

**THE HIGH COURT
(REVENUE)**

2005 No. 53R

BETWEEN

LIAM J. IRWIN

PLAINTIFF

AND
MICHAEL GRIMES

DEFENDANT

Judgment of Mr. Justice John Edwards delivered on the 4th day of April, 2008.

Introduction

1. These proceedings are brought by way of summary summons by the Collector General of the Revenue Commissioners against the defendant claiming the sum of €96,576.28 as being the total sum due for arrears of income tax payable by the defendant in respect of the income tax years 1978/1979, 1979/1980, 1980/1981, 1981/1982, 1982/1983, 1983/1984 and 1989/1990. The matter came before me by way of a motion brought by the plaintiff seeking liberty to enter final judgment for the said sum. The plaintiff was represented by solicitor and counsel. The defendant represented himself. At the commencement of the proceedings the defendant indicated that he wished to raise a preliminary objection. He contended that the plaintiff's proceedings were premature and misconceived on the basis that there were appeals in being in respect of each of tax years in question which had not been dealt with. Accordingly, assessments raised in respect of each tax year were not conclusive. Counsel for the plaintiff indicated that he had no objection to this point being dealt with by way of preliminary issue and accordingly both sides presented their respective submissions on the point raised. I determined the preliminary issue against the defendant and I indicated that I would give my reasons for doing so at a later date in written judgment. I now give my reasons.

2. Before recounting in detail the evidence relevant to the preliminary issue, and the basis of the defendant's argument on the preliminary issue, I think it is necessary to set out the relevant legislative provisions.

Relevant legislation

3. Those portions of section 933 of the Taxes Consolidation Act, 1997, relevant to the issue that I have had to decide, are in the following terms.

933. Appeals against Assessment

(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as "other officer" (shall be entitled to appeal to the Appeal Commissioner on giving, within 30 days after date of the notice of assessment, notice in writing to the inspector or other officer.

(b) Where on an application under paragraph (a) the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the ground for such refusal.

(c) A person who has had an application under paragraph (a) refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal.

(d) On receipt of an application under paragraph (c), the Appeal Commissioners shall request the inspector or other officer to furnish them with a copy of the notice issued to the person under paragraph (b) and, on receipt of the copy of the notice, they shall as soon as possible –

(i) refuse the application for an appeal by giving notice in writing to the applicant specifying the grounds for their refusal, and

(ii) allow the application for an appeal and give notice in writing accordingly to both the applicant and the inspector or other officer, or

(iii) notify in writing both the applicant and the inspector or other officer that they have decided to arrange a hearing at such time and place specified in the notice to enable them determine whether or not to allow the application for an appeal.

...

(4) All appeals against assessment to income tax or corporation tax shall be heard and determined by the Appeal Commissioners, and their determination on any such appeal shall be final and conclusive, unless the person assessed requires that that person's appeal shall be reheard under section 942 or unless under the Tax Acts a case is required to be stated for the opinion of the High Court.

...

(6) (a) In default of notice of appeal by a person to whom notice of assessment has been given, the assessment made on that person, shall be final and conclusive.

...

(7) (a) A Notice of Appeal not given within the time limit by subsection (1) shall be regarded as having being so given where, on an application in writing having been made to the inspector or other officer in that behalf within twelve months after the date of the notice of assessment, the inspector or other officer, being satisfied that owing to absence, sickness

or other reasonable cause the applicant was prevented from giving notice of appeal within the time limited and that the application was made thereafter without reasonable delay, notifies the applicant in writing that the application under this paragraph has been allowed.

(b) Where on an application under paragraph (a) the inspector or other officer is not so satisfied; he or she shall by notice in writing inform the applicant that the application under this paragraph has been refused.

(c) Within 15 days after the date of a notice under paragraph (b) the applicant may by a notice in writing require the inspector or other officer to refer the application to the Appeals Commissioners and, in relation to any application so referred, paras. (a) and (b) shall apply as if for every reference in those paragraphs to the inspector or other officer there were substituted a reference to the Appeals Commissioners.

(d) Notwithstanding paragraph (a) an application made after the expiration of the time specified in that paragraph, which but for that expiration would have been allowed under para. (a) maybe allowed under that paragraph if at the time of the application –

(i) there has been made to the inspector or other officer a return of income or, as the case may be, a return under section 884, statements of profits and gains and such other information as in the opinion of the inspector or other officer would enable the appeal to be settled by agreement under subsection (3), and

(ii) the income tax or corporation tax charged by the assessment in respect of which the application is made has been paid together with any interest on that tax chargeable under section 1080.

