



53TACD2022

BETWEEN/

[REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondents

DETERMINATION

Introduction

1. This is an appeal against income tax assessments following an audit of the Appellant's books and records which commenced in March 2015. Notices of amended assessments to income tax were raised on 25 August, 2015, for the relevant tax years of assessment 2011, 2012, and 2013 in the sums of €128,509.00 in respect of 2011, €130,061 in respect of 2012 and €130,296 in respect of 2013. The Appellant filed a notice of appeal on 28 September, 2015, on the basis that the assessments were excessive.
2. Since the assessments were raised, numerous attempts have been made to resolve the outstanding audit queries. The Respondents engaged in meetings, discussions and correspondence with the Appellant and his agent and continually requested in writing, information and documentation to clarify and resolve the outstanding issues. As set out below, the Respondents made little progress despite repeated attempts and the appeal proceeded to hearing in circumstances where numerous deductions taken

by the Appellant remained unsupported by adequate information, documentation and/or explanation.

Background

3. The Appellant filed income tax returns for the years 2011, 2012 and 2013 on an estimated basis with a note stating 'self-employed as [REDACTED]. Income estimated under 'other Income'. Accounts to be submitted and Form 11 amended shortly.' The returns were filed on 20 November, 2012, 08 November, 2013 and 13 November, 2014 respectively.
4. A notice of audit issued to the Appellant on 26 February, 2015. On commencement of the audit on 31 March, 2015, Revenue officials travelled to meet the Appellant and his accountant and agent [REDACTED] at the Appellant's place of business. There were no books or records available on that day and the initial interview was terminated early as a result.
5. On 2 June, 2015, notice under Section 900 of the Taxes Consolidation Act 1997, as amended ('TCA 1997') was issued on behalf of the Respondents requesting the Appellant to deliver or make available, the necessary records for completion of the audit, by 7 July, 2015.
6. A second meeting was held on 30 July, 2015. On that date final accounts had not yet been completed for the period of the audit. Some records were available at this time.
7. On 21 August, 2015, the Respondents wrote to the Appellant in the following terms;

'I refer to my letter of the 11th of August 2015, and my colleague's letter to [REDACTED] dated 31 July 2015 following our meeting with you of the previous day. In this context it was explicitly stated at that meeting on the 30th of July and in the correspondence referred to above that amended Income Tax Returns for the year 2011, 2012 and 2013 were to be submitted not later than 21st August 2015 with finalised accounts to be submitted to this office not later than 21st August also. In this regard it is noted from correspondence to this office from your accountant dated 18th August 2015, that this deadline will not now be met. Please therefore note the following;



Tax Returns for the years 2011, 2012 & 2013 were submitted on an overtly estimated basis.

The audit has been ongoing since March of this year and the records presented to date do not facilitate a satisfactory verification of the financial position of the business for the audit period or the other years that estimated Income Tax returns were submitted for.

.....

This office is now proceeding to raise estimated Income Tax assessments for each of the years 2011 to 2013 inclusive....'

8. Notices of amended assessments to income tax were raised on 25 August, 2015, for the relevant tax years of assessment 2011, 2012, and 2013 in the sums of €128,509.00 in respect of 2011, €130,061 in respect of 2012 and €130,296 in respect of 2013.
9. Correspondence was exchanged between the Appellant and the Respondents after that date and over the years that followed with a small amount of progress being made in the clarification of some of the queries.
10. A meeting was held on 30 June, 2017, with a view to settling all differences between both parties however, the meeting was unsuccessful as issues remained unresolved and outstanding. On 30 June, 2017, the Respondents issued a final letter detailing these issues. The Appellant through his agent replied thirteen months later on 26 July, 2018. The Appellant's response was not complete and issues remained outstanding at the hearing of the appeal.
11. The amended assessments which issued on 25 August, 2015, were based on information available to the Respondents up to that date. The Respondents submitted that those assessments were fair and reasonable given the deficiency of information and documentation at that time however, based on further information received subsequently, the Respondents indicated that they were seeking to recover the reduced amounts of €42,054 in relation to 2011, €42,083 in relation to 2012 and



€42,083 in relation to 2013 (€126,220 in aggregate) for the relevant tax years of assessment.

