

THE HIGH COURT

No. 805/ J.R./2001

A S

APPLICANT

AND

CRIMINAL ASSETS BUREAU

RESPONDENT

Judgment of Finnegan P. delivered on the 10th day of October 2005.

1. In July 2001 the Applicant was assessed for income tax in respect of the years of assessment 1993/94, 1994/95 and 1995/96 each of the assessments being dated the 27th July 2001. By letter dated 23rd August 2001 the Applicant's solicitors wrote to the Respondent in the following terms –

"Further to your letter of the 27th inst., with which you enclose notice of assessment to income tax for years ending 5th April 1994 to 5th April 2000 inclusive.

Our client instructs us to appeal against these assessments on the grounds that they are estimated and excessive.

Our client is particularly surprised to have received the aforementioned assessments given that he had a revenue audit in May 2000 and was entitled to a refund as a consequence.

We await hearing from you."

2. The Respondent replied to that letter on the 29th August 2001 in the following terms –

"I refer to your letter dated 23rd August 2001.

Your letter purports to be a notice of appeal pursuant to the Taxes Consolidation Act 1997.

Years of assessment 1993/94, 1994/95 and 1995/96.

Please note that pursuant to section 933 of the Taxes Consolidation Act 1997 I am of opinion that your client is not entitled to make such an appeal as he has not complied with the requirements as set out in section 957 of the Taxes Consolidation Act 1997. I hereby refuse the application for an appeal in respect of these years. The grounds of my refusal are –

(a) Your client has not delivered a return for each of the relevant years as required by section 957(2)(a)(i) which states that "No appeal shall lie against that assessment until such time as ... the chargeable person delivers the return".

(b) Your client has not complied with the requirements set out in section 957(2)(a)(ii) of the Taxes Consolidation Act 1997 which states that

"No appeal shall lie against that assessment until such time as ... 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".

3. Section 957(2)(b) of the Taxes Consolidation Act 1997 states that "tax shall be construed as including any amount of interest which would be due and payable under section 1080 on that tax at the date of payment of the tax.

4. Without prejudice to the foregoing:

It is a prerequisite of any appeal that your client deliver to me a fully completed return for the relevant years in the prescribed form. You are referred to the provisions of section 951 of the Taxes Consolidation Act in relation to your client's obligation to make a return. You are particularly referred to sub-section (1) of that section which incorporates the provisions of section 877 and 879 of the Act."

5. By letter dated 25th September 2001 the Respondent wrote to the Applicant as follows –

"Your letter of the 23rd August 2001 purported to be a notice of appeal pursuant to section 933(1)(a) of the Taxes Consolidation Act 1997. My letter of the 29th August 2001, pursuant to section 933(1)(b) of the Taxes Consolidation Act 1997 refused your application in respect of the years 1993/94, 1994/95 and 1995/96 and detailed the grounds for so doing.

No notice of appeal against my refusal, pursuant to section 933(1)(c) of the Taxes Consolidation Act 1997 was received in the office of the Appeal Commissioners within the specified period from the date of refusal. In default of notice of appeal the assessments made on your client are, pursuant to the provisions of section 933(6)(a) of the Taxes Consolidation Act 1997, final and conclusive."

6. By order made on the 30th November 2001 the Applicant was given leave to apply by way of Judicial Review for the following reliefs –

1. A declaration that the Respondent had unlawfully abused its powers and acted ultra vires in

(a) Raising tax assessments on the Applicant in respect of the years 1993 – 1996 inclusive.

(b) Refusing to accept his appeal of 23rd November 2001 regarding the assessments for those years.

(c) Taking enforcement action on foot of those assessments in particular attaching money payable by the North

Eastern Health Board for services provided by the Applicant's hackney business and authorising seizure inter alia of his business assets.

2. An Order of Certiorari quashing the said assessments and also attachment notices sent to several of the Applicant's debtors and the section 962 certificate sent to the Sheriff.

3. An interim interlocutory injunction restraining all or some of those enforcement measures.

4. An enquiry as to damages for inter alia abuse of power/misfeasance in public office.

5. Costs.

7. The grounds upon which the Applicant was granted relief are as follows –

1. On or after 1982, the Applicant has not committed any crime nor has he been involved in any crime, and such property as he has is not nor cannot reasonably be suspected to be the proceeds of crime, inter alia the money due to him by the Health Board and the assets of his business; all of the steps taken by the Respondent exceeds its vires as defined in section 4 of the Criminal Assets Bureau Act 1996.

2. Throughout 1993 – 1996 inclusive (until June 1996) the Applicant was unemployed and had no taxable income, and was not engaged in any other economic activity nor in crime; he should never have been assessed for income tax and those assessments are so manifestly extravagant and unsustainable as to constitute an abuse of power and a misfeasance.