(e) Where on an application referred to in paragraph (d) the inspector or other officer is not satisfied that the information furnished would be sufficient to enable the appeal to be settled by agreement under subsection (3) or if the tax and interest mentioned in paragraph (d) (ii) have not been paid, the inspector or other officer shall by notice in writing inform the applicant that the application has been refused.

(f) Within 15 days after the date of a notice under paragraph (e) the applicant may by notice in writing require the inspector or other officer to refer the application to the Appeals Commissioner and, in relation to an application so referred, if –

(i) the application is one which but for the expiration of the period specified in paragraph (a) would have been allowed under paragraph (c) if the application had been referred to the Appeals Commissioners under that paragraph,

(ii) at the time the application was referred to the Appeals Commissioners the income tax or corporation tax charged by the assessment in respect of which the application is made, together with any interest on that tax chargeable under section 1080, has been paid, and

(iii) the information furnished to the inspector or other officer is such that in the opinion of the Appeal Commissioners the appeal is likely to be determined on the first occasion on which it comes before them for hearing, the Appeals Commissioner may allow the application

...

(9) (a) Where action for the recovery of income tax or corporation tax charged by an assessment has been taken, being action by means of the institution of proceedings in any court or the issue of a certificate under section 962, neither subsection (7) nor, shall apply in relation to that assessment until that action has been completed.

(b) Where in a case within paragraph (a), an application under subsection (7) (a) is allowed,, the applicant shall in no case be entitled to repayment of any sum paid or borne by the applicant in respect of costs in any such court proceeding or, as the case be, of any fees or expenses charged by the County Registrar or Sheriff executing a certificate under section 962.

4. Section 957 of the Taxes Consolidation Act, 1997 deals with appeals. The portion relevant to the issue that I have had to decide is in the following terms:-

(2) No appeal may be made against –

(a) ... [repealed]

(b) the amount of any income, profits or gains or, as respects capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in an assessment or an amended assessment made on chargeable person for a chargeable period, where the inspector has determined that amount by accepting without the alteration of and without departing from the statement or statements or the particular or particulars with regard to income, profits or gains, as respects capital gains tax, chargeable gains, or allowances, deductions or reliefs specified in the return delivered by the chargeable person for the chargeable period, or

(c) the amount of any income, profits or gains or, as respects, capital gains tax, chargeable gains, or the amount of any allowance, deduction or relief specified in any assessment or an amended assessment made on a chargeable person for a chargeable period, where that amount had been agreed between the inspector and the chargeable person, or any person authorised by the chargeable person in that behalf, before the making of the assessment or the amendment of the assessment, as the case may be.

(2) (a) Where –

(i) a chargeable person makes default in the delivery of a return, or

(ii) the inspector is not satisfied with the return which has been delivered by a chargeable person, or has received any information as to its insufficiency,

and the inspector makes an assessment in accordance with section 919(4) or section 922, no appeal shall lie against that assessment until such time as –

(I) in a case to which subparagraph (i) applies, the chargeable person delivers the return, and

(II) in a case to which either subparagraph (i) or (ii) applies, the chargeable person pays or has paid an amount of tax on foot of the assessment which is not less than the tax which would be payable on foot of the assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person,

and the time for bringing an appeal against the assessment shall be treated as commencing at the earliest date on which both the return has been delivered and that amount of tax has been paid, and references in this subsection to an assessment shall be construed as including references to any amendment of the assessment which is made before that earliest date.

...

(4) Where an appeal is brought against an assessment or an amended assessment made on chargeable person for any chargeable period, the chargeable person shall specify in the notice of appeal –

(a) each amount or matter in the assessment or amended assessment with which the chargeable person is aggrieved, and

(b) the grounds in detail of the chargeable person's appeal as respects each such amount or matter.

(5) Where, as respects an amount or matter to which a notice of appeal relates, the notice does not comply with subsection (4), the notice shall, in so far as it relates to that amount of matter, be invalid and the appeal concerned, shall, in so far as it relates to that amount or matter, be deemed not have been brought.

Relevant evidence

5. I have before me an affidavit of John Nyhan sworn on the 5th of February 2008 in which certain documents are exhibited. No affidavit has been filed in reply and Dr Grimes, while reserving his right to make arguments as to the law, did not take issue with the contents of Mr Nyhan's affidavit.

