

THE HIGH COURT

[2014 No. 709 J.R.]

BETWEEN

JAMES DOYLE

APPLICANT

AND

JUDGE HICKSON AND THE REVENUE COMMISSIONERS

RESPONDENTS

JUDGMENT of Mr. Justice Barr delivered on the 6th day of May, 2016

1. This case concerns the operation of the Waiver of Certain Tax, Interest and Penalties Act, 1993. The central issue arising for the court's determination is whether, pursuant s. 5 of the 1993 Act, the production of a certificate issued by the Chief Special Collector under s. 2(4)(a) of the 1993 Act ("the certificate") in response to a particular enquiry by the Revenue Commissioners, within 30 days of the commencement of such enquiry, precludes all further enquiries in respect of the period covered by the certificate; or whether further enquiries may be commenced by the Revenue Commissioners, thereby necessitating the holder of the certificate to produce the certificate in response to each subsequent enquiry. As such, this case comes down to a net point of statutory interpretation.

Extension of time

2. Before turning to the substantive issues raised by the applicant, it is necessary to first deal with his application to extend time within which to initiate these proceedings.

3. The ruling of the Circuit Court which is impugned by the applicant in this case was made on 9th April, 2014; the applicant's *ex parte* application for leave to seek judicial review, however, was not made until 24th November, 2014. This was outside the three month time limit laid down by Order 84, rule 21, of the Rules of the Superior Courts (as amended by S.I. No. 691 of 2011) which provides as follows:

"21. (1) An application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose.

(2) Where the relief sought is an order of certiorari in respect of any judgement, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgement, order, conviction or proceeding.

(3) Notwithstanding sub-rule (1), the Court may, on an application for that purpose, extend the period within which an application for leave to apply for judicial review may be made, but the Court shall only extend such period if it is satisfied that:—

(a) there is good and sufficient reason for doing so, and

(b) the circumstances that resulted in the failure to make the application for leave within the period mentioned in sub-rule (1) either—

(i) were outside the control of, or

(ii) could not reasonably have been anticipated by the applicant for such extension."

4. The applicant avers that the reason for his delay in bringing the within application was due to the deterioration of his relationship with his solicitor following the Circuit Court hearing on 9th April, 2014. He stated that in June 2014 his son, Neil Doyle, collected the relevant file from the applicant's former solicitors. This file of papers contained advices of counsel dated 10th April, 2014, which informed the applicant of his right to bring a judicial review of the decision of the Circuit Court and the time limits within which to bring such an action. However, the applicant stated that by the time he had read these advices, he was out of time to bring an application for judicial review. The applicant averred that he always had the intention of appealing and reviewing the decision of the Circuit Court but that due to "*mistakes and errors and miscommunications, as set out above and not predominantly due to fault by myself, the time expired...*" He therefore asked the court to grant an extension of time.

5. The respondents opposed the applicant's application for an extension of time. It was submitted that the applicant failed to proffer any explanation for the delay in progressing matters from the time he received the advices of counsel in June 2014 until November 2014, when the proceedings were finally instituted. The respondent submitted that it was clear from the observations in the textbook, "*Civil Procedure in the Superior Courts*", 3rd ed., by Delaney and McGrath, that the new rules require much stricter adherence to time limits for judicial review and that even where the court, on an *ex parte* application, has granted an extension of time, as happened in this case, it is still a proper matter for the court on the application for judicial review to consider and have regard to. The learned authors state as follows at para. 30-36:

"Even if leave is granted on the basis that any delay is not such as to disentitle the applicant from seeking judicial review, the issue of delay may still be raised at the hearing of the substantive application and may debar an applicant from obtaining relief at this stage."

6. In this regard, reference was made to the judgment of Hederman J. in *O'Flynn v. Midwestern Health Board* [1991] 2 IR 223 where he stated, at p. 236:

"Even if leave is granted at the ex parte stage, nonetheless, when the trial judge comes to hear the matter he must adjudicate upon whether the delay was reasonable and such as may be excused or not."

7. Order 84, rule 21(3) makes it clear that the court shall only grant an extension of time if it is satisfied that there is good and sufficient reason for doing so, and that the circumstances which resulted in the failure to make the application within the time limits were either outside the applicant's control or could not reasonably have been anticipated by the applicant.

8. In this regard, I note the *dictum* of Costello J. in *O'Donnell v. Dún Laoghaire Corporation* [1991] ILRM 301 at p. 315:

"The phrase 'good reasons' is one of wide import which it would be futile to attempt to define precisely. However, in considering whether or not there are good reasons for extending the time I think it is clear that the test must be an objective one and the court should not extend the time merely because an aggrieved plaintiff believed that he or she was justified in delaying the institution of proceedings. What the plaintiff has to show (and I think the onus under Order 84, rule 21 is on the plaintiff) is that there are reasons which both explain the delay and afford a justifiable excuse for the delay."

