

THE HIGH COURT

[2003 No. 403R]

BETWEEN

DENROSS LIMITED TRADING AS WEIGHT WATCHERS (IRELAND)

APPELLANT

AND
THE REVENUE COMMISSIONERS

RESPONDENT

Judgment delivered on the 7th day of April, 2006 by Mr. Justice Barry White

1. This case stated arises out of the determination in favour of the respondent, by the Circuit Court (Judge Liam Devally), of an appeal brought by the Appellant against an assessment to value added tax raised or made by the respondent.

2. The issue for determination by the learned Circuit Court Judge had been whether or not the Appellant's activities were exempt from VAT on the basis that they were educational, and thereby came within the scope of the exemption provided under paragraph (ii) of the first schedule to the Value Added Tax Act 1972, as amended.

3. The question of law for my determination is whether, having regard to the evidence given, and the facts found by the learned Circuit Court Judge, he was correct in holding that the activities of the Appellant did not consist of the supply of educational services of a kind similar to school, or university education, or otherwise, and, therefore, such activities did not come within the scope of paragraph (ii) of the first schedule to the Value Added Tax Act 1972, and that, accordingly, the Appellant was not entitled to the exemption claimed.

4. The manner in which I must approach and consider a case stated is set out in several Supreme Court decisions in *Mara (Inspector of Taxes) v. Hummingbird Limited* [1982] ILRM 421, wherein, at p. 426, Kenny J. states:-

"A case stated consists in part of finding some questions of primary fact, for example, with what intention did the taxpayers purchase the Baggot Street premises. These findings and primary facts should not be set aside by the court unless there was no evidence whatever to support them. The Commissioner then goes on in the Cases Stated to give him conclusions or inferences from those primary facts. These are mixed questions of fact and law and a court should approach these in a different way. If they are based on the interpretation of documents, the courts should reverse them if they are incorrect for it is in as good a position to determine the meaning of the document as is the Commissioner. If the conclusion from the primary facts are ones which no reasonable commissioner could draw, the court should set aside his findings on the ground that he must be assumed to have mis-directed himself as to the law or made a mistake in reasoning. Finally, if his conclusions show the he has adopted a wrong view of the law, they should be set aside. If, however they are not based on a mistaken view of law or a wrong interpretation of documents, they should not be set aside unless the inferences which he made from primary facts were ones that no reasonable commissioner could draw."

5. And again in the *O'Culacham (Inspector of Taxes) v. McMullan Brothers Limited* 1995 I.T.R. 200, applying *Mara (Inspector of Taxes) v. Humming Bird Limited*, Blayney J, at p. 202 states:-

"In the light of these statements of the law it seems to me that when a court has before it a case stated seeking its opinion as to whether a particular decision was correct in law the following principles apply (I refer in them to a case stated by a judge, as is the position here, but they apply equally where the case is stated by the Appeal Commissioners or by any other party):

(1) Findings of primary fact by the judge should not be disturbed unless there is no evidence to support them.

(2) Inferences from primary facts are mixed questions of fact and law.

(3) If the judge's conclusions show that he has adopted a wrong view of the law, they should be set aside.

(4) If his conclusions are not based on a mistaken view of the law they should not be set aside unless the inferences which he drew were ones which no reasonable judge could draw.

(5) Some evidence will point to one conclusion, other evidence to the opposite: these are essentially matters of degree and the judge's conclusions should not be disturbed (even if the court does not agree with them, for we are not retrying the case) unless they are such that a reasonable judge could not have arrived at them or they are based on a mistaken view of the law.

6. It is well established on the basis of decided authorities that an application for relief or exemption from taxation must be determined by reference to the same strict standards which apply to the imposition of taxation. The seminal Irish authority in this regard is *Revenue Commissioners v. Doorley* [1933] IR 750, where Kennedy CJ said at p. 765:-

"The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the Taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.

7. I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under considerations, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes."