3. The twelve month statutory period for appealing has not expired and not alone are there no special circumstances to warrant taking enforcement measures at this juncture but as those were initiated following the Respondent being notified of the Applicant's intention to appeal the assessments and would have a very damaging impact on the Applicant's ability to earn his livelihood (and on the livelihood of others) they constitute an abuse and a misfeasance.

4. Issuing the certificate to the Sheriff will have the effect of depriving the Applicant of his statutory right of appeal.

8. The Applicant was permitted to amend his grounds and the grounds as amended are as follows –

1. The issue of the assessments and/or the commencement of recovery actions by the Respondent is ultra vires by virtue of the Criminal Assets Bureau Act 1996 as there is no evidence of the Applicant's criminality during the years in question nor any reasonable grounds for suspecting that such income or gains that he may have had in the said years are the proceeds of such activity as is contemplated by the said Act.

2. The monies held by the Health Board could not be the subject of attachment by the Respondent as they could not nor could not reasonably be considered to constitute the proceeds of crime.

3. The Applicant is not a "chargeable person" for the years in question and consequently was under no legal obligation to submit or furnish tax returns for said years.

4. The assessments raised are arbitrary and unreasonable and out of line with the evidence.

5. The letter of 23rd August 2001 was a valid notice of appeal under section 933 of the Taxes Consolidation Act 1997 as amended and thus the assessments herein are not final and conclusive until, at the earliest, the hearing of the appeal has been disposed of by the Appeal Commissioners or otherwise provided for under section 933 of the Taxes Consolidation Act 1997.

6. The time for appealing the assessments had not begun to run until at the earliest 26 November 2001 and accordingly recovery actions by the Respondents could not commence until at least 30 days from this date.

7. The commencement of recovery actions by the Respondent within the 12 months discretionary appeal period was unlawful as:

(a) The proceedings cannot be commenced before the 12 months discretionary appeal period has expired.

(b) The decision to so act as evidenced in the letter of 25th September 2001 demonstrates an intention on the part of the Respondent never to allow the Applicant to appeal under section 933(7) of the Taxes Consolidation Act 1997 regardless of the grounds the Applicant might have advanced for obtaining an extension of the time to appeal.

(c) There were no circumstances that would warrant taking such action at such an early stage of the 12 months discretionary appeal period.

(d) There was unfair or invidious discrimination against the Applicant as compared to the treatment of the majority of individuals in comparable circumstances.

8. The monies held by the Health Board were in respect of services provided by independent taxi drivers and were not due to the Applicant and could not therefore have been attached under section 1002 of the Taxes Consolidation Act 1997.

9. In opening Counsel for the Applicant refined ground 1. Following on from the correspondence between the Applicant and the Respondent set out above on the 18th September 2001 the Respondent made demand on the Applicant pursuant to the Taxes Consolidation Act 1997 section 961. On the 27th November 2001 the Applicant gave Notices of Attachment to Allied Irish Banks Plc and Trustee Savings Bank in respect of monies held by the Applicant in accounts. A Notice of Attachment was served on Tesco Ireland and the North Eastern Health Board in respect of sums due by them to the Applicant in respect of taxi services supplied to them by the Applicant. While accepting that a Collector of Taxes could enforce an assessment against property which is not the proceeds of crime the Applicant contends that where the mechanism of the Criminal Assets Bureau is invoked it is permissible to

attach only the proceeds of crime. The Applicant contends that this is the true construction of the Criminal Assets Bureau Act 1996 section 8. Section 8(2) of the Act provides as follows –

Section 8

(2) The powers and duties vested in a bureau officer for the purposes of this Act, shall, subject to sub-sections (5), (6) and (7), be the powers and duties vested in the bureau officer, as the case may be by virtue of

(a) being a member of An Garda Síochána

(b) the Revenue Acts or, any provision of any other enactment, whether passed before or after the passing of this Act which relates to revenue including any authorisation or nomination made thereunder, or

(c) the Social Welfare Acts, including any appointment made thereunder.

And such exercise or performance of any power or duty for the purposes of this Act shall be exercised or performed in the name of the Bureau.”

10. However section 8(8) provides as follows –

“(8) A member of the Garda Síochána, an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare, who is a bureau officer, notwithstanding his or her appointment as such, shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána, an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare, as the case may be, for purposes other than the purposes of this Act, as well as for the purposes of this Act.

