



Between

██████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against assessments to Income Tax raised by the Revenue Commissioners (“the Respondent”) on 10th December 2021 for the years of assessment 2015 and 2016. The amount of tax at issue is €231,179 for 2015 and €55,940 for 2016. The Appellant makes his appeal in accordance with the provisions of section 933 Taxes Consolidation Act 1997 (“TCA 1997”).
2. The assessments relate to lodgements to bank accounts held by the Appellant and his spouse in excess of the trading income returned on his Income Tax Returns and disallowed expenses deducted against trading income.

Background

3. The Appellant, who is resident and ordinarily resident in Ireland (meaning he spends at least 183 days in the State) trades under the business name ██████████ and is assessed to income tax under Schedule D, Case I. The Appellant is jointly assessed to

income tax with his spouse and is the assessable person for the purpose of complying with tax return filings and compliance.

4. The Appellant's business is primarily the organising of [REDACTED] and the alleged sale [REDACTED] on behalf of [REDACTED] residents.
5. On 18th May 2018, the Appellant was selected for a Revenue Audit ("audit") by the Respondent. The scope of the audit was Income Tax for the years of assessment 2015 and 2016.
6. The audit took place at the Appellant's business premises with the Appellant's agent not in attendance. At the commencement of the audit, the Appellant was given the opportunity to make a "voluntary disclosure" but declined to do so. A "voluntary disclosure" is information given to the Respondent in advance of the audit commencing and ordinarily arises where the taxpayer has not reported all of their income or gains or if the taxpayer has made an error in completing their tax return.
7. At the commencement of the audit, the Respondent became aware that a complete set of books and records was not available for inspection. However, based upon the available bank statements, the Respondent highlighted discrepancies between the lodgements to the Appellant's bank accounts and the trading income returned on his tax returns for both 2015 and 2016.
8. Subsequently, further documentation was furnished by the Appellant to the Respondent and a meeting was held with the Appellant on 8th January 2020. During the course of this meeting, the Appellant was informed by the Respondent of the preliminary audit findings and requested to provide explanations of the discrepancies between the lodgements to his bank accounts and his stated turnover for the audit years.
9. As no satisfactory response was provided by the Appellant, the Respondent issued a letter to the Appellant on 13th January 2020 requesting that the Appellant provide an explanation between the lodgements and the recorded turnover. That letter also advised the Appellant that the Respondent would consider the use of its powers under section 906A TCA 1997 if there was reason to believe that the Appellant held bank accounts which he had not disclosed to them. Section 906A TCA 1997 confers powers on the Respondent to require a financial institution to provide it with information or access to books, records or other documents in relation to a taxpayer, in certain circumstances.
10. On 26th January 2020, the Appellant advised that he had suffered a sudden family bereavement and had to travel to [REDACTED] at short notice. In those circumstances, the

Appellant advised that it might be some time before he could provide a response to the Respondent's letter.

11. A further meeting was scheduled with the Appellant on 18th March 2020 but owing to the onset of Covid-19 related restrictions, that meeting was subsequently cancelled.
12. On 3rd September 2020 the Respondent again wrote to the Appellant and requested that he now reply to the contents of the letter of the 13th January 2020. The Appellant replied to this correspondence on 18th September 2020 and stated that he could not contact the agent who had compiled his accounts and prepared his 2015 and 2016 income tax returns. Within that letter, the Appellant stated that he had no knowledge of the nature of lodgements in excess of turnover for the audit period.
13. The Respondent further wrote to the Appellant on 21st October 2020 informing the Appellant that the Respondent intended to issue a notice under section 906A TCA 1997 in order to obtain missing portions of statements for bank accounts disclosed and details of any undisclosed accounts.
14. On 23rd October 2020, the Respondent was contacted by [REDACTED] [REDACTED] ("the Appellant's agent") and advised that he had been contacted to represent the Appellant in the ongoing audit of his tax affairs. The Appellant signed mandates through his agent which authorised the Respondent to receive information directly from financial institutions.
15. Upon receipt of this information from the financial institutions, further additional lodgements in excess of recorded turnover were identified. Subsequently on 17th November 2021, the Respondent requested the Appellant to provide explanations as to why lodgements into his bank account were in excess of the amount returned by him as turnover. In addition, documentation evidencing certain deductions made against the Appellant's Case I income for the audit period were requested. That correspondence informed the Appellant that if satisfactory explanations and documentation was not received by the Respondent, it would issue assessments to income tax on the Appellant.
16. As no response was received from the Appellant, the lodgements in excess of recorded turnover were assessed as Case I income. In addition "other expenses" claimed against Case I income were disallowed for the audit period as the supporting requested documentation was not provided. Notices of assessment reflecting this additional income and expenditure disallowance were issued to the Appellant on 10th December 2021.
17. The Appellant who was not in agreement with the notices of assessment lodged a notice of appeal with the Commission on 10th January 2022. The appeal was heard on 12th

