



Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal of an assessment made by the Revenue Commissioners (“the Respondent”) on 4 October 2017 determining the Appellant to have a charge to Capital Acquisitions Tax (“CAT”) of €98,224 for the period 1 September 2011 to 31 August 2012 arising from the taking of gifts of property.
2. At the outset of the presentation of its case, the Respondent conceded that the assessment under appeal was excessive. It did so on the grounds that it had applied the incorrect Group Threshold in respect of the gifts it contended were taken. The Respondent submitted that applying the correct Group Threshold resulted in the Appellant having a charge to CAT on the gifts of €19,354.00. On the grounds that the Appellant maintained that he should have no charge to CAT for the period in question, the appeal proceeded as if it were against an assessment for this sum.

Background

3. There was no dispute in this appeal that on or about [REDACTED] 2011 the Appellant became the legal and beneficial owner of property at [REDACTED] formerly belonging to his mother, [REDACTED].

4. Certified copies of Land Registry Deeds of Transfer, signed by the Appellant and his mother in the presence of [REDACTED], solicitor, show that on [REDACTED] 2011 the Appellant became the legal and beneficial owner of numbers [REDACTED]. In respect of numbers [REDACTED] and [REDACTED] respectively, the Deeds of Transfer provide:-

"[REDACTED] the registered owner (as beneficial owner) in consideration of the natural love and affection which she has for her son [REDACTED] HEREBY TRANSFERS that part of the property comprised in [REDACTED] of the Register of the County [REDACTED] more particularly described in the Schedule hereto to [REDACTED]."

5. The Deed of Transfer relating to number [REDACTED] differs in so far as it provides that the transfer was to the Appellant and his sister as joint owners with equal shares in the property. The transfer, again, is stated to be in consideration of their mother's natural love and affection, rather than monetary consideration.

6. The Schedule to each of the Deeds of Transfer describe the lands transferred as being:-

"ALL THAT AND THOSE that part of the property comprised in Folio [REDACTED] of the Register of the County [REDACTED] more particularly delineated and outlined in red on the map annexed hereto being [numbers [REDACTED] respectively], being part of the Townland of [REDACTED], situate in [REDACTED] and County [REDACTED]."

7. Each of the Deeds of Transfer then certifies:-

"...the value of the property conveyed or transferred is wholly attributable to residential property and that the transaction affected by this instrument does not form part of a larger transaction or a series of transactions in respect of which the amount or value, or the aggregate amount or value of the property conveyed or transferred which is attributable to residential property, or which would be so attributable if the contents of residential property were considered to be residential property, exceeds €165,000."

8. Stamp Duty returns were filed on 6 January 2012 by [REDACTED], solicitor, on Revenue's Online System ("ROS"). The forms describe each of the properties as being a "second-hand dwelling house/apartment". Consideration for each property was listed as "€0.00" and their open market value as being €165,000.00. The duty payable was calculated to be

€1,650.00. Under the section headed “*Additional Information*” the word “yes” is present next to the sentence “*The Consideration paid does not represent the open market value/value of the interest passing*”.

9. Correspondence of 19 January 2012 and 16 March 2012 from [REDACTED] Solicitors to the Stamping Office of the Respondent indicates the stamp duty return was accompanied by a valuation report in respect of the [REDACTED] development dated [REDACTED] 2011. This report, carried out by [REDACTED] on behalf of its clients the [REDACTED], assessed the market value for each two-bedroom townhouse on the development to be €165,000.00.
10. The Appellant gave evidence that, contrary to the information contained in the Deeds of Transfer and the Stamp Duty returns, he had in fact bought and paid for the dwellings numbered [REDACTED] in 2008 at their open market price. He said that what happened in 2011 was that he and other property owners on [REDACTED] Estate had acquired different lands making up the estate. These lands were previously common areas in the ownership of his mother. Their acquisition was, he stated, “*less a gift from her [...] more a favour to her*”. This was so, he said, because the common areas had over time fallen into disrepair as a consequence of the failure of the estate’s management company and then the County Council to tend to them. He said the solution, suggested by him and agreed between the council, his mother and various other [REDACTED] property owners, was that the common area would be divided up and transferred to their ownership. This arrangement was described in the Appellant’s written outline argument in the following terms:-

“The [common area] was surrounded by solid walls with entrances and rearranged cobbleblock for driveways, bin enclosures were built for each unit, and fences delimited the boundaries between the units. The cost of this was to be borne by each unit owner. My mother would gift each garden as a parcel of land to each unit owner. I have never denied receiving this gift and I have never heard complaints from the affordable owners about being assessed for gift tax on the transaction.”

