



THE COURT OF APPEAL

Neutral Citation Number: [2017] IECA 264

Record No. 2016/581

Finlay Geoghegan J.  
Irvine J.  
Hogan J.

BETWEEN/

THE REVENUE COMMISSIONERS

APPELLANTS

- AND -

THOMAS COLLINS

RESPONDENT

**JUDGMENT of Mr. Justice Gerard Hogan delivered on the 19th day of October 2017**

1. This appeal raises the question of whether the annual non-principal private residence charge ("NPPR") is a deductible expense as against rental income for income tax purposes. This arises in the present case because the respondent taxpayer, Mr. Thomas Collins, is the owner of six rental properties to which the NPPR charge was applicable. In the tax year 2009 he had paid the NPPR charge, being €200 per each property. Mr. Collins then sought to deduct the sum of €1,200 against rental income received under s. 97(2)(b) of the Taxes Consolidation Act 1997 ("the 1997 Act"). The net issue in this appeal is whether these charges are so deductible.

2. The appeal originally came before the High Court by way of case stated from the Appeal Commissioners. The question for the Court to determine is as follows:

"Whether the Non-Principal Private Residents charge (hereinafter referred to as the "NPPR charge") chargeable pursuant to the Local Government (Charges) Act 2009 is deductible against rental profits under s. 97(2) of the Taxes Consolidation Act 1997 (hereinafter referred to as "the TCA 1997") as being "any rate levied by a local authority".

3. In the High Court Reynolds J. answered this question in the affirmative: see *Revenue Commissioners v. Collins* [2016] IEHC 748. The Revenue Commissioners have now appealed to this Court against that decision.

4. The NPPR charge was in some respects a forerunner to the more general form of property tax which has now replaced it. The point raised in the case stated is nonetheless of some general importance since, as we were informed at the hearing, where there are several other cases awaiting the outcome of this appeal.

5. The NPPR charge was introduced by the Local Government (Charges) Act 2009 ("the 2009 Act") and the Act itself was commenced by statutory instrument on the 24th July, 2009. The charge was introduced as an imposition on the owners of all residential properties other than the taxpayer's principal private residence. The charge thus applied to second homes such as holiday homes and rental properties. As I have already indicated, the only issue, therefore, which this Court is required to determine is whether the NPPR charge should be allowed as a deductible expense from rental profits.

6. It is accepted that the NPPR was introduced for the purpose of assisting local authorities to fund local services. An annual charge of €200 per property applied from 2009 to 2013 in respect of residential property which was not the taxpayer's only or main residence for those years. The charge was collected by each local authority and retained by the local authority for its use. To that extent, therefore, the 2009 Act sought to address a perceived funding deficit for local authorities caused in part by the abolition of domestic rates in 1978 by the Local Government (Financial Provisions) Act 1978. For the reasons I am about to state, however, that does not mean necessarily mean that the NPPR should be regarded as a "rate levied by a local authority" within the meaning of s. 97(2)(b) of the 1997 Act. Before considering that issue, however, it is first necessary to set out the relevant legislation.

**The relevant legislation**

7. Section 1 of the 2009 Act provides that the word "charge" has the meaning assigned to it by s. 3(1) and (2). The section provides as follows:

"3(1) A person who, on such date (in this Act referred to as the "liability date") falling in the year 2009 as is prescribed, is the owner of a residential property shall be liable to pay the sum of €200 (in this Act referred to as a "charge") to the relevant local authority.

(2) A person who, on 31 March (in this section also referred to as the "liability date") of each year subsequent to the year 2009, is the owner of a residential property shall be liable to pay the sum (in this Act also referred to as a "charge") specified in subsection (3) to the relevant local authority."

8. While s. 3 prescribed an annual charge of €200, s. 3(5) envisaged that the amount of the charge might be varied by ministerial order having regard to changes in the consumer price index:

"(5) The Minister may from time to time review the amount of the charge in subsection (2) and, having regard to any change in the consumer price index since the amount of the charge was last specified or prescribed under this section, prescribe a revised amount as the Minister considers appropriate, and that amount shall have effect for and from the next liability date until further varied."