December 2022 and the Appellant was represented by his agent. The Respondent was represented by two staff officials.

Legislation and Guidelines

18. The following legislation is relevant to this appeal.

Section 18 TCA 1997 – Schedule D

(1) *The Schedule referred to as Schedule D is as follows:*

Tax under this Schedule shall be charged in respect of—

(a) the annual profits or gains arising or accruing to—

...

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

...

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

Case I — Tax in respect of—

(a) any trade;

...

Section 65 – Case I and II – Basis of Assessment

(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;

...

Section 81 TCA 1997 – General Rule as to deductions

(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;*
- (c) *the rent of any dwelling house or domestic offices or any part of any dwelling house or domestic offices, except such part thereof as is used for the purposes of the trade or profession, and, where any such part is so used, the sum so deducted shall be such as may be determined by the inspector and shall not, unless in any particular case the inspector is of the opinion that having regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling house or those domestic offices;*
- (d) *any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade or profession, over and above the sum actually expended for those purposes;*
- (e) *any loss not connected with or arising out of the trade or profession;*
- (f) *any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade or profession;*
- (g) *any capital employed in improvements of premises occupied for the purposes of the trade or profession;*
- (h) *any interest which might have been made if any such sums as aforesaid had been laid out at interest;*
- (i) *any debts, except bad debts proved to be such to the satisfaction of the inspector and doubtful debts to the extent that they are respectively estimated to be bad and, in the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debts shall be deemed to be the value of any such debts;*

- (j) any average loss over and above the actual amount of loss after adjustment;*
- (k) any sum recoverable under an insurance or contract of indemnity;*
- (l) any annuity or other annual payment (other than interest) payable out of the profits or gains;*
- (m) any royalty or other sum paid in respect of the user of a patent;*
- (n) without prejudice to the preceding paragraphs any consideration given for goods or services, or to an employee or director of a company, which consists, directly or indirectly, of shares in the company, or a connected company (within the meaning of section 10), or a right to receive such shares, except to the extent—*
 - (i) of expenditure incurred by the company on the acquisition of the shares at a price which does not exceed the price which would have been payable, if the shares were acquired by way of a bargain made at arm's length,*
 - (ii) (ii)where the shares are shares in a connected company, of any payment by the company to the connected company for the issue or transfer by that company of the shares, being a payment which does not exceed the amount which would have been payable in a transaction between independent persons acting at arm's length, or*
 - (iii) of other—*
 - (I) expenditure incurred, or*
 - (II) (II)payment made to the connected company,*
by the company in connection with the right to receive such shares which is incurred or, as the case may be, made for bona fide commercial purposes and does not form part of any scheme or arrangement of which the main purpose or one of the main purposes is the avoidance of liability to income tax, corporation tax or capital gains tax;
- (o) any sum paid or payable under any agreement or understanding whereby a person is obliged to make a payment to a connected person resident in any territory outside the State for an adjustment made, or to be made, to the profits of the connected person for which relief may be afforded under the terms of an*

arrangement entered into by virtue of subsection (1) or (1B) of section 826, or for a similar adjustment made to the profits of a connected person resident in a territory in respect of which there are not for the time being in force any arrangements providing for such relief;

(p) any taxes on income.

...

