



BETWEEN/

165TACD2022



Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal in relation to the Respondent's refusal regarding the Appellants' claim for repayment of income tax in the sum of €5,004.32 pursuant to section 865 of the Taxes Consolidation Act, 1997 as amended ('TCA 1997') in respect of the tax year of assessment 2017.

Background

2. The Appellant, a [REDACTED] by profession, is a married, jointly assessed taxpayer. It was not in dispute as between the Appellant and the Respondent that the Appellant overpaid income tax in respect of the tax year of assessment, 2017 in the sum of €5,004.32. The



Appellant requested repayment of the tax overpaid and stated that it was a much needed resource for his family.

3. The Respondent stated that on or about 10 September, 2020, it came to the Respondent's attention that the Appellant was a chargeable person for the purposes of section 959A TCA 1997, on the basis that he was a proprietary director of his employer company, ██████████ Limited. The Respondent stated that based on B10 documentation from the CRO, the Appellant was appointed director of the company for the twelve month accounting period ending ██████████ June, 2017, and was listed as a proprietary director for that period. On ██████████ September, 2020, a statement issued to the Appellant advising him that he was registered for income tax and that he had an obligation to register for ROS. The Appellant stated that he was not a shareholder in the company and was not a proprietary director. On ██████████ February, 2022, the Appellant filed a form 11 in respect of the tax year of assessment 2017. The Appellant previously filed a form 12 in respect of each of the tax years of assessment 2013, 2014, 2015 and 2016.
4. Although the parties were at odds over the issue of whether the Appellant was a proprietary director and chargeable person, this disagreement does not materially affect the analysis under section 865 TCA 1997 as the provision applies to chargeable persons and to persons who are not chargeable persons and applies the same four year limitation period to all.
5. On 14 December, 2021, the Appellant instructed his accountant in writing, to file his 2017 return (form 11) and to claim in the return the deductions and credits to which he was entitled. At hearing, the Appellant furnished the email of instruction together with written confirmation dated 12 September, 2022, from his tax agent, confirming that the instruction had been received. He stated that he assumed the return had been filed in accordance with his instruction of December 2021, until he was informed otherwise in 2022. The return which showed an overpayment of tax in the sum of €5,004.32 for 2017, was filed on 2 February, 2022.
6. On 1 March, 2022, following the filing of the 2017 return, the Appellant received a notice from the Respondent titled '*Late claim for repayment of tax*'. The Appellant was notified therein that his claim for repayment of tax was not made within the relevant four year limitation period and that the Respondent was thereby precluded by the provisions of section 865 TCA 1997 from repaying the amount of tax overpaid.
7. The Appellant filed a notice of appeal with the Tax Appeals Commission on 30 March, 2022, on grounds that '*we were misled by our tax advisors*' in relation to the applicable deadline for the filing of the return and that his tax advisor failed to file the return within

the requisite four year period. The Appellant stated that he had instructed that the return be filed within the four year period and in view of the Appellant, he made a 'claim' for repayment for the purposes of section 865(4) TCA 1997 within the four year statutory period albeit a claim that was made to his tax agent and not directly to the Respondent.

8. The Appellant also submitted that the Respondent was aware of and had all relevant information prior to 2022 in relation to the overpayment of tax and that if the Respondent had the information, it brought his claim within the four year limitation period. The Appellant submitted that the Respondent was aware that he was jointly assessed and that it was self-evident that he had overpaid income tax.
9. The Respondent stated that a form 12 issued to the Appellant on 1 July, 2018, but was not filed. On 29 September, 2018, the Respondent issued a reminder notification to the Appellant in relation to the filing of the 2017 return. The Respondent stated that the Appellant could have contacted the Respondent at that time in relation to his filing obligations. The return which was due on or before 14 November, 2018, was not filed with the Respondent until 2 February, 2022, and the Respondent stated that as the return was not filed within the statutory four year period, the claim for repayment was out of time pursuant to the provisions of section 865(4) TCA 1997. The Appellant duly appealed.