11. The Applicant argues that while an Officer of the Revenue Commissioners acting as a Bureau Officer enjoys also his powers as an Officer of the Revenue Commissioners in exercising his powers he can only do so in terms of the objectives of the Bureau set out in section 4 of the Criminal Assets Bureau Act 1996 the most relevant objective being that in 4(b) – the taking of appropriate action under the law to deprive or deny those persons of the assets or the benefit of such assets, in whole or in part as may be appropriate. On this basis in availing of a process of execution such Bureau Officer may only execute against assets which derive or are suspected to derive directly or indirectly from criminal activities.

12. I am not satisfied that the Applicant is correct. Sections 4, 5 and 8 must be construed in the light of the Act as a whole. Section 10(1) of the Act provides as follows –

“(1) Notwithstanding any requirement made by or under any enactment or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of a bureau officer who is an officer of the Revenue Commissioners ... shall not be revealed.”

13. Again section 10(4) provides as follows –

“(10) Where a bureau officer –

(a) who is an officer of the Revenue Commissioners exercises or performs any of his or her powers or duties under the Revenue Acts or any provision of any other enactment whether passed before or after the passing of this Act which relates to revenue in writing such exercise or performance of his powers or duties shall be done in the name of the Bureau and not in the name of the individual bureau officer, notwithstanding any provision to the contrary in any of those enactments.

14. The policy of the Act as to the anonymity of bureau officers is to be gathered from section 10. Pursuant to section 10(4) the bureau officer who has the power or duty to enforce a revenue judgment must do so in the name of the Bureau and not in his individual name. The scheme of the Act is that a Bureau Officer as such enjoys the powers conferred upon him by the Act but also the powers vested in him as an Officer of the Revenue Commissioners: in execution of the latter he must act in the name of the Bureau. Thus a Bureau Officer who is an Officer of the Revenue Commissioners in exercise of the powers conferred by section 962 of the Taxes Consolidation Act 1997 (Issue of Certificate to Sheriff) or section 1002(2) of the Taxes Consolidation Act 1997 (Notice of Attachment) does so not in his own name but in the name of the Bureau. Both these sections of the Taxes Consolidation Act operate where a taxpayer makes default and in their terms apply to all amenable assets the objective being to remedy the default in payment of tax. It is not necessary having regard to the terms of these sections that the assets in question be the proceeds of crime where the assessment is made on the basis of criminal activity. Reading the Criminal Assets Bureau Act and the Taxes Consolidation Act together I can find nothing to suggest that the operation of section 962 or section 1002(2) of the Taxes Consolidation Act 1997 should be confined as suggested by the Applicant. I hold against the Applicant on this submission.

15. The second ground relied upon by the Applicant is that monies held by the Health Board could not be the subject of attachment by the Respondent as they could not reasonably be considered to constitute the proceeds of crime. Having regard to my finding on the first ground as modified for the like reasons which I have given there I hold against the Applicant.

16. Ground 3 relied upon by the Applicant is that the Applicant was not a chargeable person for the years in question and accordingly was under no legal obligation to submit or furnish tax returns. Other than to state the proposition and refer me to the definition of chargeable person in the Taxes Consolidation Act 1997 section 950 and the evidence of the Applicant that he was unemployed during the relevant years the argument was not developed.

17. The Taxes Consolidation Act 1997 section 950 contains the definition for the purposes of Part 41 of the Act of “chargeable person” –

““Chargeable person” means, as regards a chargeable period, a person who is chargeable to tax for that period, whether on that person’s own account or on account of some other person ...”

18. Thereafter the definition contains a number of exclusions from the definition. Thus persons on PAYE or persons whose income is insufficient to render them liable to income tax are excluded from the obligation to make a return.

19. The assessment in this case purports to be made under the Taxes Consolidation Act 1997 section 1082 which in its terms does not require a return. The section has application where there has been neglect within the meaning of section 924(2)(a) of the Act and which section refers not to a chargeable person but to a person chargeable. Having regard to the terms of section 1082 and section 924 of the Taxes Consolidation Act 1997 it was unnecessary that the Applicant be a chargeable person. The fourth ground raised by the Applicant is that the assessments raised are arbitrary and unreasonable and out of line with the evidence. Reliance is placed on the decisions of the High Court and Supreme Court in *Deighan v Hearne & Ors* at 1986 IR 603 and 499. Finlay C.J. at page 505 said –

“The Court is satisfied that, having regard to the right of the taxpayer to appeal against an assessment and his right, if an assessment were made ultra vires the powers vested in the Inspector or upon the basis of an arbitrary or capricious premise, to challenge that by way of Judicial Review the power vested in the Inspector to make an assessment and, if no appeal is brought against that, the subsequent provisions that it should then become final and conclusive do not vest in the Inspector powers which can be considered unjustly harsh nor does it constitute any failure to protect the rights of the taxpayer.”