9. I am of the view that the applicant has provided a justifiable excuse for the delay that occurred from the point at which he avers to having received the file containing the advices of counsel in June 2014, and his eventual initiation of proceedings in November 2014, some seven months after the decision of the Circuit Court.

10. In circumstances where the applicant had received an adverse finding against him in the Circuit Court and where he subsequently fell out with the solicitor who represented him at that hearing, I accept his excuse that he had corresponded with the Appeals Commissioners in relation to bringing an appeal against the Circuit Court decision and was told that he could proceed by way of an application for a case stated or proceed by way of judicial review. He submitted his own handwritten application to the County Registrar seeking to have a case stated on 24th April, 2014. Thus I am satisfied that the applicant did not sit back and do nothing.

11. While the applicant did receive his file from his former solicitor in June 2014, he was essentially a lay litigant at that stage. I accept that he did not retain the services of his present solicitor, Mr Brannigan, until 7th October, 2014. It was only then that the applicant became aware of the difficulties in proceeding by way of judicial review. He acted with considerable speed in retaining the services of counsel to draft the necessary documentation. The *ex parte* application was moved on 24th November, 2014.

12. I am satisfied that in these circumstances, the applicant has established good and sufficient reason for extending the time within which he be allowed to bring this application. I am further satisfied that after the breakdown of relations with his former solicitor, it was essentially beyond the applicant's control to institute the within proceedings within the statutory time limit.

13. Accordingly, I think that it is reasonable to extend the time up to and including 24th November, 2014, to bring this application for judicial review.

Background to the substantive claim

14. The applicant was born on 3rd June, 1941. He has been a farmer all his life, and currently farms 164 acres of land in Co Waterford. He availed of the so-called tax amnesty under the 1993 Act and obtained a certificate on 1st July, 1994, from the Chief Special Collector under s. 2(4)(a) of the 1993 Act. The applicant averred that this applies to all taxes up to and including 1991/1992. The certificate is in the following terms:

"No. 033568

CERTIFICATE

(Under section 2(4)(a) of the Waiver of Certain Tax, Interest and Penalties Act, 1993)

I CERTIFY THAT

In relation to JAMES DOYLE

of BAYLANDS, CAMOLIN, COUNTY WATERFORD

(1) I have received the declaration and the settlement amount referred to in section (2)(3) of the Waiver of Certain Tax, Interest and Penalties Act, 1993;

(2) The settlement amount paid was £124.20

(amount in words) One hundred and twenty four pounds and 20 p

(3) The respective amounts of the declared amounts were:

Income £828.00

(amount in words) Eight hundred and twenty eight pounds only.

Chargeable gains £-----

(amount in words) -----

[Signed] Susan Cummins

PP (Special Collector)"

15. In response to a telephone call from the applicant, the Revenue Commissioners, by letter dated 25th May, 2001, informed the applicant of the arrears of tax on his record for the years 1985-1999. Having set out the relevant figures, the letter states:

"I note that you referred to the amnesty in your telephone conversation. If you made a return to the Chief Special Collector you should have received a form of evidence for production to the Collector General in respect of all years to 1991/92 inclusive. Please clarify this matter."

16. The applicant averred that he was threatened with legal action by the Revenue Commissioners in respect of arrears of tax from the years 1985/1986 and 1998/1999, but that on production of the amnesty certificate, which was accepted by the Revenue Commissioners, and the payment of €4,000.00, the matter was fully settled. It should be noted that the respondents deny that the applicant produced the amnesty certificate in 2001. In any case, on 2nd August, 2001, the applicant received a further letter from the Revenue Commissioners acknowledging receipt of a cheque for the sum of £4,000.00 in full and final settlement of income tax arrears from 1991/1992 to 1996/1997. The May 2001 investigation was therefore concluded.

17. It is common case that in 2005 the Revenue Commissioners launched an investigation into life assurance products. As part of that investigation, an incentive disclosure was offered to taxpayers whereby voluntary disclosure by the taxpayer gave rise to certain benefits, including reduced penalties.

18. On 18th May, 2005, the applicant submitted a qualifying disclosure in respect of tax defaults to the Revenue Commissioners' Underlying Tax (Insurance Products) Project. These defaults were stated to be in respect of earnings between 1954 and 1980, which amounted to around £100,000.00, and which had been invested in a life assurance product. It is common case that £57,000.00 was invested on 1st July, 1991, and a further £42,775.00 was invested on 28th February, 1994. The applicant's accountants informed the Revenue Commissioners that this income had been earned from farming activities prior to 1980, at a time when the applicant was not liable to pay income tax in respect of farming income.

