragraph 41-42 as being on reflection "*unnecessary, incautiously expressed*". He confirmed that he was wrong to use the term "*purposive*" and was incorrect to suggest that the Interpretation Act mandated such an approach in respect of taxation legislation. He did confirm at paragraph 47 of *Bookfinders* that his correction should not mean that the interpretation of tax statutes cannot have regard to the purpose of the provision, or that the manner in which the court must approach a taxation statute is to look solely at the words, with or without the aid of a dictionary, and on that basis of that conclude that, if another meaning is capable of being wrenched from the words taken alone, the provision must be treated as ambiguous, and the taxpayer given the benefit of the more beneficial reading. He stated very clearly:

"Such an approach can only greatly enhance the prospects of an interpretation which defeats the statutory objective, which is, generally speaking, the antithesis of statutory interpretation."

Section 43 CATCA 2003

23. The Commissioner notes that on 28 March 2013, the Appellant sold the [REDACTED] property to the Company for market consideration in the sum of [REDACTED]. The facts as agreed are

that the Appellant did not reside in the [REDACTED] property prior to taking up residence in the [REDACTED] property. It is common ground that the Appellant is a 33% shareholder in the Company, but not a Director and that the Company is a family company, with the Appellant's brothers being Directors and also shareholders in the Company. In analysing the issues in this appeal, the Commissioner has reviewed the documentation submitted in relation to the Company *inter alia* the Memorandum of Association, details of shareholders, ownership structure, Land Registry documentation and property records of the Company. The records illustrate that the Company holds a large portfolio of properties.

24. Notably, the [REDACTED] property was sold prior to the Appellant receiving the gift of the [REDACTED] property from the disponent and it is on this basis that the Appellant argues he is entitled to a dwelling house exemption from CGT as he satisfied the provisions of section 86(3) CATCA 2003. Nevertheless, the Respondent has denied the relief claimed, on the basis that section 43 CATCA 2003 establishes that the Appellant had *"a beneficial interest in several dwelling houses at the date of the gift on 30 September 2015, and thus does not satisfy the provisions of section 86(3)(b) CATCA 2003."* Therefore, the issue to be determined in this appeal is whether the Appellant has satisfied the provisions of section 86(3)(b) CATCA 2003 to entitle him to an exemption to CGT and the application of section 43 CATCA 2003 to that section.

25. Both Counsel for the Appellant and Respondent helpfully referred the Commissioner to the well settled principles of company law namely, that a company is a separate legal entity distinct from its members and that the shareholders are not liable for the debts of the company nor do they hold a beneficial interest in the company's property or assets. Counsel for the Appellant referred to the seminal decision of *Salomon v A. Salomon & Co. Limited* [1897] AC 22 wherein Lord McNaughton stated at page 51

"The company is at law a different person altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the profits the company is not in law the agent for the subscribers or trustees for them. Nor are the subscribers as members liable in any shape or form except to the extent as in the manner provided by the act".

26. In addition, the Commissioner was referred to *Keane on Company Law*, 5th Edition, G Brian Hutchinson at paragraph 17.01 which states:-

"Where a company has a share capital, each of the members owns at least one share of that capital and is consequently a shareholder in the company. This does not mean that he.... is the owner of any part of the company's assets or that he....owns them

jointly with his....fellow shareholders. But he....is along with them the owner of the company itself and the controller of its destinies”.

27. Further, the Commissioner was referred to the *Law of Companies*, 3rd Edition, Thomas B Courtney at paragraph 4.032 and 8.036 which states:-

“As a separate legal person a company that owns property owns and holds it in its own right..... As Lord Halsbury observed in Salomon’s case if the company existed....then the business belonged to it and not to Mr Salomon. A shareholder then does not by mere virtue of his shareholding have any proprietary interest in the company’s assets. It used to be thought that a shareholder held beneficial ownership of the company’s property, or, in other words, that the company held its assets on trust for the members. This view stemmed from the fact that the property and assets of old deed of settlement companies were vested in trustees to hold for the benefit of the members. But the modern company cannot ipso facto be regarded as a mere trust for its members because of the separate legal existence which it enjoys – this was the crux of Salomon’s case. When the company holds property, it holds it in its own right. The shareholders have no interest in the property or any particular part of it”.

28. The Commissioner is in no doubt that these principles are a correct statement of the law as it relates to companies and a shareholders interest in a company, as are the parties. Nonetheless, the Respondent argues that despite these generally accepted principles of company Law, for the purposes of CGT, section 43 CATCA 2003 provides the Respondent with extensive look through provisions, such that it is entitled to in effect, lift and/or pierce the corporate veil to consider what interest the Appellant has in the properties held by the Company for the purposes of the exemption claimed under section 86(3) CATCA 2003. The Commissioner notes the argument of the Respondent that this section does not attempt to change the fundamental principles of company Law, but for the purposes of CGT, the receipt of the [REDACTED] property by the Company is deemed to be the receipt by the Appellant and the holding of the interest in the [REDACTED] property is deemed to be the holding of that interest by the Appellant.

29. The Commissioner is satisfied that a literal interpretation suffices for the purposes of section 43 CATCA 2003 and the Commissioner does not have to resort to any further interpretative rules as “the words of the statutory provision are plain and their meaning is self-evident”. The Respondent argues that even within the literal approach, context is critical and that the task of statutory interpretation is always to give effect to the intent of the legislature. The Commissioner concurs with that statement.