20. Again at page 505 Finlay C.J. indicated other circumstances where the Courts would intervene if an Inspector were to act capriciously or in a wholly unreasonable fashion in refusing to grant an appeal under what is now section 933(7)(a).

21. Murphy J. at page 613 dealt with the nature of the function being carried out by an Inspector of Taxes in making an assessment: it is a purely administrative one involving the application of established statutory provisions in relation to the imposition of personal taxation by an officer of experience and integrity to information which it is the statutory duty of the taxpayer to provide. He went on to say –

“Where the taxpayer neglects to make any return the Inspector is forced to resort to the default procedure. In that event the Inspector must exercise his best judgment on whatever information is available to him and as a consequence the task of the Inspector may be more difficult and certainly the danger of an error in the assessment is increased immeasurably. However at the end of the day the legal effect of each procedure is the same. The taxpayer on being given notice of the assessment made on him either acquiesces to it or disputes it in accordance with the statutory procedures outlined above.”

22. Murphy J. went on to point out that the fact that an assessment even where mistaken becomes final and conclusive is not a direct consequence of the assessment made by the Inspector but rather of the failure of the taxpayer to dispute the assessment by availing of his right of appeal.

23. The Applicant's case to support this ground is very simple – at the relevant times he was unemployed. In his Affidavit sworn on the 30th November 2001 he deposes as follows –

“4. Between 1992 and 1996 I was unemployed. For the first two years I and my family (2 children) were supported mainly by my wife who worked as a Contracts Officer with the North Down Hospital Trust. In 1994 she had a serious car accident, for which she received Stg. £150,000 which greatly helped the family finances and helped me set up in business. On recovering from the accident M retrained and now works for several days in Belfast as a Drugs and Alcohol Counsellor. She has a pension from her former employer and she does all the book and record keeping for my business and manages its finances.

5. In 1994 I resolved to set about establishing a business. I got a PSV licence so that I could drive a taxi but it was revoked in 1995 on account of Garda objections. I took the matter to court; those objections were rejected and I had my licence restored in June 1996. I then worked for a while with A1 Taxis for a salary.

6. In November 1996 I started up a taxi business in partnership with K McS, Top Rank Cabs, for which we paid £28,000. At all times he managed the business records and finances. Last year I bought out his 50% share for £19,500.”

24. It appears from a letter dated 19th September 2001 from the Social Welfare local office Dundalk that the Applicant signed on for unemployment assistance from the 17th June 1992 to 24th October 1995: the period with which this Application is concerned is that from the 6th April 1993 to 5th April 1996 so that the Applicant was in receipt of unemployment assistance for that period save and except from the 24th October 1995 to the 5th April 1996. The returns subsequently filed by the Applicant show nil income for the three taxation years ending on the 5th April in 1994, 1995 and 1996.

25. Detective Chief Superintendent McKenna swore an Affidavit on behalf of the Respondent on the 4th November 2001 in which he discloses a number of matters which he alleges cast doubts on the account given by the Applicant. These are as follows –

1. On the 3rd February 1995 the Applicant and his wife applied to Trustee Savings Bank for a loan of £10,000. On the application he gave as his occupation taxi driver and named as his employer A1 Cabs.

2. Again on the 3rd February 1995 the Applicant with his wife applied to Trustee Savings Bank to open a current account. He gave his occupation as taxi driver and described himself as self employed and gave the length of his employment as two years.

3. On the 2nd September 1996 the Applicant applied to Trustee Savings Bank for a term loan of £20,000. On his application he gave his salary as £2,200 per month. The purpose of the loan was to purchase a partnership in a taxi company. This loan relates to the purchase by the Applicant and K McS of Top Rank Cabs for £28,000 in November 1996.

4. On the 10th May 1994 the Applicant applied for a licence to drive a small public service vehicle. Further in response to a request for information as to his employment in the preceding three years he gave as his employer for one year M.F. K as an electrician and Downtown Taxis taxi as a driver for two years.

26. The Applicant filed an Affidavit in response. In that he avers that he did work for Downtown Taxis in Belfast for two years in 1979 and 1980 and for a year with M.F. K in Cork in 1981 and 1982: he accepts that the information given on his application for a PSV licence was false: however he believed that without giving misleading information he would not have obtained a licence. He applied to the Trustee Savings Bank for a loan to purchase a car with a view to going into the taxi business. In fact the loan was used to purchase a house and on receipt of a settlement cheque in respect of a personal injury action taken by his wife the loan was paid off. The second loan applied for on the 2nd September 1996 was to enable him to purchase a taxi business.