6. Mr Nyhan's affidavit establishes that the sums claimed in these proceedings derive, in the case of the six years from 1978/79 to 1983/84 inclusive, from assessments which were raised on the defendant, and for 1989/90 from a Notice of Preliminary Tax which issued to him in default of his filing a Return of Income.

7. The relevant details of the assessments for the years 1978/79 to 1983/84 inclusive are as follows:

Year	Date of Issue	Amount IR£	Amount € equiv
1978/79	15/12/1980	875.00	1,111.02
1979/80	15/12/1980	2,740.00	3,479.08
1980/81	06/11/1980	2,550.00	3,237.83
1981/82	24/07/1981	7,725.00	9,808.73
1982/83	13/08/1982	12,900.00	16,379.62
1983/84	08/07/1983	18,800.00	23,871.08

8. The evidence before me establishes to my satisfaction that the defendant has never filed an income tax return in respect of any of the seven years in question. I am also satisfied that he has made no income tax payments whatsoever in respect of the years in question.

9. Mr Nyhan has deposed that in respect of the year 1989/90 a notice of preliminary tax payable in the amount of £30,470.00 (equivalent to €38,688.92) was issued to the defendant.

10. The defendant did not appeal against any of the six assessments in respect of the years 1978/79 to 1983/84 inclusive, or the notice of preliminary tax payable in respect of 1989/90, within the 30 day period provided for in section 933(1)(a) .

11. By a letter dated the 12th of July 1982 the defendant wrote to the Mr J McMahon, Inspector of Taxes, asserting that the four assessments in respect of the years 1978/79 to 1981/82 inclusive were "ludicrous" for reasons set out in the said letter and which it is not necessary to go in to. He then stated:

"Under the circumstances I formally request permission to appeal at this late date"

12. Mr McMahon replied by letter dated the 14th of July, 1982 in the following (partial) terms:

"I refer to your letter of the 12th inst.

A person aggrieved by an assessment to income tax is entitled to appeal against it within 30 days after the date of the assessment. In default of appeal, within the statutory time limit, that person may apply for a late appeal if through 'absence, sickness, or other reasonable cause', he was prevented from giving notice of appeal within 30 days

[Mr McMahon then addresses the basis of defendant's assertion that the assessments were ludicrous, and continues:]

Having regard to the above, I find that in your letters of 26th May and 12th inst:

(i) in the matters ofyou have not shown sufficient reasons for being aggrieved by my assessments – and-

(ii) you have not shown any of the statutory grounds as will enable me to consider admitting late appeals."

13. By a letter dated the 11th of September, 2000 to Mr J.M. Sheehan, Inspector of Taxes, the defendant purported to give notice of appeal against "all taxes" assessed against him and then outstanding. As the defendant had still not paid the income tax demands based upon the aforementioned assessments for the four years 1978/79 to 1981/82 inclusive, his request to be allowed to prosecute appeals ostensibly included a second request to be permitted to appeal against these assessments. In addition the request ostensibly covered the assessments for 1982/83 and 1983/84 respectively, and the notice of preliminary tax payable for 1989/90, in respect of which there had been no previous attempt to lodge appeals. It also covered liabilities for other tax years with which I am not concerned in this case.

14. The defendant's requests were responded to in a letter dated 1 November 2000 from a Mr T O Cochlain on behalf of the District Manager of the Cork Tax District. He replied as follows:

"Your application for late appeals under S.933 TCA 97 in respect of above years refers. As such application is more than 12 months after the date of assessment in each case the section requires compliance with certain stated conditions. As these have not been complied with the Act precludes the admitting of late appeals.

Please forward tax returns and tax payments for each of the years."

15. The defendant has not at any time, either in respect of the refusal of his 12th of July 1982 applications, nor in respect of the refusal of his 11th of September, 2000 applications, served a notice under section 933(7) (c) of the Taxes Consolidation Act, 1997 requiring the Inspector of Taxes to refer his applications for late leave to appeal to the Appeal Commissioners.

16. The Summary Summons herein was issued on the 26th of January 2005.

17. On the 15th of June 2007 the defendant sent in excess of two hundred standard form letters to Ms Maura Morrin, Inspector of Taxes. The form of these letters was as follows:

"Dear Ms Morrin,

I wish to formally appeal the assessment for tax made by you for the period noted:

Type of Tax : [details inserted]

Type Assessment : [details inserted]

Period of Assessment : [details inserted]

The grounds for the appeal are:

1. I do not owe the claimed or any sum.
2. I am retired for over 20 years other than some years in the U.S. where I paid PAYE on my salary.
3. Such other reasons as may be adduced at any appeal hearing or subsequent court hearings.

