



Between

16TACD2023

████████████████████

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”) in relation to Notices of Amended Assessment to Income Tax issued by the Revenue Commissioners (“the Respondent”) on 8 and 9 May 2019, for the years 2013 and 2014, respectively. It is also an appeal in relation to Value Added Tax (“VAT”) Notices of Assessment of Tax Payable issued by the Respondent on 7 August 2019, for the periods 1 March 2012 to 30 April 2014.
2. The amount of income tax at issue is in the sum of €5,881.03 for the year 2013 and €76,638, for the year 2014. The amount of VAT at issue is in the sum of €3,833.06 for the period 1 March 2012 to 30 April 2013 and €11,564.15, for the period 1 May 2013 to 30 April 2014. The total liabilities to income tax are in the sum of €82,519 and to VAT in the sum of €15,397.
3. The appeal proceeded by way of a hearing on 11 November 2022. The Appellant was not present at the hearing of the appeal, due to personal circumstances. The Commissioner extended a dispensation to the Appellant in attending due to those particular

circumstances. However, the Appellant was represented by [REDACTED] who was familiar with the Appellant's business. The Commissioner is grateful for [REDACTED] representation of the Appellant and for his assistance to the appeal process throughout the hearing. He represented the Appellant admirably and his civic duty was evident throughout the hearing. The Respondent was represented by [REDACTED] and [REDACTED]. The Commissioner also thanks the Respondent's officers who presented with due consideration of the circumstances pertaining to this appeal and were very well prepared in their submissions and explanations about the Notice of Assessment.

Background

4. The Appellant is a trader with a place of business at [REDACTED]. The Appellant's business is comprised of the sale of goods such as fertilizer, coal, agricultural feed, in addition to the haulage of sheep and cattle. The evidence of the Appellant's representative was that the Appellant is no longer trading.
5. On 18 May 2016, the Respondent notified the Appellant that it was commencing an audit of its books and records to include the Appellant's sales and purchase listings for the income tax years ended 31 March 2013 and 31 March 2014, in addition to VAT for the periods 1 March 2012 to 31 December 2015. On a number of dates thereafter, the Respondent wrote to the Appellant's Agent for the additional books and records.
6. On 21 February 2018, a new Agent for the Appellant committed to submitting any outstanding books and records to the Respondent. On 30 May 2018, the Appellant's Agent informed the Respondent that he was organising the outstanding books and records.
7. On 19 October 2018, the Respondent wrote to the Appellant directly to inform him that despite numerous attempts to obtain the outstanding books and records from the Appellant's Agent, nothing had been received. Further, the correspondence placed the Appellant on notice that a liability had been established from the records previously submitted and the Respondent requested that the Appellant attend a meeting to discuss the findings.
8. On 28 November 2018, the Appellant's Agent met with the Respondent to discuss the findings in relation to the following matters namely, turnover, coal and fuel. On 21 February 2019, the Appellant's Agent informed the Respondent that the files it had received from the previous Agent were incorrect and that he had now 90% completed one year of sales, purchases and control accounts for the Appellant.
9. On 11 April 2019, the Appellant's Agent attended for a meeting which was scheduled at his request. The Appellant's Agent did not bring any additional records to the meeting.

Thereafter, on 17 April 2019, the Appellant's Agent wrote to the Respondent to state that due to difficulties in ascertaining the workings of the previous Agent, the records were still not finalised, and the issues raised could not be addressed. On 8 May 2019, the Appellant's Agent wrote to the Respondent to again state that he was encountering difficulties in trying to sort out the books and records.

10. After several months of correspondence between the Appellant and/or the Appellant's Agent and the Respondent, on 9 May 2019, the Respondent corresponded with the Appellant's Agent to inform him that Income Tax Assessments had been amended in relation to the year 2013 and raised in relation to the year 2014.
11. On 27 May 2019, the Appellant's Agent emailed the Respondent to state that he was returning to work on the case, having taken time out due to family matters. He committed to contacting the Respondent on 29 May 2019. On 3 June 2019, the Appellant's Agent emailed the Respondent to again state that he had the assistance of a bookkeeper enlisted to help with the books and records.
12. On 20 June 2019, the Appellant duly appealed to the Commission in respect of the Notices of Assessments for Income Tax for the years 2013 and 2014.
13. On 2 August 2019, the Respondent wrote to both the Appellant and the Appellant's Agent to outline the full extent of the assessments that were raised and the reasons for raising the assessments.
14. On 7 August 2019, a Notice of Assessment for VAT for the period 1 March 2012 to 30 April 2014 in the sum of €15,397.21 issued to the Appellant.
15. On 5 September 2019, the Appellant duly appealed to the Commission, the VAT Notices of Assessment of Tax Payable for the period 01 March 2012 to 30 April 2014.