Legislation

Section 865 TCA 1997 - Repayment of Tax

...

(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid,

....

[(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.]

[(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]), a repayment in respect of tax deducted, in accordance with Chapter



4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.

(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made –

i under subsection (2) and not under any other provision of the Acts, or

ii in relation to any chargeable period beginning on or after 1 January 2003, within 4 years,

after the end of the chargeable period to which the claim relates.

....

...

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, [the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision].

Submissions

10. The Appellant submitted that the Respondent's refusal to process the repayment claim was fundamentally unfair, that the Appellant had relied on his tax agent to file the return on time and had relied on the Respondent to subject him to the correct amount of tax, in

circumstances where he submitted that the Respondent was in possession of all relevant information and that in his view, it was self-evident that he was entitled to a repayment of tax overpaid. He contended that a balancing statement should have issued automatically in 2018, following the change to the basis of assessment which followed his election for joint assessment on 31 July 2017, pursuant to section 1018 TCA 1997. He submitted that he had made a 'claim' within four years for the purposes of section 865(4) albeit to his agent as opposed to the Respondent, and that the decision to issue a repayment could be made within the confines of section 865 TCA 1997 notwithstanding the absence of discretion in the statutory language contained in the provision.

11. At hearing, the Respondent acknowledged the difficulty caused to the Appellant as a result of the additional tax incurred. The Respondent's position however, was that the Respondent was statutorily obliged to comply with the provisions of section 865 TCA 1997, and was unable to process the repayment claim in the Appellant's favour in respect of the tax year of assessment 2017 on the basis that the claim for repayment, having been made on 2 February, 2022, was not made within four years after the end of the chargeable period to which the claim related in accordance with the provisions of section 865(4) TCA 1997. On behalf of the Respondent it was submitted that the Respondent did not have power or authority to act other than in accordance with the applicable statutory provision, section 865 TCA 1997, and that the Respondent thus had no option but to refuse the claim for repayment of tax on the basis that the claim was out of time. The Respondent stated that a form 12 issued to the Appellant on 1 July, 2018, and that a reminder issued to the Appellant on 29 September, 2018. The Respondent stated that had the Appellant completed and filed the form 12 on or before 31 December, 2021, the repayment of overpaid tax would have issued to him.

Analysis

12. In this appeal, there was no dispute in relation to the fact that the Appellant overpaid tax in the sum of €5,004.32 in respect of the tax year of assessment, 2017.
13. The Appellant submitted that it was fundamentally unfair that he was denied repayment of the tax overpaid. He stated that the monies were much needed and that hardship had been caused as a result of being taxed to excess, without basis.
14. This appeal relates to the tax year of assessment 2017, pre-PAYE modernisation. On 31 July, 2017, the Appellant through his agent, elected to be jointly assessed to income tax pursuant to the provisions of section 1018 TCA 1997. The Appellant's basis of assessment was updated in this regard by the Respondent on 4 January, 2018. A question arose in

relation to whether the overpayment of tax for 2017 (which arose following the application of the joint assessment provisions) should have been refunded automatically to the Appellant on the basis that he had elected to be jointly assessed for 2017 in accordance with the provisions of section 1018 TCA 1997.