19. By letter dated 18th October, 2006, the applicant was informed that his submission under the Life Assurance Product(s) Qualifying Disclosure Scheme had been referred to the Revenue Commissioners and had been selected for examination in accordance with para. 10.2 of the Code of Practice for Revenue Audits.

20. Following the examination and audit, the Revenue Commissioners did not accept the applicant's explanations in relation to the sources of this additional sum of money, and amended notices of assessment were issued to the applicant on 22nd October, 2010, in respect of undeclared income for the tax years ended 5th April, 1992, and 5th April, 1994. The applicant appealed the amended notices of assessment and proceeded to an appeal hearing before the Appeal Commissioners, who upheld and confirmed the assessments. The applicant appealed the decision of the Appeal Commissioners to the Circuit Court pursuant to s. 942 of the Taxes Consolidation Act 1997, as amended.

21. In June 2013, the applicant produced the amnesty certificate of 1st July, 1994, to the Revenue Commissioners. A preliminary application was made at the commencement of the hearing before His Honour Judge Hickson in the Circuit Court to the effect that, when the applicant produced the amnesty certificate to the Revenue Commissioners in 2001, they were required to apply to the Appeal Commissioners if they wished to challenge the veracity of the declaration on foot of which the certificate was obtained; because they had not done so, the applicant submitted that the Revenue Commissioners were precluded from continuing their enquiry. Judge Hickson refused the applicant's application, stating that: *"I don't need to consider the amnesty. The correct and true construction of the section has to be read in conjunction with whatever is set out in 955.2(a) but also 2(b)."* The learned judge stated that he was refusing the applicant's preliminary application in respect of the amnesty. It is against the determination of the preliminary point that the present application for relief by way of judicial review is brought.

22. The applicant's case is that, having produced the amnesty certificate in 2001, the Revenue Commissioners are precluded from enquiring or investigating into the tax affairs of the applicant covered by the amnesty, without invoking the procedure of applying to the Appeal Commissioners; in other words, once the amnesty certificate was produced, the Revenue Commissioners were obliged to respect its validity unless there was reason to doubt that the declaration made was true. The applicant contends that an application must be made to the Appeal Commissioners that there are reasonable grounds to indicate that the declaration made to the Chief Special Collector in relation to the tax amnesty is not true.

23. It is the Revenue Commissioners' case that the 2001 investigation was different to that commenced in 2006. The Revenue Commissioners contend that there is an obligation to produce the certificate within 30 days of the commencement of an enquiry by the Revenue Commissioners, on each occasion on which the Revenue Commissioners seek to make an enquiry.

24. The applicant contends that no such obligation exists and that, while there is a distinction between the office of the Special Collector and the Revenue Commissioners, once the amnesty certificate has been produced, the Revenue Commissioners are on notice of it and are bound by the provisions of s. 5 of the 1993 Act.

25. The present application only impugns the correctness of the decision of the learned Circuit Court judge in refusing to accede to the preliminary application made on behalf of the applicant. The Revenue Commissioners contend that the application under the amnesty to the Circuit Court was misconceived, that the veracity of the applicant's declaration under the amnesty is disputed, and that this application for judicial review should therefore be refused.

The Reliefs Sought

26. The applicant is seeking the following reliefs:

(i) An order of *certiorari* by way of judicial review quashing the decision/order of the Circuit Court dated 9th April, 2014, determining that the applicant was indebted to the Revenue Commissioners in the sum of €30,991.00 plus interest and penalties thereon.

(ii) A declaration that there is no jurisdiction for either the respondent or any other party in any forum to hear and determine, or carry out any enquiry, or make any Order, relating to the payment or non-payment of taxes for a relevant period where there is in place an authorised and valid certificate for that relevant period, pursuant to s. 2(4) or s. 3(6)(c) of the Waiver of Certain Tax, Interest and Penalties Act 1993.

(iii) A declaration that there is no jurisdiction for either respondent in any forum to hear and determine, or carry out any enquiry, or make any order, relating to the payment or non-payment of taxes for the relevant period, where there is in place for the relevant period, an authorised and valid certificate pursuant to s. 2(4) or s. 3(6)(c) of the Waiver of Certain Tax, Interest and Penalties Act 1993, in circumstances where the Revenue Commissioners have not first applied to the Appeal Commissioners as required, and where the said Commissioners have not satisfied themselves that there are reasonable grounds to indicate that the declarations made, on which the aforesaid certificate was authorised, did not contain a full and true statement of the declared amounts contained therein.