Legislation

- Part 41A - Assessing Rules including rules for self assessment
- Section 268(1) TCA 1997 - Meaning of 'industrial building or structure'
- Section 81 TCA 1997 - General rule as to deductions
- Section 886 TCA 1997 - Obligation to keep certain records

Submissions

12. The Appellant claimed an entitlement to various trading deductions relating to; children's wages (€10,450), mileage and subsistence (€62,396), subsistence re [REDACTED] (€31,020), payments to non-PAYE workers (€16,000), a loan from a family member (€22,440), hire purchase and lease charges (€40,421), peer to peer interest on loans (€13,623), bank loan interest (€12,422.46), bank charges (€19,219) and wages paid to his spouse (€15,000 per annum). The Appellant also claimed certain capital allowances and industrial buildings allowance, which were disputed by the Respondents. The Appellant submitted that he was entitled to the trading deductions on the basis that the said deductions were incurred wholly and exclusively for the purposes of the trade.
13. The Respondents disallowed the deductions on the basis that the Appellant failed, refused or neglected to furnish adequate information and/or documentation in support of the claims made. In some instances claims were disallowed due to errors in calculation in the Appellant's own books and records. In relation to industrial building allowances, the Respondents' position was that the [REDACTED] the subject of the claim did not qualify in accordance with the provisions of section 268 TCA 1997.



Evidence

14. The Appellant provided evidence in relation to the disputed issues namely, the deductions claimed, the payments to his spouse, the capital allowances and the industrial buildings allowance. The Appellant's evidence is set out in the analysis below under each sub-head of claim.
15. The Appellant and his agent, when asked at hearing whether he could produce documentation in support of the deductions he had claimed, stated repeatedly that had the documentation been requested previously, it would have been furnished. As a result, Counsel for the Respondents called Revenue officer, Mr. [REDACTED] to give evidence in relation to the numerous requests that had been made of the Appellant and his agent in relation to the information and documentation sought.
16. Revenue official, Mr. [REDACTED] gave evidence of the correspondence between the parties including;
- By letter dated 11 April, 2017, Mr. [REDACTED] wrote to the Appellant's agent with a list of queries, requesting a response and proposing a meeting. In that letter it is stated: *'where subsistence has been paid please provide full details as required under the regulations.'* Mr. [REDACTED] in evidence stated that he had not received the full details.
 - Mr. [REDACTED] wrote again on 30 June, 2017, following a meeting he had with the Appellant's agent that same day and requested again the outstanding information and documentation.
 - On 26 July, 2018, (approximately 13 months later) the Appellant's agent furnished 'control sheets' in relation to subsistence claims by the transport manager but did not furnish the detail and information he was requested to provide.
 - Mr. [REDACTED] wrote again on 19 October, 2018. In that correspondence reference is made to earlier correspondence and to the fact that the requested documentation was not received and the documentation is requested again.
17. Mr. [REDACTED] stated that on review of the bank statements, most transactions were detailed by cheque and cheque number and that there were few credit transfers. He



stated that wages were paid by cheque with no detail as to names on the bank statements. The cheque stubs were not provided. The Appellant's explanation in this regard was that he omitted to fill in the cheque stubs and that he mislaid cheque books.

18. In response to the Appellant's suggestion that there were issues in contention at hearing which had not been made clear by the Respondents, Mr. [REDACTED] Revenue official, stated that he was very disappointed with this suggestion and referred to the numerous letters written requesting the information and documentation which, despite his requests, did not result in the production of the relevant information and documentation.

Analysis

19. At hearing, a number of matters remained in dispute relating to expense deductions claimed by the Appellant, which were disallowed by the Respondents. An issue between the parties relating to a dispute regarding the estate of [REDACTED] was clarified at hearing and was no longer in dispute. The issues which remained in dispute are set out below;

Children's wages - €10,450

20. The Appellant paid money to his children which he described in his accounts as wages. In correspondence dated 21 July, 2021, the Appellant stated that: *'Both children were actively involved in the business, [REDACTED] and it was entirely a family affair.'* The Appellant submitted that *'the payment represented fair value for the services rendered'*.
21. In evidence, the Appellant stated that the children helped him clean [REDACTED] at the weekends. He stated that he would not have employed someone to do the work if the children were not doing it. He stated that he was trying to teach the children the value of money and to teach them to save money. He stated that the money was paid *in lieu* of pocket money and that the payments would have been made even if the children had not worked in the business.