11. The Appellant did not provide evidence supporting his contention either that he purchased the dwellings numbered [REDACTED] for consideration in 2008, or that in 2011, contrary to what was specified on the Deeds of Transfer, he received only a gift of what was previously part of the common area adjoining these properties.
12. The Commissioner was furnished with correspondence from the Respondent to the Appellant dated 19 January 2016, which stated:-

“Dear [Appellant]

I refer to our previous letter of 20 January 2012.

My records indicate that you have not submitted a Capital Acquisitions Tax Return (Form IT38) in relation to the gifts received by you from ██████████ in December 2012.

Please complete the Form IT38 and submit it to this office at the above address. A Form IT38 is enclosed for your convenience. Note the conditions at the top of this form as you may be required to file this return online through Revenue's Online Service [...]

Please do not hesitate to contact me if you require any further clarification or assistance with completing your Form IT38."

13. On 19 December 2016, in the absence of a CAT return filed by the Appellant, the Respondent issued a notice of assessment, which assessed the Appellant as having charge to CAT of €103,125.00 arising from his taking a gift of numbers ██████████. With surcharge and interest added, the total amount assessed came to €152,440.00. It appears that the principal sum was calculated by the application of a charge of 20% of total value of the properties, based on the aforementioned stamping forms submitted by ██████████, solicitor. It does not appear that any threshold was applied.
14. It is apparent from the documentary material furnished to the Commissioner that on 4 October 2017 the Respondent issued another assessment (not entitled an amended assessment) that re-assessed the Appellant as having a charge to CAT of €98,224.00, arising from the acquisition of ██████████. On this occasion the charge was assessed on the basis that the Appellant fell under "Threshold Group C" applicable on ██████████ 2011. This Group Threshold applies to persons who have a relationship with the transferor not falling under either Threshold Groups "A" or "B". The effect of the Threshold applied was that €16,604 of the value of the properties was not subject to tax, plus a further €3,000 separately excluded under the "small gift exemption".
15. Following the making of the assessment of 4 October 2017 by the Respondent, the Appellant filed a CAT return for the period 1 September 2011 to 31 August 2012 that assessed his liability as nil. Thereafter he delivered his Notice of Appeal against the assessment of 4 October 2017 on 3 November 2017.
16. As noted at the outset of this determination, the Respondent did not inform the Commissioner or the Appellant that it accepted that the assessment under appeal was in error until it made its replying oral submissions. The consequence of the Respondent's concession that the correct Group Threshold was "A" (that applicable to gifts received by

children of a disponent) was that €332,804 of the overall value of the legal and beneficial interest in the properties of €412,500, plus the €3,000 small gift exemption, was not subject to CAT. The charge which the Respondent contended was due was therefore €19,354, being 25% of the taxable benefit of €77,416.

17. Although it is not clear when the Respondent became aware that the relationship between the Appellant and the disponent was that of mother and son, it appears that it possessed the information necessary to apply the correct threshold for some time prior to the hearing. The Commissioner observes that it was somewhat unsatisfactory that it took until the morning of the hearing, and moreover after the Appellant had opened his case, for the Respondent to address this.

18. In written and oral argument the Appellant voiced complaint about the manner of his treatment by the Respondent over a prolonged period. He queried the content and extent of material produced by the Respondent on foot of a Freedom of Information Request and suggested that officers and employees of the Respondent should attend the hearing in order to explain their conduct in dealing with him. The Commissioner wishes to emphasise at this point that in giving this determination he has focused his attention on the oral and documentary evidence relevant to the matter that falls to be determined, namely whether the Appellant has a charge to CAT for the relevant period and, if he does, the correct amount. As was held by the Court of Appeal in *Lee v Revenue Commissioners [2021] IECA 18*, this is what is required in order for the Commissioner to fulfil his statutory function.