Section 886 TCA 1997 – Obligation to keep certain records

(1) In this section -

“linking documents” means documents drawn up in the making up of accounts and showing details of the calculations linking the records to the accounts;

“records” includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process, relating to—

- (a) all sums of money received and expended in the course of the carrying on or exercising of a trade, profession or other activity and the matters in respect of which the receipt and expenditure take place,*
- (b) all sales and purchases of goods and services where the carrying on or exercising of a trade, profession or other activity involves the purchase or sale of goods or services,*
- (c) the assets and liabilities of the trade, profession or other activity referred to in paragraph (a) or (b), and*
- (d) all transactions which constitute an acquisition or disposal of an asset for capital gains tax purposes.*

(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.

(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.

...

(3) Records required to be kept or retained by virtue of this section shall be kept—

(a) in written form in an official language of the State, or

(b) subject to section 887(2), by means of any electronic, photographic or other process.

(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

(iii) where the transaction, act or operation is the subject of—

(I) an inquiry or investigation started by the Revenue Commissioners or by a Revenue officer into any matters to which this Act relates.

(II) a claim under a provision of this Act,

(III) *proceedings relating to any matter to which this Act relates, linking documents and records shall be retained by the person required to keep the records for the 6 year period and until such time as—*

(A) the enquiry or investigation has been completed or the claim has been determined, and

(B) any appeal to Appeal Commissioners in relation to that enquiry or the determination of that claim or to any other matter to which the Act relates, has become final and conclusive, and

(C) any proceedings in relation to the outcome of the inquiry or investigation or the determination of that claim or that appeal, or to any other matter to which the Act relates, has been finally determined, and

(D) the time limit for instituting any appeal or proceedings or any further appeal or proceedings has expired.

(aa) Where a person to whom this section applies ceases to be a person to whom subparagraph (i), (ii) or (iii), as appropriate, of subsection (2) (a) applies, that person (or such other person on that person's behalf) required to keep the linking documents and records shall keep or retain the linking documents and records notwithstanding that a period of 5 years has elapsed from the date of such cessation.

...

(3) Any person who fails to comply with subsection (2), (3), (4), (4A) or (4B) in respect of any records or linking documents in relation to a return for any year of assessment or accounting period shall be liable to a penalty of €3,000; but a penalty shall not be imposed under this subsection if it is proved that no person is chargeable to tax in respect of the profits or gains for that year of assessment or accounting period, as the case may be.

Section 959Y TCA 1997 – Chargeable persons and other persons: assessment made or amended by Revenue Officer

(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.*
- (2) *For the purpose of making an assessment in relation to a chargeable person for a chargeable period or for the purpose of amending such an assessment, a Revenue officer—*
 - (a) *may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and*
 - (b) *may assess any amount of income, profits or gains or, as the case may be, chargeable gains, or allow any allowance, deduction, relief or tax credit by reference to such statement or particular.*
- (3) *The amendment of an assessment by a Revenue officer does not preclude that Revenue officer or any other Revenue officer from further amending the assessment in such manner as he or she considers necessary.*
- (4) (a) *Where any amount of income, profits or gains or, as the case may be, chargeable gains is omitted from, or not properly reflected in, an assessment for a chargeable period or the tax stated in an assessment is less than the tax payable by the chargeable person for the chargeable period, then a Revenue officer may make such amendments to the assessment as are necessary to ensure that the assessment includes the correct amount or to ensure that the tax stated in the assessment is equal to the tax payable by the chargeable person for the chargeable period.*
 - (b) *For the purposes of paragraph (a), the amendment of an assessment by a Revenue officer may include the addition of an amount of income, profits or gains or, as the case may be, chargeable gains that is not reflected in the assessment.*

Documentation Presented to the Commission

Appellant

19. The Appellant provided the Commission with the following documentation:

19.1 A statement from the Appellant entitled “My Profile”. This document outlined the Appellant’s background in the [REDACTED] sector and how he turned his hobby of [REDACTED] into a business before embarking on his career in the [REDACTED] sector. The Appellant explained how most of his [REDACTED] were to [REDACTED] and that the culture there was “cash is king” as owing to an element of mistrust within [REDACTED] cash was the only acceptable way of conducting business whilst there. The Appellant further explained that he needed 10 [REDACTED] for his [REDACTED] to break-even and 15 or more to make a “small profit” and that he often borrowed money from friends so that he could pay up-front costs before reimbursing his friends when he sold [REDACTED]. The Appellant claimed within that document that he had 8 [REDACTED] in 2014 with a total of 55 [REDACTED] and in 2015 had 6 [REDACTED] with a total of 47 [REDACTED]. Owing to the number of attendees, the Appellant claimed to have earned a modest small profit.