Legislation and Guidelines

16. The legislation relevant to this appeal is as follows:-
17. Section 18 of the Taxes Consolidation Act 1997 ("the TCA 1997"), Schedule D, *inter alia* provides:-
 1. *Tax under this Schedule shall be charged in respect of—*
 - (a) *the annual profits or gains arising or accruing to—*

.....

2. *Profits or gains arising or accruing to any person from an office, employment or pension shall not by virtue of paragraph 1 be chargeable to tax under this Schedule unless they are chargeable to tax under Case III of this Schedule*

(2) Tax under Schedule D shall be charged under the following Cases-

Case I— Tax in respect of—

(a) any trade;

(b) profits or gains arising out of lands, tenements and hereditaments in the case of any of the following concerns—

(i) quarries of stone, slate, limestone or chalk, or quarries or pits of sand, gravel or clay,

(ii) mines of coal, tin, lead, copper, pyrites, iron and other mines, and

(iii) ironworks, gasworks, salt springs or works, alum mines or works, waterworks, streams of water, canals, inland navigations, docks, drains or levels, fishings, rights of markets and fairs, tolls, railways and other ways, bridges, ferries and other concerns of the like nature having profits from or arising out of any lands, tenements or hereditaments;

18. Section 65 TCA 1997, Cases I and II: basis of assessment, *inter alia* provides:-

(1) Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment

(2) Where in the case of any trade or profession it has been customary to make up accounts-

(a) if only one account was made up to a date within the year of assessment and that account was for a period of one year, the profits or gains of the year ending on that date shall be taken to be the profits or gains of the year of assessment;

.....

19. Section 81 TCA 1997, General rule as to deductions, *inter alia* provides:-

(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of—

(a) *any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession;*

(b) *any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession;*

.....

20. Section 959Y TCA 1997, Chargeable persons and other persons: assessment made or amended by Revenue officer, *inter alia* provides:-

(1) Subject to the provisions of this Chapter, a *Revenue officer* may at any time

(a) make a *Revenue assessment* on a person for a *chargeable period* in such amount as, according to the officer's best judgment, ought to be charged on the person

(b) amend a *Revenue assessment* on, or a self assessment in relation to, a person for a *chargeable period* in such manner as he or she considers necessary, notwithstanding that-

(i) *tax may have been paid or repaid in respect of the assessment, or*

(ii) *the assessment may have been amended on a previous occasion or on previous occasions.*

.....

21. Section 959AA TCA 1997, Chargeable persons: time limit on assessment made or amended by Revenue officer, *inter alia* provides:-

(2) *Nothing in this section prevents a Revenue officer from, at any time, amending an assessment for a chargeable period*

(a) where the *return* for the period does not contain a full and true disclosure of all material facts necessary for the making of an *assessment* for that period,

.....

22. Section 886 TCA 1997, Obligation to keep certain records, *inter alia* provides:-

(2)(a) Every person who –

(i) *on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D*

- (ii) is chargeable to tax under Schedule D or F in respect of any other source of income, or*
- (iii) is chargeable to capital gains tax in respect of chargeable gains shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.*

(aa) Without prejudice to the generality of paragraph (a) and subsection (4)-

- (i) the records shall include records and linking documents relating to any allowance, deduction, relief or credit (referred to in this paragraph as a 'relevant amount') taken into account in computing the amount of tax payable (within the meaning of section 959A), for the year of assessment or accounting period concerned*
- (ii) the transactions, acts or operations giving rise to a relevant amount shall, for the purposes of subsection (4)(a)(i), be treated as transactions, acts or operations that were completed at the end of the year of assessment or accounting period for which a relevant amount is taken into account in computing the amount of tax payable (within the meaning aforesaid) for the year of assessment or accounting period concerned, and*
- (iii) the transactions, acts or operations giving rise to a relevant amount shall, for the purposes of subsection (4)(a)(ii), be treated as transactions, acts or operations that were completed at the end of the year of assessment or accounting period in which the return, in which the relevant amount is taken into account in computing the amount of tax payable (within the meaning aforesaid), has been delivered.*

(b) The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next

(c) Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents

(d) Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of

this section be deemed to be the person carrying on that trade, profession or other activity.