Legislation and Guidelines

19. Section 4 of the Capital Acquisitions Tax Consolidation Act 2003 (“the CATCA 2003”) provides:-

“A capital acquisitions tax, to be called gift tax and to be computed in accordance with this Act shall, subject to this Act and any regulations made under the Act, be charged, levied and paid on the taxable value of every taxable gift taken by a donee.”

20. Section 5 of the CATCA 2003 concerns when a gift is deemed to be taken and provides:-

“For the purposes of this Act, a person is deemed to take a gift, where a person becomes beneficially entitled in possession, otherwise than on a death, to any benefit (whether or not the person becoming so entitled already has any interest in the property in which such person takes such benefit), otherwise than for full consideration in money or money’s worth paid by such person.”

21. Section 53A of the CATCA 2003 is entitled “*Surcharge for Late Returns*”. Subsection 1 therein provides:-

“In this section “specified return date” means—

(a) In relation to a valuation date occurring in the period 1 January to 31 August in any year, 31 October in that year, and

(b) In relation to a valuation date occurring in the period 1 September to 31 December in any year, 31 October in the following year,

(c) in the case of an inheritance referred to in section 15(1) or 20(1), the last day of the period of 4 months referred to in section 46(2C).”

22. Section 53A(3) of the CATCA 2003 then provides:-

“Where a person fails to deliver a return on or before the specified return date, any amount of tax which would have been payable if such a return had been delivered shall be increased by an amount (in this section referred to as “the surcharge”) equal to—

(a) 5 per cent of the amount of tax, subject to a maximum increased amount of €12,695, where the return is delivered before the expiry of 2 months from the specified return date, and

(b) 10 per cent of the amount of tax, subject to a maximum increased amount of €63,485, where the return is not delivered before the expiry of 2 months from the specified return date.”

Submissions

Appellant

23. The Appellant submitted that there had been no gift in this instance. He had acquired numbers [REDACTED] or about 2008. In written argument he stated that “full cost price” had been paid for them at this time.

24. The Appellant submitted that the properties acquired by him on or about [REDACTED] 2011 were properties that previously formed part of the common area of [REDACTED] owned by his mother. He, and other owners of properties at [REDACTED], acquired parcels of the common area so as to solve the problem of the deterioration of the estate. Had they not done so, [REDACTED] would have fallen into a worse state of dilapidation and disrepair. The Appellant submitted that, in this way, his acquisition was more the giving of a favour to his mother than the taking of a gift from her. It should not, therefore, be subject to CAT.

25. This favour was, moreover, one benefitting the State as the arrangement reached regarding the division of the common area among various owners in [REDACTED] solved a problem that it would otherwise have been up to the County Council to resolve.

26. The Appellant also took issue with the application of a surcharge of 10% to the charge to CAT assessed by the Respondent. In this regard, he queried how this had been arrived at and suggested it was an example of the Respondent's ill-treatment of him.

Respondent

27. The Respondent submitted that the evidence disclosed that the Appellant had acquired a full legal and beneficial interest in numbers [REDACTED] and a half interest in number [REDACTED] for no monetary consideration from his mother. In particular, this was clear from the Deeds of Transfer that were signed by the Appellant himself. The value of the property was also clear from the stamp duty documents submitted on ROS.

28. The Respondent submitted that the Appellant had failed to produce any evidence to support his claim that the properties were acquired for full consideration. As the burden of proof rested with the Appellant, his appeals should be rejected.

Material Facts

Agreed facts

29. It was not easy to discern from the totality of the written and oral arguments made which precise facts the Appellant admitted and which were denied. However, it was clear the following was not in dispute between the parties and therefore constitute facts material to the determination of this appeal:-

- at a certain point the Appellant acquired full ownership of numbers [REDACTED];
- at a certain point the Appellant acquired a half share in number [REDACTED], [REDACTED];
- no Capital Acquisition Tax Form IT38 was filed by the Appellant in respect of these acquisitions prior to the making of the assessment of 4 October 2017 under appeal.