(iv) A declaration that the second named respondent is precluded from continuing with or commencing any enquiries relating to the payment or non-payment of taxes or arrears of taxes for the relevant period for which an authorised and valid certificate applies pursuant to s. 2(4) or s. 3(6)(c) of the 1993 Act, unless and until the Chief Special Collector of the Revenue Commissioners first applies to the Appeal Commissioners, showing to the satisfaction of those Commissioners that there are reasonable grounds which indicate that the relevant declarations made by the applicant did not contain a full and true statement of the declared amounts upon which the certificate was authorised.

(v) An order of prohibition by way of judicial review, prohibiting the second named respondent from continuing with or commencing any proceedings relating to, or connected with the recovery of monies or taxes for the period covered by the certificate furnished to the applicant by the respondent on 1st July, 1994, unless and until the Chief Special Collector of the second named respondent first applies to the Appeal Commissioners, showing to the satisfaction of those Commissioners that there are reasonable grounds which indicate that the relevant declarations made by the applicant did not contain a full and true statement of the declared amounts upon which the certificate was authorised.

(vi) An order extending the time granted to the applicant for liberty to seek leave and make an application for the judicial review of the decisions of the respondents herein.

The Statutory Scheme

27. The Waiver of Certain Tax, Interest and Penalties Act, 1993 introduced a statutory scheme that became known as "*the tax amnesty*". The Act provides for what is essentially a two-tier amnesty, with different concessions accorded to each level. The first amnesty, colloquially known as the "*incentive*" amnesty, provided for a 15 per cent tax write-down to cover Income Tax, Capital Gains Tax and levies relating to income and gains accruing for the period to 5th April, 1991. This is the amnesty which the applicant availed of in the present case. The second amnesty created under the Act, which was known as the "*general amnesty*", was aimed at taxpayers who had arrears of tax of which the Revenue Commissioners were aware, and is not relevant for present purposes. The salient provisions of the 1993 Act are set out below.

28. Section 2(2) provides:

"(2) This section applies to an individual who, for the relevant period, was in receipt of income or had chargeable gains in respect of which any tax (referred to in this Act as "relevant tax") due and payable by him in accordance with any provision of the Acts has not been paid..."

29. Section 1 provides that "the relevant period" means "any period ending on or before the 5th day of April, 1991..."

30. Section 2(3) provides that:

"(3) An individual to whom this section applies shall—

(a) within the specified period give a declaration in writing to the Chief Special Collector which—

(i) is made and signed by the individual,

(ii) is in a form prescribed by the Revenue Commissioners and approved of by the Minister,

(iii) contains, in relation to the individual, a full and true statement of the respective amounts (referred to in this Act as "the declared amounts") of—

(I) the income, and

(II) the chargeable gains..."

31. Section 2(4) provides:

"(4) On receipt by him of the declaration referred to in subsection (3) and the settlement amount, the Chief Special Collector shall give to the individual concerned—

(a) a certificate, in a form prescribed by the Revenue Commissioners and approved of by the Minister, stating, in relation to that individual—

(i) his name and address,

(ii) the settlement amount paid by him, and

(iii) the respective amounts of the declared amounts..."

32. Section 2(5) provides:

"(5) Notwithstanding any other provision of the Acts but subject to section 4, where an individual to whom this section applies complies with the provisions of subsection (3)—

- (a) his liability to relevant tax in respect of the declared amounts—
 - (i) shall be deemed to be satisfied by the settlement amount, and
 - (ii) shall not be arrears of tax...

33. Section 4 of the Act provides:

"(4)(1) The provisions of sections 2 (5) and 3 (4) shall not apply, and those provisions shall be deemed never to have applied, to a person where—

- (a) such person fails—
 - (i) if he is an individual, for the year of assessment 1992-93, or
 - (ii) in any other case, for any accounting period ending in the year beginning on the 1st day of January, 1993, and ending on the 31st day of December, 1993,

to duly deliver a return of income on or before the specified date in relation to that return, or

 - (b) (i) a declaration given by such person to the Chief Special Collector under subsection (3) (a) of section 2 —
 - (I) did not contain a full and true statement of the kind referred to in subparagraph (iii) of the said subsection, or
 - (II) is proven to be false in so far as the requirements of subparagraph (iv) of the said subsection are concerned,

or

 - (ii) a declaration given by him to the Chief Special Collector under subsection (6) (b) of section 3 did not contain a full and true statement of the kind referred to in subparagraph (III) of the said subsection, or
 - (c) the amount paid or remitted by him in respect of arrears of tax was less than the arrears of tax due and payable by him,
- and any certificate issued to that person pursuant to section 2 (4) or section 3 (6) (c) shall be null and void."*