15. When queried whether a repayment of tax would have issued to the Appellant automatically had the basis of assessment been updated in the Respondent's records in 2017, the Respondent stated that had this been done, a revised tax credit certificate ('TCC') would have issued and as the Appellant's spouse was not in employment at the time, the unused tax credits might have been reallocated to the Appellant's employment and this could have resulted in a refund to him during 2017. However, the Respondent submitted that to receive a refund due to the Appellant in respect of the tax year of assessment ending 31 December 2017, the Appellant would have been required to request an end of year statement in respect of 2017 (a balancing statement/P21) or to file a return, to ensure that his credits were brought into account and balanced for the tax year of assessment, 2017. The Respondent submitted that the net tax position of a taxpayer for a tax year of assessment, can be established only by reviewing the entirety of a taxpayer's income and circumstances in respect of a tax year of assessment, after the tax year end.
16. The Appellant argued that a balancing statement should have issued automatically once the basis of assessment was changed on 4 January, 2018, and that this would have alerted him to the existence of the overpayment. The Respondent stated that balancing statements would issue automatically where a basis of assessment was changed however, the Respondent submitted that this this would not occur in the absence of a P35 having been filed on behalf of an employer and that the P35 was not filed until 4 February, 2018, which meant that on 4 January, 2018, when the basis of assessment was changed, the balancing statement did not issue automatically.
17. The Respondent stated that a balancing statement would not have issued during the tax year of assessment 2017 but would have issued after 31 December, 2017, either after a return was filed or following a request for a balancing statement, had one been requested which would, the Respondent submitted, not have been possible until post submission of the P35 on 4 February, 2018. For the tax year of assessment 2017, the Respondent submitted that post year end, the Appellant could have requested a balancing statement (but did not do so) or could have filed a return. While a return was filed, it was not filed until 2 February, 2022.
18. In this appeal, it is not in dispute that €5,004.32 was overpaid by the Appellant in respect of 2017 and that the overpayment arose as a result of the application of the provisions of

joint assessment following an election by the Appellant in accordance with section 1018 TCA 1997.

19. The provisions of section 865 TCA 1997 govern claims for repayment of tax and the time limits within which such claims must be made and it is clear from section 865 TCA 1997, that a taxpayer's entitlement to claim a repayment of tax relates to taxes overpaid '*in respect of a chargeable period*'. Sub-section (2) provides (emphasis added):

*'Subject to the provisions of this section, where a person has **in respect of a chargeable period** paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.'*

20. The chargeable period in which tax was overpaid in this appeal is the tax year of assessment 2017. It is important to note that a repayment claim must relate to tax overpaid in respect of the chargeable period and it follows therefore, that a claim for repayment can arise only after the end of the chargeable period. This is expressly set out in sub-section 4 which provides (emphasis added):

*'..... a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made - within 4 years **after the end of the chargeable period** to which the claim relates.*

21. In addition, a '*valid claim*' for the purposes of subsection (1)(b) is defined in terms of a claim '*for a chargeable period*'. That subsection provides (emphasis added);

(b) For the purposes of subsection (3) –

*(i) Where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts **for a chargeable period**, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –*

*(I) All the information which the Revenue Commissioners may reasonably require to enable them to determine if and to what extent a repayment of tax is due to the person **for that chargeable period** is contained in the statement or return, and*

(II) The repayment treated as claimed, if due –

(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time

*(ii) where all information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to a person **for a chargeable period**, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person **for that chargeable period** shall be treated as a valid claim when that information has been furnished by the person, and*

*(iii) To the extent that a claim to repayment of tax **for a chargeable period** arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.*

22. It is clear from the provisions of section 865 that a claim for repayment of tax is a claim which can arise only after a chargeable period *i.e.* after a tax year of assessment, has drawn to a close. The Appellant submitted that his claim for joint assessment in July 2017 should have resulted in an automatic repayment of tax to him on the basis that the Respondent knew he was jointly assessed, operated the joint assessment provisions and therefore knew he had overpaid his taxes. Alternatively, the Appellant argued that the fact that he had elected for joint assessment meant that he was entitled to a repayment of tax overpaid, which overpayment arose as a result of the operation of the joint assessment provisions. However, a repayment of tax for the purposes of section 865 TCA 1997, cannot be claimed within or during the tax year of assessment and thus the Appellant's election dated 31 July 2017 pursuant to section 1018 TCA 1997, seeking that he be jointly assessed to income tax with his wife for that tax year of assessment, does not constitute a '*valid claim*' for the purposes of section 865 TCA 1997.