(4)(a) Notwithstanding any other law, linking documents and records kept in accordance with subsections (2) and (3) shall be retained by the person required to keep the records

(i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or

(ii) in the case of a person who fails to comply with Chapter 3 of Part 41A requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered showing the profits or gains or chargeable gains derived from those transactions, acts or operations, or

23. Section 84 of the Value Added Tax Consolidation Act 2010, Duty to keep records, *inter alia* provides:-

(1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility

(2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business

(3) The following:

(a) records kept by a person pursuant to this Chapter or section 124(7) and that are in the power, possession or procurement of the person

(b) any books, invoices, copies of customs entries, credit notes, debit notes, receipts, accounts, vouchers, bank statements or other documents whatsoever which relate to the supply of goods or services, the intra-Community acquisition of goods, or the importation of goods by the person and that are in the power, possession or procurement of the person

(c) *in the case of any such book, invoice, credit note, debit note, receipt, account, voucher, or other document, which has been issued by the person to another person, any copy thereof which is in the power, possession or procurement of the person; and*

(d) *any linking documents that are in the power, possession or procurement of the person*

shall, subject to subsection (4) and sections 91C(7) and 91E(7) and notwithstanding any other law, be retained in that person's power, possession or procurement for a period of 6 years from the date of the latest transaction to which the records, linking documents, invoices, or any of the other documents relate.

.....

24. Section 111 of the Value Added Tax Consolidation Act 2010, Assessment of tax due, *inter alia* provides:-

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

(a) *the total amount of tax payable by the person, including tax (if any) payable in accordance with section 108C(3), 109A(4) or 91J(10)(b), was greater than the total amount of tax (if any) paid by that person;*

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

.....

Submissions

Appellant

25. [REDACTED] gave evidence and made submissions on behalf of the Appellant. The Commissioner sets out a summary hereunder:-

(i) He gave evidence that the Appellant operates a yard and purchases gravel, sand, fertiliser and feed which he breaks up and sells to local farmers. This is in addition to the haulage of sheep and cattle. He said that the Appellant has a small business,

which is adjacent to his house and operated out of a small office. He said that it is often untidy but that the Appellant has always been tax compliant. He mentioned that the only taxes that are owed to the Respondent, is the tax under appeal.

- (ii) He said that following an audit of the Appellant's books and records by the Respondent, the Appellant's liabilities for 2013 were increased, such that an additional sum of €5,881 in income tax was due and €3,833.06 VAT was due for the period 1 March 2012 to 30 April 2012. He mentioned that this is now accepted for the year 2013 and the Appellant is not proceeding with this part of his appeal, as the sums are reflective of his business and in line with the Appellant's liabilities for the year 2016.
- (iii) However, he said that the Respondent's calculations in respect of income tax liabilities for the year 2014 and VAT liabilities for the period 1 May 2013 to 30 April 2014 is not representative of the Appellant business. He mentioned that the Appellant is involved in the sale of low margin items and could not have achieved the income for the year 2014, as contended for by the Respondent. He said that he was responsible for filing the returns for the year 2016 and the Appellant's liabilities were in the region of €47,311, a sum not dissimilar to the year 2013.
- (iv) He said that the Appellant is not in a position to discharge the liabilities for the year 2014, as he is no longer trading and has a number of other debts. He stated that the Respondent's calculations are a highly skewed interpretation of the previous Agent's books and records. He said that the Appellant is disputing the liabilities raised for 2014 and that the Appellant is incapable of repaying these sums. He submitted that the common good is served by the Appellant being in a position to discharge his liabilities due to the Respondent and that if a sum representative of his business is achieved on appeal, then the Appellant can engage with the Respondent with a view to putting a payment plan in place. He said that the Appellant aspires to being a compliant tax payer.
- (v) He submitted that the Respondent raised the assessments in frustration at the Appellant, given the difficulties he had with the books and records being brought up to date, following his appointment as a new Agent for the Appellant. He said it made no sense to have such an increase in liability for 2014 and that the books and records that the Respondent was working from were incomplete.
- (vi) In relation to 50% of the diesel purchases being disallowed, he mentioned that the Appellant would purchase diesel in large quantities and that the Appellant would use a tractor to haul the various goods he purchased into the yard. This was in

addition to his haulage business, thus the diesel purchased was required for his business and a percentage should not be disallowed.