9. Section 97(2) of the 1997 Act (as amended) provides for the deductibility of certain expenses from gross rental income for income

tax purposes as follows:

"(2) The deductions authorised by this subsection shall be deductions by reference to any or all of the following matters:-

(a) the amount of any rent repayable by the person chargeable in respect of the premises or in respect of part of the premises;

(b) any sums borne by the person chargeable:

(i) in the case of a rent under a lease, in accordance with the conditions of the lease, and

(ii) in any other case, relating to and constituting an expense of the transaction or transactions under which the rents or receipts were received,

in respect of any rate levied by a local authority, whether such sums are by law chargeable on such person or on some other person...."

### **The determination of the Appeal Commissioner**

10. The matter was originally heard by the Appeal Commissioner on 9th May 2013. The Commissioner found for the taxpayer in a written determination issued on 21st October 2013. In his determination the Commissioner concluded as follows:

"The NPPR charge is a rate levied by a local authority: the amount of €200 is a fixed rate per applicable premises and that the amount is levied or collected by the relevant local authority. The charge amount is set out in the Local Government (Charges) Act 2009 and in this it results from a different process from that employed by a local authority in setting the annual rates as part of the annual budgeting process.

However, this difference does not, in my determination, deny the NPPR charge to be regarded as a open "rate"; section 97(2) TCA 1997 does not restrict the meaning of a rate to that applicable to the budgeting process of local authorities set out above, the phrase used is "any rate levied by a local authority" and I have concluded that the ordinary meaning of that phrase includes the charge. The appellant is therefore entitled to a deduction of €200 in respect of the NPPR charge for each of the six residential properties claimed under s. 97(2) TCA 1997 in respect of 2009."

11. The matter was then the subject of a case stated to the High Court.

### **The judgment of the High Court**

12. In her judgment Reynolds J. noted that there was no definition of what constituted a "rate" for the purposes of s. 97(2)(b) of the 1997 Act. She concluded that as this funding mechanism was designed exclusively for the benefit of local authorities it would be artificial and contrived not to hold that the charge amounted to a rate levied by a local authority for this purpose. On this point she said:

"It is clear from the legislation underpinning the NPPR that the charge is constructed in a way expressly designed to ensure that the revenue achieved is attributable entirely to the local authority. It mandates that the collected funds are steered in one direction only - locally and away from central government. To conclude in these circumstances that the charge is in reality a national one, as contended by the appellants, would be contrived and artificial and contrary to the intent of the statute (namely, the Local Government (Charges) Act 2009). The legislature is the architect of a framework specifically engineered to ensure the resulting revenue stream flows directly into the coffers of the local authority. If anything, central government is deliberately bypassed to allow local authorities to be the collectors of the generated proceeds and are indeed empowered to prosecute defaulters. The government's involvement is effectively to design and sign off on a system which takes it out of the loop and distances itself from what to all intents and purposes is a tax or charge levied by the local authority.

Where there is no definition of the word "rate" or "levy" in the Taxes Consolidation Act, 1997 the Court must look to the ordinary meaning of the phrase "any rate levied by a local authority". Clearly the use of the word "any" suggests that the provision was not limited to a particular category of a rate but was providing prospectively for rates which might be contemplated by the legislature at some point in the future.

In interpreting the provisions of the statute, the Court is guided by the principles set down in the *Inspector of Taxes v. Kiernan* [1981] I.R. 117. Clearly this is a legislative provision directed at the public at large and therefore the phrase "any rate levied by a local authority" must be given its "ordinary or colloquial meaning". The test to be applied is that which "an ordinary member of the public would intend it to have when using it ordinarily". I am satisfied that ordinary or colloquial meaning includes the NPPR charge. In the circumstances, I must answer the question in the affirmative."