The Appellant concluded his profile by stating that he also sold [REDACTED] [REDACTED] on behalf of [REDACTED] residents and that he would collect items while there with his [REDACTED] from them, source a cash buyer in Europe and bring cash back to [REDACTED] to pay the [REDACTED] customer.

19.2 A profit and loss account for the years ended 31st January 2015 and 31st January 2016 prepared by the Appellant’s agent. These accounts disclosed the following information:

Year		2016	2015
Description		€	€
[REDACTED]		103,810	134,032
[REDACTED]		451,138	618,854
		554,948	752,886
Cost of Sales		478,120	643,903
Gross Profit		76,828	108,983
Other Expenses		21,953	47,835
Net Profit		54,875	61,148

19.3 Included within the Balance Sheet annexed to that profit and loss account under the heading “Capital Funds Introduced” was the sum of €49,152.38 for 2015 and €77,365 for 2016 under the sub-heading “████████████████████”. Drawings within that account (“Capital Funds”) included the following:

Year		2016	2015
Description		€	€
Dental Expenses		3,400	3,400
Drawings (Spouse)		5,274	1,333
Drawings (Appellant)		41,000	26,804
Drawings Mortgage		47,148	26,804
Household Expenses		7,718	3,978
BOI Personal Loan		42,000	37,000
College/School Expenses		22,218	9,501
		168,758	108,820
Note - The term "drawings" refers to monies withdrawn by a sole-trader for personal use.			

Respondent

20. The Respondent produced the following documentation.

20.1 A handwritten memorandum completed by the Respondent of an undated meeting held between the Appellant and the Respondent. This document stated that:

“Frequent cash lodgements (loans) from friends. Lodged into accounts and paid back at different times usually in cash.

[The Appellant] was a sole trader. He had no professional bookkeeper or accountant as he could not afford it.

His accounts were all mixed up with different accounts.

Cash withdrawals – He often withdrew cash from accounts and brought it with him to ██████████ and paid in cash for ██████████ Withdrawals of cash were often used to pay ██████████ but can't find receipts.”

20.2 A copy of the Appellant’s original submitted income tax return for 2015. The amount of assessable Case I income shown on that tax return is €28,210. The tax return also discloses that the Appellant had drawings from the business of €9,805 and that he received payments from the Department of Social Protection in the sum of €11,911.

- 20.3 A copy of the Appellant's original submitted income tax return for 2016. The amount of assessable Case I income shown on that tax return was €30,570. The tax return also discloses that the Appellant had drawings from the business of €46,637 and that his spouse had employment income of €13,000.
- 20.4 A print out of a computerised General Ledger Account for various periods throughout 2014, 2015 and 2016. Beside the typed text on that ledger is handwritten notes which described many of the expenses as "household" and many of the cash withdrawals as [REDACTED]. This document was supplied to the Respondent by the Appellant's agent with the intent of assisting the Respondent with its calculations.
- 20.5 A print out of several nominal ledger accounts titled under various expense names. These accounts contain similar handwritten notes purporting to explain the transactions and contain a mix of personal and alleged business expenses. This document was similarly supplied to the Respondent by the Appellant's agent.
- 20.6 A listing of lodgements into a Bank of Ireland Account number [REDACTED] in the Appellants name for the period 7th February 2014 to 31st January 2015. These lodgements totalled €212,211.32 for that period and were mainly described as "transfer" or "ATM".
- 20.7 A listing of lodgements into the same Bank of Ireland account for the period 3rd February 2015 to 23rd November 2015. These lodgements totalled €42,644.53 and were mainly described as "credit transfers", "GP" and "Card in Branch".
- 20.8 A listing of lodgements into an AIB account number [REDACTED] in the Appellant's name for the period 3rd February 2014 to 30th January 2015 in the sum of €761,589.72. These lodgements were mainly described as "lodgements" or "ATM".
- 20.9 A listing of lodgements into the same AIB account for the period 12th February 2015 to 29th January 2016. These lodgements totalled €609,749.94 and were mainly described as "lodgement" or "ATM".
- 20.10 A listing of lodgements into an AIB account number [REDACTED] for the period 11th June 2015 to 14th December 2015. These lodgements totalled €5,506.50 and were mainly described as "ATM lodgement" or "INET –Current".