22. The Appellant's children were aged [REDACTED] at the commencement of the accounting period, 1 September, 2010, and thus the children were of not of an insurable age for employment purposes. Aside from that, it is clear on the Appellant's evidence, that the sum of €10,450 was not a deductible trading expense for tax purposes as it would have been paid even if the children had not assisted the Appellant in the business. The Respondents correctly disallowed the deduction.

Mileage and subsistence - €62,396

23. This expense claim purportedly relates to one employee over the relevant tax years of assessment, namely [REDACTED] who was the [REDACTED] manager.

24. Subsistence claimed must be verified by specific detailed logs of all journeys made to include date, time of departure and return, departing point and destination, vehicle registration and kilometres travelled. Logs should be signed by the claimant and the employer. No supporting document to this effect was provided by the Appellant.

25. In correspondence received by the Tax Appeals Commission on 23 July, 2021, the Appellant reiterated his position that the payments were made wholly and exclusively for the purposes of the trade. He stated that summaries of the claims had been provided to the Respondents and that the claims had been documented in accordance with civil service regulations. He stated that *'... no further details were requested, they would have been provided if asked for'*.

26. In evidence, the Appellant stated that [REDACTED] the [REDACTED] manager, worked in [REDACTED] and in [REDACTED]. The Appellant confirmed that there was no formal contract of employment. The Appellant stated that he paid €5 subsistence per day for a twelve or fourteen hour day however, the evidence in relation to how often the [REDACTED] manager worked these type of hours lacked specificity. The Appellant stated that he could have been [REDACTED] three to four days per week but that it was quieter during the relevant tax years of assessment because of the economic downturn. The Appellant stated that the [REDACTED] manager would [REDACTED] [REDACTED] occasionally however, most of the time he was working during the [REDACTED] [REDACTED]. He stated that there were written records in relation to these logs however, he was unable to produce them and he did not produce them at the hearing. He stated that [REDACTED] and that there would have



been several of [REDACTED] however, these [REDACTED] took place on the Appellant's evidence, in the tax year of assessment 2008.

27. Despite the Appellant's assertions that the claims had been adequately documented and furnished, the Appellant furnished no contemporaneous vouching, no invoices and no receipts. If these claims were paid, it appears they were paid without the necessary documentation having been provided. In these circumstances, given the insufficient documentation, this deduction is disallowed.

Subsistence re [REDACTED] –€31,020

28. In correspondence dated 21 July, 2021, the Appellant stated that the payments were made wholly and exclusively for the purposes of the trade and were based on a daily rate of €5 per [REDACTED]. The Appellant submitted that this was a fair figure when compared with the civil service rate.
29. The Appellant claimed that a flat fee of €5 per day was paid to [REDACTED] however, no contemporaneous supporting documentation was provided in relation to this claim. The Respondents stated that the [REDACTED] did not suggest a subsistence allowance was required.
30. At hearing, the Appellant stated that he paid €5 subsistence per day as 'additional lift pay'. He stated that he did not have contracts of employment with [REDACTED]. He stated the payments were made in cash, that there were no receipts, no spreadsheets showing payments made and that he had no records identifying when the payments were made. Thus, no documentation was provided to the Respondents in relation to this claim nor was documentation produced at hearing.
31. The Appellant's agent expressed uncertainty in relation to whether the rate was €5 or €6 per day, yet notwithstanding the absence of adequate documentation, he persisted in his submission that the Appellant was entitled to claim a deduction in relation to this alleged expense.
32. As regards this claim, the Appellant furnished no contemporaneous vouching, no invoices and no receipts. In these circumstances, given the absence of sufficient supporting documentation, the deduction is disallowed.



Non-PAYE workers - €16,000

33. In correspondence dated 21 July, 2021, the Appellant stated that these payments related to [REDACTED] and [REDACTED] who were being tried out. He stated that the payments were made wholly and exclusively for the purposes of the trade.
34. In evidence, the Appellant stated that he would try out [REDACTED] for periods of two to three weeks at a time. He stated that for [REDACTED] he did not employ, he treated them as non-PAYE. He stated that these [REDACTED] were paid in cash and those payments were referenced as wages in the accounts. He stated that he did not request these [REDACTED] to sign any documentation before taking and driving a bus.
35. However, the Appellant in evidence was unable to identify the persons to whom the money was paid, how much was paid or on what date(s) it was paid. In his own documentation the figures in respect of this deduction were estimated. There was no contemporaneous vouching, no invoices and no receipts. The Respondents correctly disallowed this expense on the basis that the Appellant furnished no supporting documentation in relation to these payments. The deduction is hereby disallowed.