34. Section 5 of the 1993 Act provides:

"5.(1) Where, in relation to any liability to tax (within the meaning of section 2 or 3, as the case may be) of an individual for the relevant period, being tax which has been remitted to the Chief Special Collector, an inspector or other officer of the Revenue Commissioners commences to make such enquiries, or take such action, as are within his powers, or gives a notice in writing to an individual of his intention to make such enquiries or take such action in relation to such liability to tax and the individual produces to the inspector or other officer, not later than 30 days from the commencement of the said enquiries or the taking of the said action, or the giving of the notice as aforesaid, a certificate referred to in section 2 (4) or 3 (6) (c), as the case may be, in respect of such liability to tax given to him by the Chief Special Collector, the inspector or other officer shall, on production to him of the said certificate and on validation of that certificate in accordance with the provisions of paragraph (a) of the proviso to section 7 (4), be precluded from continuing with or commencing the said enquiries or continuing with or commencing the said action unless, on application by him to the Appeal Commissioners, he shows to the satisfaction of those Commissioners that—

- (a) enquiries made or action taken in relation to the liability to tax (within the aforesaid meaning) of the individual for any period commencing on or after the 6th day of April, 1991, indicate, or
 - (b) there are other reasonable grounds which indicate,
- that a declaration made by the individual to the Chief Special Collector under section 2 (3) (a) or 3 (6) (b) did not contain a full and true statement of the declared amounts or the amount of value-added tax comprised in the arrears of tax, as the case may be.*
- (2) (a) An application by the inspector or other officer under subsection (1) shall be made by him by notice in writing to the Appeal Commissioners within 30 days of the receipt by him from the individual concerned of the certificate referred to in section 2 (4) or 3 (6) (c), as the case may be, given to that individual by the Chief Special Collector, and a copy of the application shall be furnished as soon as practicable by the inspector or other officer to the individual concerned.
 - (b) An application under subsection (1) shall, with any necessary modifications, be heard by the Appeal Commissioners as if it were an appeal against an assessment to income tax.
 - (c) Any action required to be taken by the individual and any further action proposed to be taken by the inspector or other officer pursuant to the inspector's or other officer's enquiry or action shall be suspended pending decision by the Appeal Commissioners on the application.
 - (d) Where, on the hearing of the application by an inspector or other officer under subsection (1), the Appeal Commissioners—
 - (i) decide that there are no reasonable grounds to suggest that the declaration made by the individual to the Chief Special Collector under section 2 (3) (a) or 3 (6) (b) did not contain a full and true statement of the declared amounts or the amount of value-added tax comprised in the arrears of tax, as the case may be, then the individual shall not be required to take any action pursuant to the inspector's or other officer's enquiry or action and the inspector or other officer shall be prohibited

from pursuing his enquiry or action, or

(ii) decide that there are such reasonable grounds, then the inspector or other officer may continue with his enquiry or action.

35. In her judgment in *The Comptroller and Auditor General v. Ireland* [1997] 1 IR 248, Laffoy J. provided the following useful overview of the provisions of the 1993 Act:

"Section 2 of the Amnesty Act identified the taxes to which the incentive amnesty applied — primarily, income tax and capital gains tax. Section 2 also identified the persons eligible to avail of the incentive amnesty, namely, individuals who owed tax on declared or undeclared income or gains in respect of any period ending on or before the 5th April, 1991, but there was a proviso to s. 2, sub-s. 2 which, in broad terms, excluded from the scope of the incentive amnesty the following persons and taxes:

(a) individuals who were subject to audit or investigation before 25th May, 1993;

(b) tax which was subject to specified enforcement procedures before 25th May, 1993; and

(c) tax in respect of income or chargeable gains which arose from or by reason of an illegal source or activity.

In effect, that proviso imposed certain eligibility pre-conditions to participation in the incentive amnesty.

The inducement to participate in the incentive amnesty was threefold. First, tax at a concessionary rate of 15 per cent was accepted in satisfaction of outstanding tax. Secondly, any interest due on the outstanding tax was waived and penalties forgiven. Thirdly, the incentive amnesty was to be administered by a special collection unit staffed by the chief special collector and special collectors who were bound by a declaration of confidentiality so as to ensure confidentiality and anonymity for the participating taxpayers.

The incentive amnesty operated on a self-assessment basis. A participating individual was required to give to the chief special collector by the 30th November, 1993, a full and true declaration of all income and chargeable gains in respect of which tax was unpaid embodying a statement that the declared amounts did not arise from or by reason of an unlawful source or activity. He was further required, either contemporaneously with the signing of the declaration or, in any event, not later than 14th January, 1994, to remit to the chief special collector an amount equal to 15 per cent of the declared amounts. By s. 2, sub-s. 4 the special collector was required to issue to each participating individual two documents: a certificate setting out his name and address, the settlement amount paid by him and the respective amounts of the declared amounts; and evidence that such a certificate had been given."