- 20.11 A listing of lodgements into the same AIB account for the period 5th September 2016 to 9th November 2016. These lodgements totalled €1,760 and were mainly described as "Lodgement".
- 20.12 A listing of lodgements into a Bank of Ireland Account number [REDACTED] for the period 2nd October 2015 to 21st December 2015. These lodgements totalled €39,860.20 and were mainly described as "wages" and "[REDACTED]".
- 20.13 The Respondent's calculations of the Appellant's revised Income Tax assessments. For 2015 the Respondent took the sum of the lodgements to the Appellant's various bank accounts for 2015 and from that figure deducted the amount returned by the Appellant in his financial statements for 2015. That differential figure was then added to the amount originally assessed on the Appellant to give revised Case I income of €357,319. In addition, the Respondent reduced the Appellant's claimed Case I expenses of €106,269 for 2015 and reduced this figure to allowable expenses of €20,000 and added the differential to the Appellant's Case I figure to give a revised Case I figure assessable figure of €443,587. The corresponding figures for 2016 were €41,245 for the differential between 2016 lodgements and 2016 recorded turnover, claimed expenses of €86,864 reduced to an allowable figure of €20,000 and revised assessable Case I income of €139,123. The Respondent subsequently calculated the Appellant's liability for the period under appeal and deducted the income tax paid by the Appellant in accordance with the liability on his original submitted tax returns. These figures gave rise to the figures under appeal, chiefly €231,179 for 2015 and €55,940 for 2016.
- 20.14 The Appellant's "original" signed accounts for the years ended 31st January 2015 and 31st January 2016 prepared by his previous agent who was a qualified accountant. Those accounts derived the figures used by the Appellant in completing his income tax returns submitted in 2015 and 2016 and which were submitted to the Respondent in advance of the audit commencing. The accounts disclosed drawings of €46,637 for 2016 and €9,805 for 2015 and further contained the following figures:

	2016	2015
	€	€
██████████	654,900	651,893
██████████	503,606	502,852
Gross Profit	151,294	149,041
Less: Expenses		
Printing, Postage & Stationery	1,069	960
Motor & Travel	10,416	10,116
██████████	300	300
Advertising	3,153	2,662
Light & Heat	6,355	7,887
Telephone & Internet	6,884	6,740
Bank Interest & Charges	2,614	2,684
Salaries	18,974	18,974
Accountancy	1,500	1,500
Sundry Expenses -	-	68,414
Rent	20,000	
Insurance	1,920	
Rates	3,314	
██████████	401	
Alarm	562	
██████████	40,579	
Computers	1,252	
Loan Interest	56	
Repairs	712	
Waste	219	
Depreciation	444	536
Total Expenses	120,724	120,773
Net Profit	30,570	28,268

Submissions

Appellant

21. The Appellant's agent submitted that the additional amounts of Schedule D, Case I income assessed by the Respondent for 2015 in the amount of €414,784 and for 2016 in the sum of €108,109 were derived by the Respondent "*arbitrarily increasing the Appellant's turnover by €328,515 in respect of 2015 and €41,245 for 2016 and by reducing claimed expenses by €86,269 in 2015 and €66,864 in 2016*".
22. The Appellant's agent submitted that these assessable figures were not realistic as the Appellant had informed him that he made a 10% margin on his ██████ income, 2% on the sale of ██████████ and that he only made a "small commission" on the sale of ██████████. The Appellant's agent submitted given this position on a "*macro*

overview” it was “just not possible or in any way commercial to extrapolate gross profit” of the amounts computed by the Respondent for 2014 and 2015 respectively.

23. The Appellant’s agent further submitted that he had posted up all the bank entries onto a bookkeeping system for the two years ended 31st January 2015 and 31st January 2016 and from that information he extracted what he believed, following discussion with the Appellant, was the assessable figures for 2015 and 2016. Those figures were calculated as follows:

Year		2016	2015
Description		€	€
		103,810	134,032
Less: Cost of Sales		93,429	120,629
Gross Profit - 10%		<u>10,381</u>	<u>13,403</u>
		451,138	614,854
Less: Cost of Sales		442,115	602,557
Gross Profit - 2%		<u>9,023</u>	<u>12,297</u>
Amended Gross Profit*		<u>19,404</u>	<u>25,700</u>
*Based on a realistic view of results from the 2015 and 2016 activities.			