As the assessment is totally incorrect and totally inconsistent with reality I hereby formally call on you to inform me of the basis of your assessment so that I may dispute same. Without knowing such a basis I am unable to dispute your fictitious claim and such lack of knowledge is deprivation of my constitutional rights and contrary to natural justice.

Please advise me in due course of the time and place of the appeal hearing and I would request that you acknowledge receipt of this appeal.

Yours etc"

18. These numerous letters were accompanied by a covering letter of the same date. In this letter the applicant appears to have been primarily concerned with arguing the merits of his case, but with respect to the enclosures he stated:

"The reason for all the appeals is simply I have no idea what you have assessed me and why and the only way I can cope is to appeal everything."

19. Included in the numerous letters were letters purporting to attempt to appeal, yet again, against the six assessments in respect

of the years 1978/79 to 1983/84 inclusive, and the notice of preliminary tax payable in respect of 1989/90. No attempt was made in any case to address the statutory pre-conditions to the consideration of an application for late leave to appeal. No returns were filed and the tax as assessed was not paid pro-temp, as required by section 957. Moreover, no grounds to explain the failure to appeal in time such as sickness, absence or other good reason were advanced, as required by section 933(7). Finally, proceedings were in being prior to the submission of the purported attempts to appeal, thereby bringing into play section 933(9).

20. The defendant's covering letter of the 15th of June 2007 was acknowledged and he was informed by Ms Morrin that the enclosures had been forwarded to one of her superiors. They ended up on the desk of Mr Nyhan, who having reviewed them was, apparently, not prepared to allow late appeals as applications for late appeals (certainly for all seven years that I am concerned with) had already been refused and no new grounds had been advanced. However, his decision in that regard was never communicated in writing to the defendant.

The defendant's argument.

21. The defendant argued before me that because the Revenue had not responded in writing to his purported notices of appeal dated the 15th of June, 2007 he must be regarded as having live appeals in being in respect of each of the tax years in question and that therefore the assessments in each year cannot be regarded as final and conclusive. He submitted that there is nothing in the legislation to preclude a taxpayer from attempting to appeal more than once and that notwithstanding the refusal of his earlier applications to have late appeals considered the Revenue was still bound to consider his new applications. In the absence of a communication indicating that the Inspector was either allowing or refusing the submission of a late appeal an application must be regarded as "live" and the assessment that it relates to cannot be regarded as final and conclusive.

Reasons for my decision

22. As already indicated I have determined the issue against the defendant. My reasons for doing so are that I regard the defendant's argument to be manifestly without foundation in the circumstances of this case.

23. In respect of the four tax years from 1978/79 to 1981/82 inclusive the assessments were not appealed against within time. An application made on the 12th of July 1982 to have a late appeal considered was refused, correctly in my opinion as no good grounds were demonstrated to justify the admission of a late appeal. While, strictly speaking the defendant may be correct in stating that there is nothing in the legislation precluding the taxpayer from applying a second or a third or more times to have a late appeal considered it seems to me that there is no obligation on an Inspector of Taxes to entertain such an application, or indeed respond to it, unless some new circumstances are advanced. To hold otherwise would give rise to an absurdity. The Inspector of Taxes, though he was not obliged to do so, did in fact entertain the second application dated the 11th of September, 2000 and refused it, again correctly in my view. He did not respond to the third application dated 15th June 2007 and in my opinion was perfectly within his rights not to do so, no new grounds having been advanced.

24. In respect of the three tax years from 1982/83, 1983/84 and 1989/90 inclusive once again the assessments were not appealed against within time. An application made on the 11th of September 2000 to have a late appeals considered and these were refused, correctly in my opinion as again no good grounds were demonstrated to justify the admission of a late appeal. A second application was submitted dated the 15th of June 2007 and was not responded to. In my view the inspector of Taxes was perfectly within his rights not to do so, no new grounds having been advanced.

25. In default of valid appeals having been filed the assessments for each of the seven tax years in question are indeed final and conclusive by virtue of section 933(6)(a), and most importantly, were so on the date on which proceedings were commenced i.e., on the 26th of January 2005.