

THE HIGH COURT

[RECORD NO. 2015/259 R]

BETWEEN

THE REVENUE COMMISSIONERS

APPELLANT

AND

THOMAS COLLINS

RESPONDENT

JUDGMENT of Ms. Justice Reynolds delivered the 28th day of November, 2016

1. This matter comes before the Court by way of case stated, the matter having been referred by the Appeal Commissioner. 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".

2. The NPPR charge was introduced by the Local Government (Charges) Act, 2009 and was commenced by statutory instrument on the 24th July, 2009. It was introduced as an imposition on owners of more than one residential property, on all properties other than the taxpayer's principal private residence, and applies to holiday homes and rental properties. For the purposes of this application, the only issue for the Court to determine is how the charge is to be applied in respect of rental properties and whether or not it should be allowed as a deductible expense from rental profits.

3. By way of background, the NPPR was introduced to go towards funding local authority services. An annual charge of €200 per property applied from 2009 to 2013 in respect of residential property that was not the taxpayer's only or main residence in those years. The charge was collected by the local authority and retained by the local authority for its use.

4. The Local Government (Charges) Act, 2009 provides that "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."

5. Section 97(2) of the Taxes Consolidation Act, 1997 (as amended) provides as follows:

"97 (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;"

Facts

6. The respondent taxpayer herein is the owner of six rental properties to which the NPPR charge was applicable. In the taxable year 2009 he had paid the said charge, being €200 per each property and then sought to deduct €1200 against rental income received under s. 97(2)(b) of the TCA 1997.

7. The hearing proceeded before the Appeal Commissioner on 9th May, 2013 and a written determination issued on 21st October, 2013 wherein 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."

The appellant's case

8. It is the appellant's case that the NPPR charge is not a "rate levied by a local authority" but rather a charge pursuant to the Local Government (Charges) Act, 2009 and is therefore not deductible. It is contended that the phrase "rate levied by the local authority" in its ordinary meaning, requires the local authority to have a function in the determination of the sum to be paid. However, it is clear from s. 3(5) of the Local Government (Charges) Act, 2009 that the charge is to be fixed by national legislation, whereby it is provided as follows

"(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."

It is contended therefore that a national charge collected locally is quite distinct from a local authority rate and this forms the core of the Appellant's submissions. In that regard, it is contended that the charge must be distinguished from rates which apply to commercial premises.

The respondent's case

9. The respondent argues that the word "charge" is no less generic than the word "rate" and if anything is wider in its definition. It is submitted that the word "rate" is clearly used in s. 97(2) of the Tax Consolidation Act, 1997 to capture any local authority charge.

10. Further it is argued that there are important taxation principles to be borne in mind when considering the NPPR and whether or not it should be allowed as a deductible expense. Firstly the respondent refers to *Maguire* in "*Judge's Income Tax 2016*" at para. 1.405 as follows:

"There is a very powerful presumption against double taxation "in the domestic sense – i.e. the subjection of the same income more than once to Irish taxation" which can probably be displaced only by words incapable of bearing an alternative meaning. Indeed the courts would generally regard double taxation as a form of "absurdity" to be avoided if at all possible. In any event the constitutional legitimacy of a measure imposing double taxation might well be highly questionable."

It is contended therefore by the respondent that if no relief is allowed for NPPR, the same income will be subject to two forms of tax. In addition, the respondent submits that a further principal of Irish taxation must be considered which is that assets which are put to economic service are not subjected to extraordinary measures.

The law

11. There is no definition of a "rate" in the Taxes Consolidation Act, 1997.

12. Under current legislation, the only "rate levied by a local authority" applies solely to commercial premises, the levying and collection of which is governed by the Valuation Acts and the Local Government Act, 2001 (as amended).

13. Because the methods by which a local authority rate such as commercial rates and the NPPR charge are fixed are so distinguishable, they are not interchangeable terms in legislation in either meaning or effect.

14. Clearly the onus rests on the respondent to establish that he is entitled to relief claimed pursuant to s. 97 (2) of the Taxes Consolidation Act, 1997.

15. There is no dispute on the facts before the Court and therefore the only issue to be determined is whether the Appeal Commissioner adopted a correct interpretation of the provisions of s. 97 (2) of the Act.

Conclusions

16. 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.

17. 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.

18. In interpreting the provisions of the statute, the Court is guided by the principles set down in the *Inspector of Taxes v. Kiernan* [1981] 1 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.

19. In the circumstances, I must answer the question in the affirmative.