24. In conclusion, the Appellant’s agent submitted that the Respondent’s assessments were flawed, exaggerated and incorrect and the Commission should in place assess the Appellant on the figures prepared by him based upon his “realistic view of the Appellant’s trading activities”. In those circumstances, the Appellant’s agent submitted that the Commission should allow the Appellant’s appeal by reducing the Respondent’s assessments to the more “reasonable figures” advanced by him.

Respondent

25. The Respondent submitted that it identified lodgements in accounts held in the name of the Appellant and his spouse for the periods under appeal which were in excess of the stated traded income for those periods. The Respondent further submitted that despite the Appellant being requested multiple times to provide explanations for these excess lodgements, he failed to do so.
26. The Respondent stated absent any explanation, it treated the unexplained excess lodgements as taxable income under Schedule D, Case I. The Respondent submitted that as its calculations were based upon a careful and thorough analysis of the Appellant’s bank statements then those additional taxable income figures should be upheld by the Commission.

27. The Respondent further submitted that as the Appellant failed to produce any or any adequate documentation to verify the expenses he claimed in his financial statements for the periods under appeal, then those expenses ought to be reduced to a “reasonable figure”, which in the Respondent’s opinion was €20,000 for each year under appeal.
28. The Respondent stated that despite the Appellant’s agent preparing revised financial statements for the periods under appeal after it raised its assessments, it was unable to verify the figures contained within these financial statements as no vouching documentation was provided with them. The Respondent submitted that as no evidence was provided by the Appellant, then the Commission should disregard that information in determining the Appellant’s appeal and in place rely on the workings it had prepared.
29. In conclusion, the Respondent submitted that as the Respondent’s assessable figures for the period under appeal were obtained from a careful examination of the Appellant’s own books and records, then the liabilities calculated by the Respondent as evidenced in the supplied folders of source documentation ought to be upheld by the Commission.

Material Facts

30. The Commissioner finds the following material facts:-
 - 30.1. The Appellant is resident and ordinarily resident in Ireland.
 - 30.2. The Appellant was jointly assessed with his spouse for Income Tax purposes for the periods under appeal.
 - 30.3. The Appellant was engaged in the trade of selling [REDACTED] and in the alleged sale of [REDACTED] on behalf of [REDACTED] residents for those periods.
 - 30.4. The alleged sale of [REDACTED] was conducted in Ireland and other European countries.
 - 30.5. The Appellant’s Income Tax return for 2015 and 2016 did not disclose any trade in respect of [REDACTED] nor any income or expenditure in respect of that trade.
 - 30.6. The Appellant did not maintain proper books of account.
 - 30.7. The Appellant in his original submitted Income tax returns disclosed gross income of €654,900 in 2016 and €651,893 in 2015.
 - 30.8. The Respondent conducted a review of lodgements for the periods under appeal into bank accounts owned by the Appellant and his spouse. This analysis

concluded that the Appellant's lodgements for the periods under appeal were more than the figures returned by the Appellant as gross income for those years.

30.9. The Appellant failed to provide the Respondent with explanations explaining why lodgements into bank accounts owned by him and his spouse were in excess of the gross income figures returned as sales in his 2015 and 2016 Income Tax returns.

30.10. A substantial amount of the lodgements into the Appellant's bank account did not provide any or any significant detail on the source of those lodgements.

30.11. Much of the Appellant's purported business expenses were allegedly paid by cash and limited receipts for expenditure was made available to the Respondent or the Commission.

30.12. In the second set of financial statements prepared by the Appellant's new agent drawings ("private expenditure") were recorded in the sum of €168,758 in 2016 and €108,820 in 2015.

30.13. Those financial statements also included as monies received under the heading "Capital Funds Introduced" €77,365 for 2016 and €49,152 for 2015 under the description "████████████████████".

30.14. Within the Appellant's original submitted tax returns, he disclosed the sum of €46,637 for 2016 and €9,805 for 2015 in respect of private expenditure.