36. The learned judge went on to state at p. 255:

"Section 4 provided that the benefits accruing to a person who participated in the incentive amnesty would be withdrawn ex post facto by the waiver of interest and penalties being cancelled and the settlement amount being treated as a payment on account of tax due in the circumstances outlined in that section, for example, in the case of an individual who failed to deliver a return of income for the year of assessment 1992/1993, by the 31st January, 1994, or where a declaration submitted to the chief special collector in accordance with s. 2 did not contain a full and true statement of income and chargeable gains."

37. As regards s. 5, Laffoy J. observed:

"Section 5 was designed to preclude any inquiry or action by an inspector or other officer of the Revenue Commissioners in relation to liability to tax for a period in respect of which an individual participated in the incentive amnesty. If an individual produced a certificate issued by the chief special collector under s. 2, sub-s. 4 and that certificate was validated by the chief special collector, the inspector or other officer was precluded from continuing with his inquiry or action unless, on application by the inspector or other officer to the Appeal Commissioners, the Appeal Commissioners were satisfied that there were reasonable grounds to suggest that the declaration made by the individual to the chief special collector under s. 2 did not contain a full and true statement of income and chargeable gains as required by section 2."

The submissions of the applicant

38. The applicant submitted that the learned Circuit Court judge erred in law in holding on the preliminary hearing, either expressly or by implication, that the Revenue Commissioners were entitled to commence an enquiry pursuant to s. 922(2)(b) or otherwise, without considering the consequences and effect of an amnesty certificate previously produced to the Revenue Commissioners in respect of the years in issue.

39. It was submitted that the judge erred in fact and in law in accepting the Revenue Commissioners' submission that the burden of proof was on the applicant, and that the principles enunciated in *Mennolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 56 applied. In this regard, it was submitted that s. 5 of the 1993 Act shifts the burden of proof to the Revenue Commissioners by operation of statute and, therefore, the *Mennolly Homes* decision had no application in this instance.

40. The applicant submitted that the appropriate interpretation of s. 5 is that the legislature was acutely aware of the necessity to ensure fair procedures and the protection of the rights of an individual enshrined under Article 40 of the Constitution are not breached, when a body such as the Revenue Commissioners asserts and accuses a person of making an untruthful declaration which could attract a criminal sanction. It was submitted that where such an assertion is made, no enquiry may proceed or commence into matters which cover the period of the certificate at any subsequent stage, in circumstances where the individual has previously produced an amnesty certificate within the correct time period in accordance with law, except by way of an application to the Appeals Commissioner as prescribed.

41. The applicant submitted that the expression "*precluded from continuing with or commencing said enquiries*" in s. 5(1) means precluded, and refers to all such enquiries subsequent to the production of the amnesty certificate. The applicant contended that if that was not the correct interpretation of the legislation, it would set at nought the benefit and purpose of the amnesty, because the

Revenue Commissioners could continually make new enquiries and require that the certificate be produced on multiple occasions. It was submitted that that was neither the meaning nor the intention of the legislation.

42. The applicant submitted that the learned Circuit Court judge was wrong to dismiss that issue without considering the legal effect of the amnesty certificate. He proceeded to hear the case on its merits, without considering whether the investigation itself was valid, having regard to the 1993 Act. The applicant submitted that he was thereby denied the opportunity of having that matter considered; it was further submitted that the decision of the Circuit Court was wrong in law, unfair and should be quashed.

The submissions of the respondent

43. The respondent submitted that the applicant had not furnished an amnesty certificate to the Revenue Commissioners within 30 days of the Revenue Commissioners commencing enquiries as required by s. 5. The respondent stated that the applicant accepted that the enquiries, the subject of the present proceedings, commenced in 2005, and the applicant received notification of further enquiries on 18th October 2006. The enquiries culminated in the raising of amended assessments in respect of the applicant on 22nd October, 2010. The applicant appealed these assessments.

44. The respondents submitted that despite this, the amnesty certificate was produced on behalf of the plaintiff for the first time on 27th June, 2013, when the applicant's appeal was listed for hearing before the Circuit Court.

45. The respondents submitted that in making his application to the Circuit Court, counsel for the applicant relied only upon the production of the certificate to the Revenue Commissioners in 2001 in support of the contention that the applicant had produced the certificate at all. The respondents submitted that the earlier enquiry was fully settled and closed on 2nd August, 2001. It was submitted that, accordingly, referring to a notification of the certificate made in the context of that matter, could not avail the applicant in relation to enquiries commenced in 2006, and culminating in an amended assessment in 2010 and an appeal hearing thereafter. The later enquiry was entirely independent of that concluded in 2001; moreover, it arose from new information, not known in 2001, which was derived from the applicant's own voluntary disclosure made in May 2005, that he had invested £57,000.00 in a single premium insurance policy in July 1991, being a year in which he returned taxable income of £6,241.00.