23. The question which arises then is what claim was made after the end of the chargeable period and whether that claim was a '*valid claim*' for the purposes of section 865 and whether it was made within the four year limitation period.

24. The Appellant submitted that on 14 December, 2021, the Appellant instructed his accountant in writing, to file his 2017 return and to claim in the return the deductions and credits to which he was entitled. The Appellant furnished the email of instruction of even date together with written confirmation from his tax agent dated 12 September, 2022, that

the instruction had been received. He stated that he assumed the return had been filed in accordance with his instruction of December, 2021, until he was informed otherwise in 2022. The return which was filed on 2 February, 2022, showed an overpayment of tax in the sum of €5,004.32 in respect of 2017.

25. The Appellant submitted that he made a 'claim' on 14 December, 2021, for the purposes of section 865(4) TCA 1997 within the four year statutory period albeit a claim that was not made directly to the Respondent. The Appellant submitted that section 865(4) TCA 1997, did not require that the claim be made to the Respondent and that the claim to his tax agent dated 14 December, 2021, was a valid claim even though it was made to his tax agent and not to the Respondent.
26. This submission is defeated by section 865(3) TCA 1997 which provides; '*A repayment of tax shall not be due under subsection (2) unless a valid claim has been made **to the Revenue Commissioners** for that purpose.*' (emphasis added). Thus for a claim to be a valid claim, it must be made to the Revenue Commissioners. The only claim in this appeal which has been identified as being made to the Respondent is the filing of the 2017 return which occurred on 2 February, 2022.
27. The Appellant also submitted, that where a repayment arises from a mistaken view taken by the Respondent of the tax treatment of an item, and that item had been correctly dealt with in the return, the return should be regarded as a valid claim for repayment. However, the Respondent did not take a mistaken view of the law in this case. The joint assessment provisions were applied based on the election pursuant to section 1018 TCA 1997, which gave rise to an overpayment of taxes in the sum of €5,004.32. The return in relation to the relevant tax year of assessment, 2017, was filed on 2 February, 2022.
28. The statute is clear as to its requirement that a claim for repayment '*..shall not be allowed unless it is made... .. within 4 years after the end of the chargeable period to which the claim relates.*' The facts in this appeal are not in dispute. The Respondent stated that a form 12 issued to the Appellant on 1 July, 2018, and that a reminder issued to the Appellant on 29 September, 2018. The Respondent stated that had the Appellant completed and filed the form 12 on or before 31 December 2021, the repayment of overpaid tax would have issued to him. However, the return was not filed until 2 February, 2022 in circumstances where the limitation period for repayment claims in relation to the tax year of assessment 2017, commenced on 1 January, 2018, and expired on 31 December 2021.
29. Section 865(4) TCA 1997 provides (emphasis added) that; '*... a claim for repayment of tax under the Acts for any chargeable period **shall** not be allowed unless it is made - within 4 years, after the end of the chargeable period to which the claim relates.*'

30. In this appeal, the applicable provision is section 865 TCA 1997, and I am satisfied that the use of the word 'shall' per s.865(4) TCA 1997, indicates an absence of discretion in the application of the provision. The Appellant submitted that the decision to issue a repayment could be made within the confines of section 865 TCA 1997 notwithstanding the absence of discretion in the provision.
31. In considering whether the Appellant in this appeal is entitled to a repayment of tax in accordance with the provisions of section 865 TCA 1997, the appropriate approach is to examine the meaning of the words contained in the relevant statutory provisions in accordance with the relevant jurisprudence in relation to the interpretation of tax statutes.
32. In the recent Supreme Court case of *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, the principles governing statutory interpretation were comprehensively reviewed. Leading the judgment of the Court, O'Donnell J. as he then was, stated at paragraph 39: *'It is worth emphasising that the starting point of any exercise in statutory interpretation is, and must be, the language of the particular statute rather than any pre-determined theory of statutory interpretation.'*
33. The Court at paragraph 53 of the judgment quoted and approved the judgment of McKechnie J. in the Supreme Court case of *Dunnes Stores v the Revenue Commissioners* [2019] IESC 50 including *inter alia*, the following paragraphs:

- '63. As has been said time and time again, the focus of all interpretive exercises is to find out what the legislature meant: or as it is put, what is the will of Parliament. If the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail. "The words themselves alone do in such cases best declare the intention of the law maker" (Craies on Statutory Interpretation (7th Ed.) Sweet & Maxwell, 1971 at pg. 71). In conducting this approach "...it is natural to inquire what is the subject matter with respect to which they are used and the object in view" Direct United States Cable Company v. Anglo - American Telegraph Company [1877] 2 App. Cas 394. Such will inform the meaning of the words, phrases or provisions in question. McCann Limited v. O'Culachain (Inspector of Taxes) [1986] 1 I.R. 196, per McCarthy J. at 201. Therefore, even with this approach, context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that.*
64. *Where however the meaning is not clear, but rather is imprecise or ambiguous, further rules of construction come into play. Those rules are numerous both as*

to their existence, their scope and their application. It can be very difficult to try and identify a common thread which can both coherently and intelligibly explain why, in any given case one particular rule rather than another has been applied, and why in a similar case the opposite has also occurred. Aside from this however, the aim, even when invoking secondary aids to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of Parliament.

65. *When recourse to the literal approach is not sufficient, it is clear that regard to a purposeful interpretation is permissible. There are many aspects to such method of construction: one of which is where two or more meanings are reasonably open, then that which best reflects the object and purpose of the enactment should prevail. It is presumed that such an interpretation is that intended by the lawmaker.'*
34. On the authority of *Bookfinders*, I am satisfied that the approach to be taken in relation to the interpretation of the meaning of the words contained in sections 865 and 865B TCA 1997, is one which affords the words their ordinary, basic and natural meaning.
35. I cannot accept the Appellant's submission that his claim for repayment falls within the confines of section 865 TCA 1997 notwithstanding the absence of discretion in the provision. An interpretation in these terms would be at odds with the express statutory language contained in the provision, specifically, the stipulation in section 865(4) that a claim for repayment "*shall not be allowed*" unless it is made '*within 4 years after the end of the chargeable period to which the claim relates*'.
36. The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated. In short, I do not consider that I have the authority or jurisdiction to determine that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.
37. The scope of the jurisdiction of the Appeal Commissioners and of the Tax Appeals Commission, has been the subject of judicial consideration in very recent times, in a number of seminal Irish cases, namely; *Lee v Revenue Commissioners* [2021] IECA 18, *Stanley v The Revenue Commissioners* [2017] IECA 279 and *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49. See also *The State (Calcul International Ltd.) v The Appeal Commissioners III ITR 577* and *The State (Whelan) v Smidic* [1938] 1 I.R. 626. While the Appellant submitted that the denial of the repayment claim by the Respondent was fundamentally unfair, and that a balancing statement should have issued automatically notifying him of the existence of the overpayment, it is clear from the authorities that the jurisdiction of the Tax Appeals Commission does not extend to the provision of equitable



or declaratory relief nor to the provision of remedies available in High Court judicial review proceedings.

38. Previous determinations of the Tax Appeals Commission have considered and addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations may be found on the Commission website at www.taxappeals.ie.

Determination

39. Pursuant to the wording of s.865 TCA 1997, and in particular the stipulation in section 865(4) that a claim for repayment "*shall not be allowed*" unless it is made '*within 4 years after the end of the chargeable period to which the claim relates*' I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside the four-year period. As a result, I have no option but to determine that the repayment claim on behalf of the Appellant in respect of the tax year of assessment 2017 is out of time in accordance with the provisions of section 865(4) TCA 1997.

A handwritten signature in black ink, appearing to read "Lorna Gallagher".

COMMISSIONER LORNA GALLAGHER

4th day of October 2022

This determination has not been appealed.