8. The first schedule to the Value Added Tax Act, 1972 exempts, *inter alia*, the following activities:

"School or university education, and vocational training or retraining (including the supply of goods and services incidental

thereto), provided by educational establishments recognised by the State, and education, training or retraining of a similar kind [excluding instruction in the driving of mechanically propelled road vehicles other than vehicles designed or constructed for the conveyance of goods with a capacity of 1.5 tonnes or more] provided by other persons;"

9. Therefore, two essential conditions must be fulfilled for exemption from VAT to apply, namely;

(i) The Appellant must provide education, training or retraining; and

(ii) That education, training or retraining must be of a similar kind to that provided by State recognised educational establishments.

10. Although the learned Circuit Court Judge sets out a large number of findings of fact made by him, details the evidence given before him, and the arguments made before him, he does not however say anything about how he reached his determination that the appellant was not entitled to the exemption sought. In a decision of the High Court in England in *Bird (Inspector of Taxes) v. Martland: Bird (Inspector of Taxes) v. Allen* [1982] STC 603 at 608 Walton J. stated:

"It must be borne in mind that when one is taking one's stand on an *Edwards (Inspector of Taxes) v. Bairstow* point one cannot avoid the decision of the commissioners, be they general or be they special, from being reviewed merely because they have said nothing about how they reached their determination. It must be taken in all such cases that they have reached their determination as a result of deductions from the facts which they have stated, and no other facts: because if they had considered any other facts relevant then those facts ought to have been set out as well. Accordingly, as I see it, my task is to look at the facts which they have set out ... and decide on those facts whether the conclusion they reached was a possible one."

11. Accordingly, the learned Circuit Court Judge must be taken as having reached his determination as a result of deductions drawn from the primary facts set out in the case stated.

12. I must, therefore, consider whether the inferences drawn by the learned Circuit Court Judge were reasonable or whether they were ones which no reasonable Judge could draw.

13. At paragraphs 4(p) and (q) of the case stated the learned Circuit Court Judge found:

"(p) The primary objective of the class is to inform participants of proper dietary and nutritional lifestyles to enable each participant to modify dietary and nutritional behaviour to enable him or her to permanently lose or maintain weight at an ideal level (the goal weight) which was set at the outset. This objective is achieved by informing participants of dietary and nutritional behaviour to assist them in modifying their eating, shopping and cooking habits.

(q) The principal topic in a typical class is information on how and why more nutritious and healthier foods and eating habits should be substituted for existing dietary habits to reduce the likelihood and aid treatment of obesity and other dietary related illnesses. The nutritional breakdown of the various food groups is also discussed. The overall purpose is to achieve progressively the target weight objective agreed for the participant at the outset of the programme. Each class is based on the weekly guide for lecturers as to the material and specific topic to be covered in the class. Classes also frequently involve practical demonstrations of how alternative foods and dishes can be prepared and cooked."

14. Paragraphs 5(a) and (b) of the case stated summarise the uncontroverted evidence given by Mrs. Rita Fagan, Managing Director of the appellant company.

"(a) Mrs. Rita Fagan, Managing Director of the appellant company, in her evidence stated that the primary purpose of the appellant's classes was to modify a participant's dietary behaviour by teaching the participant about the nutritional values of various food types and the benefits to be achieved from regulating the various types of food constituents with the objective of reducing weight or maintaining weight at ideal levels. The appellant did not provide any physical exercise facilities, it did not engage in any physical exercise training, it did not provide any fitness or health club type facilities or training, nor did it provide any beauty salon type facilities, treatment or training.

(b) The concept which underpins the company's activities was that of informing people on how to cope with food in normal every day life to enable them to acquire the knowledge to make sound decisions on nutrition. The company's philosophy was that unless individuals changed their approach to their eating patterns, exercise patterns and their whole approach to life and adopted a healthy lifestyle, they were not going to be successful in learning how to lose weight and keep it off. The company's purpose and function, therefore, was to provide people with information and skills they needed in order to maintain a healthy lifestyle."

15. It was submitted that the findings of fact, set out in paragraphs 4(p) and (q), and the summarised evidence, set out in paragraphs 5(a) and (b) of the case stated established that the appellants were entitled to the exemption provided for in paragraph (ii) of the first schedule to the Value Added Tax Act, 1972, and that it was wrong and unreasonable of the learned Circuit Court Judge to determine otherwise.