Loan from a family member - €22,440

36. Initially the accounts showed a payment in of €22,420, being a loan from the Appellant's [REDACTED]. Payments out were contained in sundry expenses. However, no further information was provided and the Respondents took the view, correctly, that the Appellant had not furnished sufficient information and documentation to enable the Respondents to conclude that this transaction constituted a deductible trading expense.
37. In correspondence dated 21 July 2021, the Appellant stated that the loan was a loan of €9,000 from his [REDACTED] but that there would be difficulty obtaining verification of this because of the health condition of his [REDACTED]. He stated that the loan was fully and promptly repaid. In evidence, the Appellant stated that he could not shed any light on the figure of €22,440 but that he did receive a loan of €9,000.



38. There is no evidence that this loan or the repayments thereof constituted a deductible trading expense and the deduction is thereby disallowed.

HP and lease charges –€40,421

39. The Appellant claimed €40,421 as fines or charges imposed by the hire purchase company in addition to interest charges. No supporting documentation was provided to verify the existence of the charges nor the payment of the charges.
40. In evidence, the Appellant stated that he missed six or eight hire purchase payments and that one of the [REDACTED] was about to be repossessed. He stated that he paid interest in relation to the hire purchase agreements.
41. In correspondence dated 21 July, 2021, the Appellant stated that he had furnished the relevant documentation and had answered the queries raised. He stated that all payments were made in respect of hire purchase and lease payments and late payment charges arising thereon. In correspondence dated 7 October, 2021, the Appellant's agent furnished a summary of loan agreements together with statements supplied by the banks. The agent also provided a schedule of the hire purchase and lease agreements.
42. The Respondents stated that they had seen lease documentation and had allowed lease charges but they had not seen documents evidencing that there were fines or charges incurred in addition, or that these were actually paid. There was no debit from the Appellant's bank account evidencing that such fines and charges were in fact paid.
43. In short, documentation in verification of the figure of €40,421 was not furnished prior to the hearing nor at hearing. The Appellant's position was that there was documentation in existence but that he did not bring it to the hearing nor did he furnish it in advance of the hearing. The Respondents' position was that they had been seeking the documentation since 2017 and Mr. [REDACTED] in evidence, opened the relevant correspondence to that effect.

44. In conclusion, the Respondents took the view correctly, that the Appellant had not furnished sufficient information and documentation in support of the Appellant's claim that the sum of €40,421 constituted a deductible trading expense.

Peer to peer interest - €13,623

45. A number of loans were received by the Appellant from friends and acquaintances including the sum of €185,000 from his own agent. Interest totalling €13,623 was charged against these loans to the profit and loss account. The Respondents were unable to verify this claim from tax returns submitted and thereby disallowed the expense.

46. In correspondence dated 21 July, 2021, the Appellant stated that loans were made to him to cover weekly wages, cash flow shortages and [REDACTED] finance. He stated that interest paid on these loans (to clients of the Appellant's agent's office and to the Appellant's own agent) constituted a deductible trading expense. The Appellant submitted that these loans were made wholly and exclusively for the purposes of the trade. He stated that the PPS numbers of parties who had supplied loans had been provided to the Respondents. He stated that the parties involved had made returns of the interest or fee received.

47. In evidence, the Appellant named some of the individuals who allegedly provided the loans. In submissions, the Appellant's agent stated that his own brother was one of the individuals who provided loans however, the Appellant in evidence stated that that was incorrect and that the persons who provided loans were not related to his agent. The Appellant stated in evidence that he had no written loan agreements and no documentation evidencing these loans.

48. The Respondents took the view, correctly, that the Appellant had not furnished sufficient information and documentation to enable them to conclude that the interest of €13,623.00 constituted a deductible trading expense.

Ulster bank loan interest- €12,422.46



49. The bank statements submitted to the Respondents accounted for the sum of €10,430.81 and not €12,422.46 and the Respondents disallowed the difference of €1,991.65. In correspondence dated 21 July, 2021, the Appellant stated that all information requested was submitted including details of other bank accounts.
50. The Respondents took the view, correctly, that the Appellant had not furnished sufficient information and documentation to enable a deduction in relation to the sum of €1,991.65.

