



146TACD2022

Between:

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

[REDACTED]

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a Notice of Amended Assessment to Capital Acquisitions Tax (hereinafter “CAT”) raised on 5 February 2018 by the Revenue Commissioners (hereinafter the “Respondent”).
2. The total amount of tax under appeal is €45,423
3. This determination has, on the request of the Appellant and with the agreement of both Parties hereto, been made without an oral hearing pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”).

Background

4. On 24 January 2017 [REDACTED] (hereinafter the “Appellant”), through his Tax Agent, made an application to the Respondent seeking to offset his income tax liability for 2015 against an overpayment of Capital Gains Tax (hereinafter “CGT”) which was made in 2012.

5. On 23 February 2017 the Respondent requested the Appellant to submit further information in relation to the Appellant's CGT computation for 2012 and on 5 May 2017 the Appellant responded submitting the following CGT computation for 2012:

Sale of Shares	€370,781
Cost of Shares	Nil
Profit	€370,781
Capital losses fwd	€180,824
	€189,957
Personal Exemption	€ 1,270
	€188,687
CGT	€ 56,606
The shares sold were part of the original shares on the formation of the company. The value was IR£51.	

6. On 6 June 2017 the Respondent requested full details of the CGT calculation to include a CGT computation for the capital loss of €180,824 claimed and the Appellant responded as follows:

"██████████ and two of his business partners participated in a partnership which bought ██████████ and entered into an agreement to buy gardens at the back of ██████████.

In addition to the monies injected the partnership also borrowed from ██████████. The intention was to ██████████.

Planning permission was sought and was subsequently refused. ██████████ appointed a receiver in 2011. All of the investment was lost as the proceeds from the sale was [sic] used to pay off most of the loan.

Investment	██████████ share	€
Deposit	Deposit	400,000
04/12/2006	Planning fees and outlay	50,000

19/09/2006	██████ – Dep on gardens	35,000
05/12/2006	██████ – Dep on gardens	15,000
07/07/2009	Planning fees	10,000
15/07/2009	Planning fees	28,660
		538,660
██████ share	1/3	179,553"

7. On 8 September 2017 the Respondent wrote to the Appellant as follows:

"I refer to your Capital Gains Tax computation submitted in respect of your claim for loss relief. Loans obtained and repaid are not a factor when computing a Capital Gains Tax profit or loss.

Please now provide me with a Capital Gains Tax computation in respect of the loss claim calculated in accordance with the Capital Gains Tax Act which is based on the purchase and sale of the property."

8. No response to this request was received from the Appellant.

9. On 5 February 2018 the Respondent issued a Notice of Amended Assessment to Capital Gains Tax for the year 2012 on the basis that the Appellant has not satisfied the Respondent that there had been a disposal of property by the Appellant in 2012. The Notice of Amended assessment for 2012 raised contained the following:

Rate of Tax	30%	Total €
Amount of chargeable gains arising in this period		370,781.00
Less: Allowable Losses		0.00
Less: Amount not chargeable - section 601 TCA1997		1,270.00
Net amount chargeable to tax	369,511.00	369,511.00
Capital Gains Tax thereon	110,853.00	110,853.00

Amount of Tax Payable for this period: 110,853.00

Tax Due 15/12/12 110,853.00

Tax Due 31/01/13 0.00

Amount already paid or credited to the Collector General: 92,695.00

Tax Due 18,158.00

10. By way of Notice of Appeal dated 2 October 2018 the Appellant appealed the decision of the Respondent. The late submission of the within appeal was subsequently accepted by the Tax Appeals on the basis of illness.

Legislation and Guidelines

11. The legislation relevant to the within appeal is as set out below. The entirety of section 477C of the TCA1997 is contained in Appendix 1 hereto.

Section 546(5) of the TCA1997

“(5) Except where provided by section 573 an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment, and relief shall not be given under the Capital Gains Tax Acts—

(a) more than once in respect of any loss or part of a loss, and

(b) if and in so far as relief has been or may be given in respect of that loss or part of a loss under the Income Tax Acts.”

Submissions

Appellant's Submissions

12. The Appellant in his Statement of Case outlined the relevant facts as follows:

“Our client acquired with bank borrowings an asset. The bank appointed a receiver, the asset was sold at a substantial loss. Our client claimed losses in respect of the initial monies put into the acquisition of the asset.

It is the revenue contention that the initial losses incurred by my client are not allowable but instead relate to the receiver selling the property.”

13. The Appellant submits that sections 78(8), 537(2) and 570 of the TCA1997 make it clear that liquidators and receivers are acting as nominees of the owners of the property over which they are appointed. The Appellant submits that it follows that he sold the property in a CGT disposal and he is therefore eligible to claim the losses incurred in the sale of the property against any gains which he made in 2012.

14. In correspondence to the Commission dated 15 June 2020 the Appellant stated, *inter alia*:

“Monies received

The monies received from the sale were paid to the bank as they appointed a receiver. The monies were the reduction it [sic] the amounts owed to the [REDACTED] Bank.

An additional €300,000 was subsequently paid to the bank in settlement of the debt to the bank. Other financial undertakings were also given as part of the settlement.

The receiver was appointed in 2011 and our client lost control to the bank at that time. He did not have any say in the running of the building, timing of the disposal, disposal itself nor received any rents from the property while under the control of the receiver. The receiver was acting on instructions from [REDACTED] Bank and not my client.