### **The meaning of the phrase "...any rate levied by a local authority...."**

13. The appeal accordingly reduces itself to the single question of whether the NPPR charge is a rate levied by a local authority. The current rating system has its origins in pre-Famine and post-Famine Victorian legislation, namely, the Poor Law (Ireland) Act 1838 and the Valuation (Ireland) Act 1852 prior to the enactment of modern legislation such as the Valuation Act 1988 and the Valuation Act 2001. It is true that, historically, the rating system amounted to a form of annual *ad valorem* charge on immoveable property and, in the context of commercial rates, industrial plant and machinery. The amount of this *ad valorem* charge was left to the local authority itself whose task it was to fix or strike the rate for coming financial year.

14. In my view, it is unnecessary to decide for present purposes whether the NPPR charge might amount to a rate in this sense, because even if that were so, it could not be said that the NPPR charge has been "levied" by a local authority within the meaning of s. 97(2)(b) of the 2009 Act. As the Long Title to the 2009 Act itself recites and s. 3 of the 2009 Act clearly provides, the NPPR charge was imposed by legislation enacted by the Oireachtas. It was an autonomous decision taken by the Oireachtas which itself fixed the amount of the charge, albeit that the proceeds of the charge were intended for the benefit of local authorities. But local authorities were given no power to vary or review the charge, since s. 3(5) of the 2009 Act reserves this power to the Minister for Local Government alone.

15. As Reynolds J. observed in her judgment, the Supreme Court has made it clear that in the case of the interpretation of legislation

such as this which is addressed to the members of the general public, the word or phrase in question should be "given the meaning which an ordinary member of the public would intend it to have when using it ordinarily": see *Inspector of Taxes v. Kiernan* [1981] I.R. 117, 122, *per* Henchy J. I consider that the word "to levy" would be understood in this context by members of the general public as the power to impose or to raise a charge.

16. In *Kiernan* Henchy J. further suggested that in approaching this question of interpretation a judge should normally draw on his or her "own experience of its use", such that dictionaries "should be looked at when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning." While there can really be no doubt as to the meaning of the words "to levy" in ordinary modern usage, this can, in any event, be independently confirmed by dictionary definitions.

17. The verb to levy has accordingly been defined as the power "to impose a tax, fee or fine": see *Concise Oxford Dictionary* (1990) (8th ed). The word has etymological roots in the Latin *levare* and the French *lever*, namely, to raise. In passing, it is perhaps interesting to note that Article 22.1.2 of the Constitution excludes from the definition of a Money Bill "...any taxation...raised by local authorities or bodies for local purposes". Article 22.1.2 thus envisages that local authorities can have a role in raising taxes for local purposes and the levying of rates by local authorities was the traditional method whereby this was done.

18. But, to repeat, the 2009 Act does not fall into this category of local taxation raised by a local authority for local purposes. The 2009 Act rather represents instead a form of charge imposed by statute by the Oireachtas. Local authorities were given no role in determining whether to raise such charge or to determine or even to vary the amount that would be levied on each taxpayer. On any view, therefore, on the ordinary meaning of the words contained in s. 97(2)(b) of the 1997 Act, the NPPR charge was not one which was "levied" by a local authority. Since this latter requirement is a pre-condition for satisfying the deductibility provisions of s. 97(2)(b) of the 1997 Act, it is plain that the taxpayer's claim for a deduction on this ground must accordingly fail.

19. Counsel for the taxpayer, Mr. Mooney, contended strongly that the sub-section must be interpreted by reference to the presumption against double taxation. It is, I think, sufficient to say in response to this submission that the issue of double taxation simply does not arise, because the NPPR is charge in respect of *property*, whereas the 1997 Act provides for a tax on *income*. There is, accordingly, no question of double taxation in respect of the taxpayer's income.

### **Conclusions**

20. In conclusion, therefore, since I am of the view that as the NPPR charge is not a charge which has been "levied" by a local authority, the taxpayer cannot bring himself within the scope of the deductibility provisions of s. 97(2)(b) of the 1997 Act. I would therefore allow the appeal and answer the question posed in the case stated in the negative.