Bank charges current account - €19,219

51. Bank statements submitted to the Respondents accounted for the sum of €9,782.78 and the Respondents disallowed the balance of €9,346.22.
52. At hearing, the Appellant accepted that the bank charges were overstated by the amount in question but suggested that the deduction should be allowed because another figure was incorrect. The Appellant was unable to clarify his position or to present a coherent explanation in relation to the balance of €9,346.22 or to identify the document or documents that supported his claim in respect of this figure.
53. The Respondents were not satisfied that the expenses had been incurred because no original documentation was furnished in support of this amount and thus the Respondents correctly disallowed the sum of €9,346.22.

Payments to spouse

54. The Appellant who is jointly assessed with his spouse, confirmed in evidence that he paid his spouse the sum of €15,000 wages per annum.
55. The Respondents' position was that the amount was required to be included in the Appellant's joint income tax return for the relevant tax years of assessment but had not been included. Thus the sum was included and taxed, leading to an increased liability.

Capital allowances

56. Capital allowances claimed by the Appellant were reduced by €75,918 due to miscalculations and errors in the calculation of same, in the Appellant's records.
57. The sum of €49,298 was identified by the Respondents as a miscalculation in the Appellant's accounts. The Appellant accepted that €49,298 should be disallowed on this basis.
58. In relation to the balance of €26,620, this sum was claimed in relation to an item which was a leased vehicle. The Appellant stated that this was a leased asset and the Appellant furnished a document which showed this item in the 'leased assets' section of a schedule furnished.
59. Again, the Respondents took the view, correctly, that the Appellant had not furnished sufficient information and documentation to enable capital allowances to be claimed in relation to this vehicle.

Industrial buildings

60. The industrial building allowance claimed by the Appellant was disallowed by the Respondents on the basis that [REDACTED] the subject of the claim, did not qualify as an 'industrial building or structure in use for the purposes of a trade carried on in a mill, factory or other similar premises' in accordance with section 268(1)(a) TCA 1997.
61. In evidence, the Appellant stated that the site was [REDACTED] and that he put in a base that would take a building. He stated that on the site there is a [REDACTED] which is used as an office and a container to store parts. He stated that there were no lifts on site but there were jacks for changing tyres and carrying out a service. He confirmed that there was no building on the site and that the [REDACTED] was used for [REDACTED] [REDACTED]. The Appellant stated that he applied for planning permission for a [REDACTED] with three roller doors however, planning permission was refused.
62. Mr. [REDACTED] Revenue officer, stated in evidence that he had inspected the premises, that it contained a large [REDACTED] with a [REDACTED] and a storage unit in the corner. He stated that he did not observe any repair instruments or other instruments.



63. On behalf of the Appellant it was submitted that the reinforced concrete structure *i.e.* the [REDACTED] qualified as an '*industrial building or structure*' within the meaning of section 268 TCA 1997.

Section 268(1) TCA 1997 provides;

In this Part, 'industrial building or structure' means a building or structure in use –

(a) for the purposes of a trade carried on in -

(i) a mill, factory or other similar premises, or

(ii) a laboratory the sole of main function of which is the analysis of minerals (including oil and natural gas) in connection with the exploration for, or the extraction of, such minerals,

64. The Appellant contended that he was entitled to claim the cost of the foundation (€130,000) for what he had hoped would be a full [REDACTED]. He stated that most of the structure was underground in the form of a foundation and at ground level there was a concrete and steel platform on which [REDACTED] [REDACTED] would stand namely, the [REDACTED]

65. The Respondents stated that the premises was in use for the [REDACTED]. [REDACTED] The Respondents submitted that the activity of the trade was [REDACTED] [REDACTED] and that the [REDACTED] was not a structure that was in use for the purposes of a trade carried on in '*a mill, factory or other similar premises*'. The Respondents submitted that [REDACTED] overnight or [REDACTED] them or carrying out minor repairs occasionally is not a trade carried on in '*a mill, factory or other similar premises*' and that the structure did not come within any other subsections of section 268 TCA 1997.

66. I find, on the evidence and submissions, that the concrete structure comprising the [REDACTED] does not constitute a '*building or structure in use for the purposes of a trade carried on in a mill, factory or other similar premises*' in accordance with section 268(1)(a) TCA 1997.