We nor my clients ever received any correspondence or documentation whatsoever from the receiver nor the bank despite numerous requests over the years. We only received the information from the revenue. The Name on the sale of the property was that of his mother [REDACTED] who was acting as trustee for our client in the sale of the property.

We understand that losses cannot be carried back but indeed forward. Hence it can be seen that all the losses were incurred from 2006 and ended in 2009.”

15. On 13 June 2021 the Appellant wrote to the Commission as follows:

“Background

Our client, was involved with other partners in the purchase of a property called [REDACTED] at [REDACTED].

This was funded from personal resources together with a [REDACTED] loan.

Planning was sought for [REDACTED]. This was subsequently refused. [REDACTED] appointed a receiver in 2011 and took over the management and disposal of the property. Our client had no hand or act in the management and disposal of the property once they were appointed. This was evidenced by the fact that our client nor any of his advisors had seen sight of any documentation of the receiver. The Revenue Commissioners supplied us with a copy of the contract of sale.

Our client claimed the losses he incurred against other gains. Initially the Revenue put forward the case that any losses were those of the receiver personally and raised an estimate. Hence the start of this case.

I have reviewed the correspondence and I think rather than repeating it I decided to attach the previous statement of case.

I do not seem to have received any further documentation from the Revenue in relation to this case.

We are still of the opinion that the claim that was made for CGT relief was correct.”

Respondent's Submissions

16. The Respondent submits that contract for sale of the property [REDACTED] shows that the sale of the property took place in 2013 and not in 2012 as claimed by the Appellant.
17. The Respondent further submits that the contract for sale of the property [REDACTED] does not contain the Appellant as one of the owners of the property.
18. The Respondent submits that because the sale of the property [REDACTED] was in 2013 the provisions of section 546(5) of the TCA1997 mean that any loss arising from the sale of the property cannot be applied against the Appellant's liability to CGT for 2012.

Material Facts

19. The following material fact is at issue between the Parties:
 - i. The Appellant disposed of a property at a loss.
20. The Commissioner has considered all of the submissions and documentation received from both Parties.
21. On the one hand the Appellant asserts that he disposed of the property [REDACTED] in 2012. On the other hand the Respondent asserts that the property was disposed of in 2013.
22. The Respondent received a copy of the Contract for Sale for the property [REDACTED] [REDACTED] from the Receiver and on 6 January 2020 the Respondent wrote to the Appellant as follows:

“I attach herewith a copy of the contract received from the Receiver's office.

The contract is not dated but they have advised me that it was signed by the Receiver in May 2013 and the sale closed in June 2013. As you can see the consideration was €360,000.

As the Receiver was acting as nominee for the owners it would seem that any loss would not arise until 2013 and would have to be computed taking the sale price into account. The loss would not be available for relief against any gains arising in 2012.”

23. The Commissioner notes the submissions and documentation received and in particular notes the Contract for Sale which although undated states that it is a "*Memorandum of Agreement made this ___ day of ___ 2013*" and in the Documents Schedule therein at number 27 refers to "*E mails of [REDACTED] dated 15th April 2013 & [] April 2013 regarding NPPR Tax and Household charger refer.*"
24. Having considered same the Commissioner finds that the property [REDACTED] was sold in June 2013. The Commissioner has confirmed this by referencing the Property Price Register maintained by the Property Services Regulatory Authority which has a record of the sale of [REDACTED] on [REDACTED] 2013.
25. In addition the Commissioner notes that the identity of the Vendor in the Contract for Sale is "[REDACTED] (*Receiver of certain assets of [REDACTED] and [REDACTED]*)". The Appellant has claimed in submissions that [REDACTED] is the Appellant's mother and was acting as trustee for the Appellant. No evidence of this has been submitted to the Commissioner.
26. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-
- "This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*
27. The Commissioner finds that the Appellant has not succeeded in establishing that the property was disposed of in 2012 or that he was the owner of the property [REDACTED]. Therefore, the Appellant has not succeed in establishing that he disposed of a property at a loss and in particular the Appellant has not succeeded in establishing that he disposed of a property at a loss in 2012.
28. Therefore, this material fact is not accepted.

Analysis

29. Section 546(5) of the TCA1997 provides that:

"Except where provided by section 573 an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains in any earlier year of assessment..."

30. The Commissioner has already found that the Appellant has not succeeded in establishing that he disposed of a property at a loss and in particular the Appellant has

not succeeded in establishing that he disposed of a property at a loss in 2012. Therefore, the Commissioner finds that the Appellant has not succeeded in establishing that he was entitled to claim losses in relation to the disposal of a property against his liability to CGT for 2012.

Determination

31. Having considered the facts and circumstances of this appeal, together with the evaluation of the documentary evidence as well as the submissions from both Parties, the Commissioner determines that the Appellant has not succeeded in establishing that the Notice of Amended Assessment to Capital Gains Tax issued by the Respondent to the Appellant on 5 February 2018 was incorrect.
32. The Commissioner determines Notice of Amended Assessment to Capital Gains Tax issued by the Respondent to the Appellant on 5 February 2018 shall stand.
33. This appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reasons 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.



Clare O'Driscoll
Appeal Commissioner
8 September 2022