Respondent

26. [REDACTED] gave evidence and made submissions on behalf of the Respondent. The Commissioner sets out a summary hereunder:-

- (i) She stated that in May 2016, she commenced an audit of the Appellant's books and records which were supplied by the previous Agent of the Appellant. She said that the Appellant's current Agent has been on record since February 2018. At the hearing of the appeal, the Appellant's Agent agreed with this submission.
- (ii) She stated that numerous attempts were made to obtain further books and records from the Appellant's Agent during the period, 2016, 2017, 2018 and 2019, but were not forthcoming. As a result, the assessments to income tax and VAT were raised and issued to the Appellant. She stated that in addition to seeking the books and records of the Appellant, a number of meetings were organised by the Respondent.
- (iii) She mentioned that from the outset the Appellant's Agent stated that the books and records were highly skewed and that he was commencing a process of redoing the books and records for the requisite years. She stated that the book and records both in hard copy and electronic format, did not appear to her to be incomplete. She said that the assessments were not raised in frustration and that she could only consider what she had been furnished with. Hence, the assessments to income tax and VAT were raised on the books and records that she had been provided with, as no other records were forthcoming. This was despite every opportunity being provided to the Appellant to furnish same.
- (iv) She stated that the turnover figures as per the Form 11 filed and the sales listings provided for 2013 were nearly in line, with a small difference of €1,207 being established. However, a comparison of the Form 11 filed and the sales listings for 2014, indicated a significant difference, namely €108,357. In addition, she stated that coal sales of €31,970.40 for 2014, were not included in the listings and should have been.
- (v) In relation to the diesel purchases, she stated that it was queried in line with the level of haulage that the Appellant had carried out and that she disallowed 50% of diesel and other fuel purchased, on the basis that it was not wholly and exclusively for the purposes of trade i.e. non business. She stated that she relied on section

81 TCA 1997. She mentioned that the Appellant's Agent had promised to furnish a report in relation to diesel. However, nothing was furnished to her. She stated that she applied the 50% reduction in relation to diesel and other fuel on both the 2013 and 2014 calculations, and that it appears now that it is accepted for 2013, but not 2014.

- (vi) She stated that the turnover of the business had nearly trebled for the year 2014, hence the increase in liabilities due and owing by the Appellant. She stated that the increase in turnover was based on the Appellant's own figures, namely €588,266, as submitted in the books and records that she had access to and without any adjustments being made by her. She mentioned that had the Appellant's Agent provided an alternative report to her in relation to diesel and other fuel, she would have taken it into consideration in relation to her calculations.

Material Facts

27. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

- (i) The Appellant is a trader and his business is comprised of the sale of goods such as fertilizer, coal, agricultural feeds, in addition to the haulage of sheep and cattle.
- (ii) An audit of the Appellant's books and records commenced in May 2016.
- (iii) The Appellant's Agent [REDACTED] was engaged by the Appellant in February 2018, following the commencement of the audit by the Respondent.
- (iv) The Appellant's books and records provided by the previous Agent of the Appellant were examined as part of the Respondent's audit and the assessments were raised on the basis of these books and records.
- (v) Despite numerous attempts on the part of the Respondent, the Appellant's Agent did not provide to the Respondent any outstanding and/or further books and/or records of the Appellant.