Conclusion

67. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant, in accordance with the established authorities including, *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49. In *Menolly Homes*, Charleton J. at paragraph 22 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. The absence of mutuality in this form of appeal procedure is illustrated by the decision of Gilligan J. in T.J. v. Criminal Assets Bureau, [2008] IEHC 168. While the appeal in question there concerned income tax, the observations made in the course of the judgment as to the nature of a tax appeal are germane to deciding this issue. The applicant in that case was assessed for income tax by a tax inspector assigned to the Criminal Assets Bureau. He was assessed to tax on a large amount of income from apparently mysterious sources. Invoking his statutory right of appeal in those circumstances, the applicant sought disclosure of all information on which the assessment was made. Referring to the Revenue Customer Service Charter, the court noted that there was a self-imposed obligation on the Revenue Commissioners to give all relevant information whereby the taxpayer would understand his tax obligations. This did not extend, it was held by Gilligan J., to making an order for discovery. In taking the appeal, the taxpayer was undertaking the burden of appeal within the relevant formula as to the relief which he might be granted if successful. At para. 50 Gilligan J. stated:-

“The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self assessment on the basis of any income and/or gains that arose within the relevant tax period. In effect, the applicant is seeking discovery of all relevant information available to the respondents against a background where he has, by way of self assessment, set out what he knows or ought to know, is the income and gains made by him in the relevant period. It is quite clear that the whole basis of self assessment would be undermined if, having made a return which was not accepted by the respondents, the applicant



was entitled to access all the relevant information that was available to the respondents. The issue, in any event, is governed by legislation and there is no constitutional challenge to that legislation. The respondents are only required to make an assessment on the person concerned in such sum as according to the best of the Inspector's judgment ought to be charged on that person. The applicant in this case has the right of an appeal to the Appeal Commissioners and the right to a further appeal to the Circuit Court and the right to a further appeal on a point of law to the High Court and from there to the Supreme Court. Any reasonable approach dictates that if the applicant, on appeal to the Appeal Commissioners or to the Circuit Court, can demonstrate some form of prejudice, then an adjournment in accordance with fair procedures would have to be granted, and if not granted, the applicant would have an entitlement to bring judicial review proceedings. There are adequate safeguards in position to protect the applicant in the event that he is in some way prejudiced, but in any event it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant."

68. In addition, the Appellant has a statutory obligation to maintain adequate books and records for a period of six years pursuant to section 886 TCA 1997.
69. The Appellant failed to file accounts on a yearly basis for the accounting periods ended 31 August 2011, 2012 and 2013. Accounts were not prepared and submitted to the Respondents until 02 September 2015, approximately five months post commencement of the audit. The Respondents, during the audit and thereafter, repeatedly requested relevant documentation from the Appellant, in support of the trading deductions he had claimed. However, the Appellant failed, refused and/or neglected to provide the said documentation.
70. This appeal proceeded to hearing before the Tax Appeals Commission in circumstances where on the day of the hearing, the Appellant persisted in asserting his entitlement to various trading deductions even though he was unable or unwilling to produce adequate documentation in support those deductions. It is clear that such an approach cannot but fail because the onus of proof in tax cases rests on the



Appellant and it is the Appellant who must demonstrate, through his own books and records that he is entitled to the deductions claimed.

Determination

71. Section 949AK TCA 1997 provides;

- (1) In relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that –*
- (a) an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly*
 - (b) an appellant has, by reason of the assessment, been undercharged, determine that the assessment be increased accordingly*
 - (c) neither paragraph (a) nor (b) applies, determine that the assessment stand*

72. I determine that the assessments in the sums of €128,509.00 in respect of 2011, €130,061.00 in respect of 2012 and €130,296.00 in respect of 2013 (€388,866.00 in aggregate) shall be reduced to an aggregate sum of €126,220 comprising €42,054 in relation to 2011, €42,083 in relation to 2012 and €42,083 in relation to 2013. The amount payable by the Appellant will be €126,220 less any amounts heretofore returned and paid in respect of the relevant tax years of assessment.

73. This appeal is determined in accordance with s.949AK TCA 1997.



COMMISSIONER LORNA GALLAGHER

23rd day of March 2021

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.