30.15. The Appellant's assessable Case I income was disclosed on his tax return for 2016 in the sum of €30,570 and €28,210 for 2015.

30.16. The evidence provided by the Appellant was unreliable for a number of reasons which included informing the Respondent at the interview that he did not have an accountant or bookkeeper despite his submitted income tax returns being prepared by an accountant and within the document entitled "My Profile" stating that he had a "modest income" in contrast to the significant sums withdrawn from his business for private expenditure.

Analysis

31. In appeals before the Commission, the burden of proof rests with the Appellant who must prove on a balance of probabilities that the assessments or tax deductions are incorrect. In the case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49 (*"Menolly"*), at paragraph 22 Charleton J. stated:

'The burden of proof in this appeals 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.'

32. The decision in *Menolly* is consistent with authorities in England and Wales, such as *Hurley v Taylor (Inspector of Taxes)* ChD, 10th February 1998 which is persuasive authority that on appeal of an "in-time" assessment the burden of proof rests with the taxpayer. In *Eagerpath Limited v Edwards (Inspector of Taxes)* CA 14th December 2000, the UK Court of Appeal held:

'On appeal to the commissioners the burden of proof is on the appellant taxpayer because the taxpayer can be expected to know all about his own financial affairs, whereas the inspector may have little or no knowledge about them apart from the taxpayer's return.'

33. The provisions of section 886 TCA 1997 further require taxpayers such as the Appellant to maintain proper records which correctly record and explain the transactions of his business.
34. It follows that 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 but also to produce such documentation as may be required in support of his appeal so as to meet the burden of proof.
35. As the Appellant did not keep the records required under section 886 TCA 1997, it follows that the assessments issued by the Respondent should not be vacated by the Commission subject to the quantum of those assessments being determined in accordance with the provisions of section 959Y TCA 1997.
36. In the Appellant's submissions to the Commission and during the course of the appeal hearing, the Appellant made submissions that he only made a "modest small profit" and that the Respondent's assessments were "flawed, exaggerated and incorrect". The Commissioner notes that much of the information and documentation submitted by the Appellant was inconsistent and not credible such as the submissions that his earned income was at the level he submitted it was despite the fact that it was incapable of supporting the level of substantial drawings recorded as being withdrawn from the business for both 2015 and 2016 (see sub-paragraph 19.3 above) and the number of █████ allegedly provided in 2015 (6 █████ with 47 participants) which based upon the Appellant's own figures (as per his "second set" of financial statements and ignoring the

lodgement differentials) would result in each participant paying an unlikely average of €16,019 for [REDACTED] (€752,886 divided by 47 [REDACTED]).

37. In addition to this lack of credibility the Appellant submits that the Commissioner should disregard the provisions of section 886 and section 81 TCA 1997 and base his income tax assessments upon “margin estimates” or “scribbled notes” in a nominal ledger which purports that much of the income lodged into the Appellant’s bank accounts being “loans from family and friends” or suchlike is not taxable income and much of the cash withdrawals are legitimate business expenses. As there is no basis in law for these submissions, the Commissioner disregards the Appellant’s submissions in entirety instead preferring the verifiable documentation submitted by the Respondent. It therefore follows that the Commissioner is required to uphold the Respondent’s assessments subject to the quantum of those assessments being calculated by the Respondent on a “reasonable judgment basis” in accordance with the provisions of section 959Y (1) (a) TCA 1997.

38. In relation to the additional income assessed on the Appellant, the Commissioner notes that the Respondent conducted the following calculations:

	2016	2015
	€	€
Sum of Lodgements		
to Appellant's bank accounts	696,145	980,407
Less: Turnover per tax return	654,900	651,893
Sum treated as additional		
Unrecorded Turnover	41,245	328,514

39. It should be noted that as the Appellant’s financial year end is 31st January, in accordance with the provisions of section 65 TCA 1997, the Appellant is assessed based upon the relevant 31st January year-end falling in the relevant tax year. Thus, in 2016 the Appellant was assessed on his income for the accounting period ended 31st January 2016 and for 2015 on the accounting period ended 31st January 2015. In compliance with this requirement, the Commissioner notes that the Respondent correctly calculated and compared the Appellant’s turnover and lodgements for the periods under appeal.