46. The respondents submitted that the learned trial judge was therefore correct to refuse the applicant's preliminary submission that the Revenue Commissioners were obliged under s. 5 of the 1993 Act to apply to have the certificate set aside and/or that the appeal should be stayed to permit this to happen. It was submitted that it was a necessary precondition for such a submission that the certificate in question had been produced *"to the inspector or other officer, not later than 30 days from the commencement of the said enquiries or the taking of the said action..."*

47. The respondents submitted that since this had not been done, and no evidence was adduced by the applicant that it had been done, the learned Circuit Court judge was correct not to accede to the application and to conclude that he did not need to consider the amnesty certificate as a preliminary point.

48. The respondents stated that no application was made for an adjournment to allow the Circuit Court's preliminary ruling to be reviewed by this court; instead, the appeal proceeded and no complaint was made in relation to the fairness thereof, or that the learned Circuit Court judge acted in a biased or prejudicial manner.

49. In conclusion, the respondent submitted that the Circuit Court was asked to determine whether the production of the certificate required the suspension of the hearing pending an application being made by the Revenue Commissioners under s. 5(1) of the 1993 Act. The respondent added that in light of the date upon which enquiries commenced, the date of the amended assessment and the failure to rely upon any event (other than an event in 2001) in support of the contention that the certificate had been produced within the thirty days provided for under s. 5(1) of the 1993 Act, the learned Circuit Court judge had correctly refused the preliminary application, and correctly decided the case based on the applicable provisions of the Taxes Consolidation Act 1997.

50. Finally the respondent submitted that if the Circuit Court judge was in error in the manner in which he dealt with the preliminary issue raised on behalf of the applicant in relation to the 1993 Act, such error did not deprive him of jurisdiction to hear the appeal or determine the applicant's liability on foot of the assessment to tax, which was the subject matter of the appeal.

Decision

51. The central issue arising for the determination of the court in this case is a net point of statutory interpretation: was the applicant required to produce the amnesty certificate with which he had been issued by the Chief Special Collector pursuant to s. 2(4)(a) of the Waiver of Certain Tax, Interest and Penalties Act, 1993, on each occasion on which the Revenue Commissioners commenced an enquiry into his tax affairs; or was the production of the certificate in 2001 sufficient to preclude all future enquiries into the applicant's tax liabilities in respect of the period covered by the amnesty, i.e. up to 4th April, 1991? While it is contested between the parties as to whether the applicant did in fact produce the amnesty certificate in 2001, it is not necessary for the court to make a determination on that issue, unless I find that that production of the certificate in 2001 precluded all subsequent enquiries by the Revenue Commissioners into tax liabilities covered by the certificate, including the enquiry commenced in 2006, which is the subject matter of the present proceedings.

52. Section 5 of the 1993 Act provides that where an inspector or other officer of the Revenue Commissioners *"commences to make such enquiries or take such action, as are within his powers"* in relation to liability to tax of an individual for the period before 5th April, 1991, and the individual produces an amnesty certificate to the inspector, within 30 days of the commencement of the said enquiries, the inspector shall be precluded from commencing or continuing with the enquiries, unless he satisfies the Appeal Commissioners that there are reasonable grounds which indicate that the declaration made by the individual, on foot of which the amnesty certificate was obtained, did not contain a full and true statement of the declared amounts. The burden of proof in this regard rests on the inspector.

53. The inspector's application to the Appeal Commissioners must be made within 30 days of his receipt of the individual's amnesty certificate. If the Appeal Commissioners decide that there are no reasonable grounds to suggest that the declaration made by the individual did not contain a full and true statement of the declared amount, then *"the inspector or other officer shall be prohibited from pursuing his enquiry or action..."* If, however, the Appeal Commissioners decide that there are such reasonable grounds, then the inspector *"may continue with his enquiry or action..."*

54. The applicant has submitted that the expression *"precluded from continuing with or commencing the said enquiries"* in s. 5(1) means precluded on a permanent basis, and refers to all such enquiries subsequent to the production of the amnesty certificate. The applicant has contended that if this interpretation was not correct, it would set at nought the benefit and purpose of the amnesty

because the Revenue Commissioners could continually make new enquiries and require that the certificate be produced on multiple occasions.

55. If the applicant's construction were accepted, however, it would mean that where an inspector or other officer of the Revenue Commissioners commenced enquiries in respect of an individual, and that individual produced an amnesty certificate, unless the inspector had sufficient evidence at that time to satisfy the Appeal Commissioners that there were reasonable grounds to indicate that the declaration made by the individual to the Chief Special Collector under s. 2(3)(a) on foot of which the amnesty certificate was obtained, did not contain a full and true statement of the declared amounts, then the enquiry would be precluded, and indeed the Revenue Commissioners would forever thereafter be precluded from commencing enquiries into the tax liabilities of the individual covered by the amnesty certificate.