Analysis

28. The appropriate starting point for the analysis of the issues is to confirm that 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 v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

29. In accordance with the TCA 1997, Schedule D is the heading under which business income is charged to tax. It has five cases and case I charges the profits of a trade. The Appellant is a trader and thus any income is charged to tax under Schedule D. The general rule is that income tax is charged on the full amount of the profits of a trade or profession arising in the year of assessment. This is in accordance with section 65 TCA 1997.
30. The only deductions authorised by the TCA 1997, are allowed in computing the profits of a trade or profession. No deduction is allowed for any expense, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession. This is in accordance with the provisions of section 81 TCA 1997.
31. Section 886 TCA 1997 imposes a statutory obligation on a taxpayer to retain records for income tax purposes, for a period of 6 years after the completion of transactions to which they relate. The same statutory obligation exists in relation to the retention of VAT records, pursuant to section 84 VATCA 2010.
32. The Appellant contends that the Respondent has raised the assessments *“on an incorrect determination of the liabilities as they were raised by the Inspector on a highly skewed interpretation of the documentation erroneously processed by the previous agent”*. Further, the evidence of the Appellant’s Agent was that the Respondent has not considered the Appellant’s business correctly in terms of its calculations that relate to the use of diesel and other fuels. Nevertheless, the Appellant has not produced any alternative proof in the form of records and/or documentation to support its propositions in that regard.
33. The Respondent states that it calculated an additional undeclared amount for sales based on the records submitted by the Appellant, in addition to an undeclared amount for the sale of coal which was established from the purchase records of the Appellant. Further, the Commissioner notes the evidence that the Respondent queried the volume of diesel and other fuel purchased and requested an explanation from the Appellant. However, despite the Appellant’s Agent stating that he was preparing a report to support the expenditure, no report was submitted to the Respondent.
34. The Commissioner has considered the evidence of the Respondent that the level of diesel and other fuel purchased, in line with income from Haulage, appeared excessive. Therefore, the Respondent disallowed 50% of diesel and other fuel purchased on the basis

that it was not wholly and exclusively for the purposes of the trade, and or expended for other domestic or private purposes distinct from the purposes of such trade. Again, the Appellant has not provided proof to substantiate an alternate view, as to the levels of diesel and other fuels used. The Respondent states that VAT is now due to be returned by the Appellant on an undeclared sale of coal. In addition, VAT is now due to be repaid for input credits claimed for expenses that the Appellant had no entitlement to claim, as the percentage of the expenditure disallowed was not wholly and exclusively for the purposes of the trade, and or expended for other domestic or private purposes distinct from the purposes of such trade, in accordance with the provisions of section 81 TCA 1997.

35. The Commissioner notes that whilst the evidence is that the Appellant was disorganised in his approach to his business records and that the Appellant's Agent attempted to reconcile the records, the situation remains that the Appellant has not provided any evidence to support his contention that the assessments raised by the Respondent are incorrect. Though the Appellant states that the records relied on by the Respondent to complete the assessments are incomplete, the Respondent's witness gave evidence that it did not appear to her that the records were incomplete. She stated that there was a significant increase in turnover in the Appellant's business in 2014, such as to justify the increase in income tax liabilities. However, again the Appellant has not furnished any additional records to prove otherwise.
36. The Commissioner notes the Appellant's argument that the assessments were raised in frustration and that the records and/or documentation would have been forthcoming. Having had regard to the evidence and submissions in this appeal, the Commissioner is satisfied that the Respondent gave significant time and issued numerous letters, emails and phone calls to the Appellant to provide the Respondent with books, records and information that the Appellant believed to be the 'correct' books and records. However, no further books and/or records were forthcoming. The Commissioner is satisfied that the Respondent had no option but to raise Notices of Assessment to income tax and VAT based on the books and records that were provided, and was correct in doing so.
37. As set out above, in a tax 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. The Appellant, being the person with access to all of the facts and documents relating to his own tax affairs, is bound not only to retain documentation in accordance with the requisite statutory provisions (section 886 TCA 1997 and section 84 VATCA 2010) but also to produce such documentation as may be required in support of his appeal so as to meet the burden of proof.

38. Accordingly, the Appellant has not succeeded in demonstrating that the assessment is incorrect and has not brought forward any books or records to demonstrate the assessment is incorrect. The Commissioner would have considered records or books if they had been produced to negate the assessment raised by the Respondent. But, that did not occur. Hence, then the assessment shall stand. The Commissioner is satisfied that the Appellant in this appeal has not succeed in proving on the balance of probabilities that the assessments to income tax and VAT raised by the Respondent were incorrect.

Determination

39. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the tax is not payable. Accordingly, the Commissioner finds that the assessments to income tax and VAT raised by the Respondent and the subject of this appeal, shall stand.

40. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties.

41. 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
1 December 2022