Contested facts

30. There was no agreement between the parties regarding the date of the purchase of numbers [REDACTED]. There also was no agreement whether monetary

consideration was paid for them. On these factual questions the Commissioner finds that the evidence shows clearly that that the property acquired by Appellant on [REDACTED] 2011 comprised [REDACTED], that the vendor was the Appellant's mother and that there was no monetary consideration in exchange for their acquisition. This is evidenced by the Deeds of Transfer, signed by the Appellant himself in the presence of a solicitor, which provide expressly that the properties were transferred in consideration of love and affection only.

31. The stamp duty returns filed with the Respondent on ROS list the value of the properties at €165,000.00 each. At the hearing of the appeal, the Appellant produced no evidence to support the claim that the transfer of the properties actually occurred in 2008 and that he paid "full cost price" for them. These were merely bare assertions which cannot not have the effect of satisfying the burden resting on him to prove the facts on which he relies in support of his appeal (in this regard see *Menolly Homes v Revenue [2010] IEHC 49* at para 22). There also was no evidence to support the Appellant's contention that the valuation of the properties in respect of which he became legally and beneficially entitled to possession was less than that specified in the stamping documents and Deeds of Transfer. The Commissioner finds as a fact that the Appellant acquired beneficial interests in the three properties with a cumulative value of €412,500.00 on [REDACTED] 2011 from his mother in consideration for love and affection.

32. In summary therefore, the following are the facts, contested by the parties, found by the Commissioner:-

- that the property acquired by Appellant on [REDACTED] 2011 comprised [REDACTED];
- the vendor of [REDACTED] was the Appellant's mother
- there was no monetary consideration in exchange for the acquisition by the Appellant of [REDACTED];
- the cumulative value on [REDACTED] 2011 of the legal and beneficial interests acquired by the Appellant in [REDACTED] was €412,500.

Analysis Based on the Facts Agreed and Found

33. Section 4 of the CATCA 2003 makes provision for a tax on gifts taken by a person. Section 5 of the CATCA 2003 provides that a person is deemed to take a gift where they become beneficially entitled to the ownership of property "*otherwise than for full consideration in money or money's worth paid...*".

34. It has already been found as a material fact that the Appellant became the sole legal and beneficial owner on 6 [REDACTED] 2011 of two properties, [REDACTED] [REDACTED], previously belonging to his mother in return for no monetary consideration. In addition, he became the joint owner of another property along with his sister, [REDACTED], also received from his mother in return for no monetary consideration.
35. The consequence of these findings is that the Appellant took a taxable gift within the meaning of section 5 of the CATCA 2003 and therefore is liable to CAT. Applying the threshold then applicable to Group "A", that being the group covering gifts from parent to child, the charge to tax on gifts with a total value of €412,500 was €19,354.00, excluding surcharge and penalties. The Commissioner finds that this sum is the principal tax owed on account of the acquisition of the gifts of beneficial interests in numbers [REDACTED] [REDACTED].
36. Finally, regarding the application of a surcharge to the Appellant's charge to CAT, the Commissioner makes the following observation. Section 53A of the CATCA 2003 is clear in its terms. A person who should have delivered a CAT return, but failed to do so on or before the appropriate specified return date is to have their amount of tax payable increased. The amount of the increase in the case of a person more than two months late with their return is 10 per cent of the tax owed (subject to a maximum increased amount of €63,485). In the Appellant's case his return was not delivered until some point in October 2017, many years late. Section 53A of the CATCA 2003 is mandatory in its terms and it is clear to the Commissioner that the circumstances for the application of a surcharge exist. It must therefore be applied.

Determination

37. The Appellant has a charge to Capital Acquisitions Tax for the period 1 September 2011 to 31 August 2012 in respect of gifts of property taken in the sum of €19,354.00, excluding surcharge and interest.
38. This appeal is determined under section 949AL of the TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Conor O'Higgins
Appeal Commissioner
7 November 2022

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. This request is currently under consideration.