56. This would mean that even if reasonable grounds for believing that the individual had not made a full and true declaration arose after the original enquiry had been commenced, and then terminated by the production of an amnesty certificate, the Revenue Commissioners would nevertheless be precluded from commencing an enquiry into these matters.

57. It seems to me that the effect of such a construction would be to afford improper protection to individuals who provided false declarations to the Chief Special Collector and obtained amnesty certificates on foot thereof. Such an individual, having successfully produced his certificate in response to an enquiry by the Revenue Commissioners on one occasion, when the Revenue Commissioners had insufficient information upon which to satisfy the Appeal Commissioners that there were reasonable grounds for believing that the individual's declaration was not full and true, would be protected in perpetuity, even in circumstances where, for example, new and compelling evidence subsequently emerged which indicated that his declaration was not full and true.

58. The 1993 Act, however, is predicated on a full and true declaration having been made. Section 5 cannot therefore be construed in such a way as to protect individuals who have breached the provisions of the Act and dishonestly obtained an amnesty certificate. Indeed, s. 4 makes it clear that if the declaration was not full and true, then the amnesty certificate obtained on foot thereof was null and void.

59. In giving s. 5(1) its true construction, it is necessary to have regard to the section as a whole. Section 5(2)(d) provides that where the Appeal Commissioners decide that there are no reasonable grounds to indicate that the individual's declaration was not full and true, the inspector *"shall be prohibited from pursuing his enquiry or action"*; if, however, the Appeal Commissioners find that there are such reasonable grounds, then the inspector *"may continue with his enquiry or action."*

60. A careful reading of these provisions leads to the conclusion that the terms of s. 5 are confined to the singular enquiry or action commenced by the inspector at the particular time – the references in s. 5(2)(d) are to *"his enquiry or action"* [Emphasis added]. It seems to me, therefore, that even where an inspector has commenced enquiries, has been met with the production of an amnesty certificate, and has applied unsuccessfully to the Appeal Commissioners, with the result that *"his enquiry or action"* is prohibited in accordance with s. 5(2)(d)(ii), that does not preclude other separate enquiries being commenced in the future. The wording of s. 5(2)(d)(i) is quite clear in this regard: the particular inspector *"shall be prohibited from pursuing his enquiry..."* There is nothing to suggest that the Revenue Commissioners are thus precluded from commencing enquiries in perpetuity, as has been contended for by the applicant.

61. The wording of s. 5(1) seems to me to be similarly clear: it provides that where, in relation to any liability to tax, an inspector or other officer of the Revenue Commissioners commences to make enquiries in relation to the tax liabilities of an individual for the period before 5th April, 1991, and the individual produces an amnesty certificate, the inspector shall be precluded from continuing with or commencing the said enquiries unless he satisfies the Appeal Commissioners that there are reasonable grounds to suspect that the declaration on foot of which the certificate was obtained was not full and true; in other words, the inspector who commenced the enquiries shall be precluded from proceeding with them. There seems to me to be nothing in the wording of s. 5(1) that suggests that the Revenue Commissioners would be forever precluded from commencing enquiries in respect of the individual; the wording seems to be limited to the preclusion of the particular enquiries commenced by the particular inspector at the relevant time.

62. Accordingly, I am of opinion that the true construction of s. 5 is that the taxpayer is obliged to produce the amnesty certificate in response to each enquiry that may be initiated by the Revenue Commissioners. This enables the inspector or other officer of the Revenue Commissioners, in circumstances where they may have received new information, to commence enquiries, and if an amnesty certificate is produced, to apply to the Appeal Commissioners for authorisation to continue. If the individual has made full and true declarations in order to obtain a certificate, then he has nothing to fear. If, however, the individual has made false declarations and has obtained a certificate on foot thereof, that certificate shall be deemed to be void in accordance with s. 4(1) of the 1993 Act.

63. In this case, even if I were to accept that the applicant produced his amnesty certificate in respect of the 2001 enquiry, that would not assist him: on the true construction of s. 5, the applicant was in fact required to produce the certificate in response to the 2006 enquiry if he wished to avail of the protection which it affords. He did not do so; indeed he delayed doing so until 2013, when the present proceedings were listed before the Circuit Court. This clearly was outside of the 30 day time limit laid down by s. 5. Accordingly, I am satisfied that the learned trial judge was correct in determining that he did not need to consider the amnesty certificate as the applicant had not produced the certificate in respect of the enquiry which was under consideration, and which forms the subject matter of the present proceedings.

Conclusion

64. For the reasons set out above, the applicant's application for judicial review is refused.