40. However, in noting that the Respondent did not reduce the Appellant’s lodgements by the amount of non-trade income for the years under appeal, the Commissioner directs that the Appellant’s turnover be reduced by €13,000 in 2016 and €11,911 for 2015.

These figures represent the amount of Schedule E income returned by the Appellant for those years and if not deducted from the Appellant's turnover would result in a misclassification of those figures.

41. Having adjusted the Appellant's income for 2015 and 2016 by the amount of the excess lodgements, the Respondent proceeded to review the expenses claimed by the Appellant in his financial statements for those years. In noting that the Appellant claimed the sum of €106,629 in 2015 and €86,864 in 2016, and as the Appellant had not provided the Respondent with any vouching documentation, the Respondent sought to reduce these expenses to €20,000 for each of the years of assessment 2015 and 2016. The effect of this reduction would be to increase the Appellant's assessable income for 2015 in the sum of €86,629 and €66,864 for 2015.
42. The Commissioner notes from the Appellant's evidence that he asserts he brought ██████ and similar items into the State and sold these for a "small commission" on behalf of ██████ residents. However, as no credible evidence was presented to the Commission to substantiate this claim, such as customs declarations or similar documentation, the Commissioner is unable to lend any weight to these submissions and in place finds that the Appellant is involved in the single trade as that of a ██████. The Commissioner therefore finds that the Appellant is not permitted any allowance or deduction from this alleged trade of ██████ and similar type sales.
43. Furthermore, as the Appellant conducted the majority of his banking transactions in cash and maintained limited accounting records, the Commissioner is unable to permit the Appellant any additional deduction for expenses aside from that provided by the Respondent, subject to the allowance granted by the Respondent being considered reasonable.
44. In making such a finding, the Commissioner is required to consider the provisions of section 959Y (1) (a) TCA 1997 which requires that the assessments issued by the Respondent were computed using the Respondent's "best judgment". The Commissioner notes that the following table represents the Appellant's revised adjusted Case I income and expenses, after adjusting the figures originally returned by the Appellant by the adjustments sought by the Respondent:

	2016	2015
	€	€
Revised Turnover	696,144	980,407
Less: Cost of █████	503,606	502,852
Revised Gross Profit	192,538	477,555
Other Expenses Allowed	20,000	20,000
Revised Assessable Case I	172,538	457,555

45. The Commissioner notes that the Appellant originally claimed the sum of circa €120,000 for each of the years 2015 and 2016 in "other expenses" as detailed in sub-paragraph 20.14 of this determination. In reviewing those expenses and having regard to the net result of the Respondent's adjustments the Commissioner considers it more reasonable to adjust the sum for "other allowable expenses" from the €20,000 proposed for each year by the Respondent to €35,000 for 2016 (in noting that the Appellant's spouse was employed by the Appellant for that year on a salary of €13,000) and for 2015 to the sum of €120,000 having regard to the significant turnover reported for that year.

46. The Commissioner therefore directs that the Appellant be assessed to income tax for the periods under appeal as follows:

	2016	2015
	€	€
Case I Income per Respondent	172,538	457,555
Less; Adjustment for other income	13,000	11,911
	159,538	445,644
Other "Additional" Expenses Allowed	15,000	100,000
Revised Assessable Case I	144,538	345,644

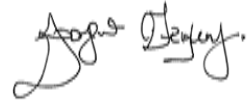
47. In addition to those Case I figures the Appellant is to be assessed on the Schedule E income of €13,000 for 2016 and €11,911 for 2015 as returned in his original tax returns for those years. From the recalculated liabilities, the Appellant is to receive credit for income tax paid for those years, in the sum of €969 for 2016 and €3,090 for 2015.

Determination

48. The Commissioner determines that the assessments to Income Tax be recalculated with reference to adjusted Case I income of €144,538 for 2016 and €345,644 for 2015 and to Schedule E income for those years in the additional sum of €13,000 for 2016 and €11,911

for 2015. In addition to the Appellant's tax credits, the Appellant is entitled to credit for the amount of tax paid by him which amounts to €969 for 2016 and €3,090 for 2015.

49. The appeal is determined in accordance with section 949AK 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 only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
12th April 2023

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