30. The Respondent argues that section 43 (2) and (3) CATCA 2003 contains deeming provisions which deem consideration received, or disposition by and all acts of the Company, to be consideration received/disposition by and/or acts of its shareholders. The Respondent argues that the deeming provisions cannot be interpreted to change the operation of general law, but that the deeming merely deems a state of affairs to exist in respect of the shareholders in companies for the purposes of CATCA 2003. The Commissioner has considered the Respondent's reliance on *Gilchrist* in this regard such that *"you must treat as real, all of the incidents including beneficial interest, as having an existence, applying and being real"*.
31. The Respondent maintains that in essence this means that for the limited purpose of CAT, the receipt of the [REDACTED] property by the Company is deemed to be a receipt by the Appellant and the holding of the interest in the [REDACTED] property is deemed to the holding of that interest by the Appellant. Consequently, this deems the Appellant to have an interest in another dwelling house, disentitling the Appellant to a dwelling house exemption under section 86(3) CATCA 2003. The basis of this argument is that the word '*disposition*' is extremely broad in subsection (2) as is the word '*acts*' in subsection (3), and extends to the shareholders an interest in the property.
32. The Commissioner cannot accept that argument. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner is not satisfied that in applying the ordinary, basic and natural meaning of the words of section 43 CATCA 2003, it provides for such an interpretation. The Commissioner is mindful of the decision of the Finlay CJ in *McGrath v McDermott* [1988] IR 258 wherein he states
- "The courts have not got a function to add to or delete from express statutory provisions so as to achieve objectives which to the courts appear desirable. In rare and limited circumstances words or phrases may be implied into statutory provisions solely for the purpose of making them effective to achieve their expressly avowed objective"*.
33. The Commissioner is satisfied that there is no ambiguity attaching to section 43 CATCA 2003 and that for CAT purposes consideration received by, or disposition made and all acts of the Company, to be consideration received and/or acts of its shareholders in the same proportions as the specific amounts relating to shares. The Commissioner has no doubt that subsection (2) extends across the provisions of CATCA 2003, given the language *"for the purposes of this Act"*. However, the section goes no further and it is not open to the Commissioner to add to express statutory provisions so as to achieve objectives which appear desirable. The Commissioner does not accept that the section can be interpreted such that it displaces the well-established principles of company law,

and deems the Appellant to have an interest in property of the Company for the purposes of section 86(3) CATCA 2003, nor can it be assumed that this is the intention. The Commissioner is satisfied that the reliance placed on *Gilchrest* in this context, to deem the Appellant to have a beneficial interest in the property of the Company, is misconceived.

34. The Commissioner has considered the Respondent's argument that the overall purpose of CATCA must be considered and also the circumstances of the sale of the [REDACTED] property to a vehicle owned by the Appellant's family of which he is a shareholder. Against that the Commissioner has considered that this was a transaction for market value and not a gift to the Company and that the Appellant did not reside in the [REDACTED] property prior to residing in the [REDACTED] property. Moreover, the Appellant does not have an entitlement to sell the property, as the Company is a separate legal entity to its shareholders and the Appellant has no legal or equitable interest in the property. The Appellant has a beneficial interest in the shares of the Company only and section 43 CATCA 2003 does not displace that.
35. The Appellant referred the Commissioner to the decision of Costello J in *Leanne Deane* and submitted that while the decision is not relevant in terms of its facts as it relates to an inheritance, what is crucial is that it is the most up to date decision of the Courts in this jurisdiction in relation to beneficial interest for the purposes of CAT. The Appellant submits that it illustrates the approach the courts are willing to take despite the fact that the taxpayer in the case may have been entitled to 3 other properties under a will.
36. If the Commissioner was to accept the argument of the Respondent, it seems to the Commissioner that this would result in a situation where any taxpayer who is a shareholder in a company that has acquired property or has a portfolio of properties, the taxpayer would be automatically disentitled to dwelling house relief under section 86(3)(b) CATCA 2003, on an entirely separate transaction, unconnected with the company, despite occupational requirements being satisfied and without regard to any other circumstances of the taxpayer. The Commissioner does not accept that this was the intention of the legislature when drafting section 43 CATCA 2003 and if that had been the intention, that specific prohibition would have been included by the legislature.
37. The Commissioner determines that section 43 CATCA 2003, does not operate to deem the Appellant to hold a beneficial interest in the property of the Company. The well settled principles of company Law, grounded in case law, have not been displaced by the provisions of section 43 CATCA 2003. Accordingly, the Appellant does not and could not have a beneficial interest in the properties, as they are held by the Company. What he has is a beneficial interest in the shares of the Company.

38. In an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd* 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”.

39. The Commissioner finds that the Appellant has on balance shown that he is not beneficially entitled to any other dwelling house or to any interest in any other dwelling house, such that he satisfies the provisions of section 86(3)(b) CATCA 2003.

Determination

40. As such and for the reasons set out above, the Commissioner determines that the Appellant has satisfied the conditions necessary to avail of the exemption under section 86 CATCA 2003, in respect of the [REDACTED] property and that he is not disqualified from claiming the exemption on the basis of section 86(3)(b) CATCA 2003.

41. The Commissioner determines that the Respondent has erred in raising the assessment dated 1 October 2018, disallowing the exemption pursuant to section 86 CATCA 2003, in respect of the period 1 September 2010 to 31 August 2011, and that the assessment shall be reduced to zero.

42. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
27 July 2022