16. The appellant was entitled to highlight aspects of its case, both to the learned Circuit Court Judge, and to this Court, and, taken in isolation from the other findings of fact made by the learned Circuit Court Judge, there is a certain merit to this submission. However, the learned Circuit Court Judge was obliged to have regard to the totality of material before him, to each and every finding of fact he made, to the submissions of both the appellant and the respondent, and to where the onus of proof rested, in determining the issue before him.

17. At paragraphs 4(a), (g), (h), (l), (m), and (n) the learned Circuit Court Judge found:-

(a) The appellant was incorporated on the 1st day of March 1986 and commenced trading on the 1st day of March 1986... The appellant trades as "Weight Watchers" and operates in Ireland under a franchise agreement with the US owners of the trade-name, know-how and methods of training known as "Weight Watchers".

(g) The appellant's income derives from registration fees for classes and a nightly attendance fee together with the sale of some products to participants, e.g., cookery books, measuring spoons and weighing scales. The income from the sale of the products was approximately £20,000 per annum in respect of which VAT was payable. The total turnover of the

appellant was approximately £1,000,000 per annum.

(h) Each lecturer's fee is an agreed percentage of the gross class income. There are approximately 90 lecturers employed on a contract for service basis by the appellant, and these lecturers give classes in the various locations. A sample agreement between the appellant and the lecturer was proved in evidence and forms part of this case stated (Appendix 3)

(i) Lectures, as a rule, are taken from successful past class participants. No particular academic qualifications are required for selection as a lecturer other than a good standard of general education. Once a potential lecturer was identified as an individual who had successfully completed the Weight Watchers programme over a period of time, the individual was trained mainly by being assigned to an established instructor who assisted the lecturer in class for about four to five weeks. A candidate subsequently attended an intensive weekend training session to learn more advanced nutrition and presentation/communication skills. A sample of the weekend training material is among the documents put in evidence, was proved before me and forms part of this case stated (Appendix 4). The candidate then shadows the assigned lecturer for a further month or so before completing a "passing out" session (mock class) before senior personnel of the appellant company.

(m) Classes are open to all men, women and teenagers who wish to reduce or maintain their weight at ideal levels. The vast majority of members are adult women.

(n) To be admitted into the appellant's programme, an applicant must be in excess of 7 lb above the maximum medical target weight for a person of their size and stature. A goal weight to be achieved is set initially for each participant and the participant's weight is monitored on a weekly basis for the duration of the programme.

18. Inferences are capable of being drawn from these findings of fact that would support the learned Circuit Court Judge's conclusions. They raise questions such as Why a franchise? Why such a low turnover from the sale of products when compared to the appellant's total turnover? Why a lecturer's fee of a percentage of the gross class income? Why a registration and a nightly attendance fee? Why a desire to reduce or maintain weight necessary? Why is a particular excess weight a prerequisite? Why a weight goal? Why weight monitoring?

19. The respondent submitted to the learned Circuit Court Judge that, although some of the elements of the appellant's activities are educational, these are incidental to the primary purpose, which is to provide members with psychological and other support to enable them to reduce and/or maintain weight at ideal levels. The appellant, on the other hand, submitted that the primary function of class activity is to impart knowledge to participants so that, having received relevant information, guidance, and training, they could themselves reduce and/or maintain their weight at ideal levels.

20. On the facts, the evidence, and the in material before him, it was open to the learned Circuit Court Judge to accept the respondent's submission and to reject the Appellant's submission.

21. Having regard to the fact that my function is not to retry the case, but, rather, that my sole function is to determine whether a reasonable Judge could have arrived at the same conclusion as the learned Circuit Court Judge, I must answer the case stated in the affirmative. There is evidence that points to a conclusion favourable to the appellant, other evidence points to the opposite, and I am unable to conclude that no reasonable Judge could arrive at the conclusion reached by the learned Circuit Court Judge.