27. Detective Garda Anthony Scully swore an Affidavit on behalf of the Respondent on the 6th December 2001. He deposes that Garda Eric McGovern on the 7th January 1995 stopped the Applicant driving a motor car. Garda McGovern established that the car was a hackney cab owned by a firm in Francis Street, Dundalk. At the time the car was stopped it had a passenger.

28. While the Affidavit of Detective Garda Scully is entirely hearsay it was nonetheless dealt with in an Affidavit sworn by the Respondent on the 13th December 2001. He deposes that he was never the registered owner of the car identified by Detective Garda Scully. However he remembers the 7th January 1995 and the passenger was not a paying passenger. Garda Eric McGovern gave evidence at the hearing and I do not rely on the Affidavit of Detective Garda Anthony Scully to the extent that he gave evidence.

29. Detective Inspector James Sheridan gave evidence. During 1992 he was Detective Garda attached to Dundalk Garda Station and carried out surveillance on the Applicant. The Applicant took up residence in Dundalk towards the end of June 1992. Almost immediately thereafter he took up the occupation of providing a hackney service. He was observed on a daily basis conducting this activity in the vicinity of the premises of A1 Cabs at Crowe Street, Dundalk. The Applicant's lifestyle and activities at that time were inconsistent with those of a person existing on means tested social welfare benefits as was the Applicant from the 17th June 1992 to the 24th October 1995.

30. Detective Chief Superintendent McKenna swore an Affidavit on behalf of the Respondent on the 17th October 2002. The Applicant denied that he was ever the registered owner of a car registration number 91D 5068 in his Affidavit sworn on the 13th December 2001. Detective Chief Superintendent McKenna deposes however that the Applicant was the habitual user of the vehicle and as to his belief that the Applicant made use of the same for the purposes of carrying fare paying passengers and in support of this belief referred to a number of documents. The first document is a proposal for Road Traffic Act insurance in respect of motor car 91D 5068 dated 7 December 1994. The Applicant gives his occupation as taxi driver since 1979, gives the date of purchase of the vehicle as October '94 and the value of the vehicle as £8,000. The cover required is for use as a taxi. The proposal form it would appear was accompanied by a number of documents – the Applicant's PSV licence, a letter from Mac Cabs Newry certifying that the Applicant had been employed by them as a PSV driver from 19th July 1985 until 30th November 1994. A policy of insurance was duly issued by Lloyds on foot of the proposal. On the 1st February 1995 the insurance was switched from 91D 5068 to 93LH 1691 the value of which was given as £12,000. On the 8th September 1995 a second driver was added to the policy, E MacE. On the 30th May 1996 the Applicant completed a proposal form for insurance again for car 93LH 1691. In the same he stated that he had been in business as a taxi driver for three years. The proposal gave M H as a named driver. Mr. H also completed a proposal form which was witnessed by the Applicant and in the same gave as his employer the Applicant. In connection with that application for insurance the Applicant wrote a letter as follows –

"To Whom It May Concern

The reasons I have changed insurance companies are several. The first of which is the quite unsatisfactory service I receive from the broker B.J. Pierce with constant struggles to get proof that I actually was covered. It cost me as much in phone calls as my monthly premiums. Another reason was the extreme cost of putting a second driver on the policy, nearly as much as the cost of the whole policy again."

31. On foot of that proposal the Applicant obtained cover with Mr. H being a named driver for the period 30th May 1996 to 29th May 1997.

32. The Applicant himself gave oral evidence. In relation to in 1992 he had rented a house in Dundalk: his wife and two children continued to live in Belfast until the Summer of 1993. In 1992 and 1993 he spent a lot of his time away from Dundalk on the Anti Extradition Campaign. His wife had an accident in 1994 and was in hospital for much of that year and the Applicant looked after her when she came home from hospital and their two children. In 1994 his income consisted of social welfare payments and his wife's salary which was still being paid by her employer and her invalidity payments. In anticipation of a personal injury award to his wife early in 1994 he formed the intention to go into the taxi business. At that time he frequented the premises of A1 Taxis. A lot of Northern people did so as it was like a drop-in centre with a snooker table, a television, fruit machines and tea making facilities. In the evenings there were card games. In May 1994 he applied for a PSV licence. He had been a taxi driver in the North. In order to set up as a taxi operator you first apply for a PSV licence then for PSV insurance and then acquire an appropriate car. In December 1994 the owner of A1 Cabs asked the Applicant to insure a vehicle for him as he needed a car for over Christmas and the figures quoted to him by insurers was too high. When the car was not required by A1 Cabs he had a loan of the same. The car in question only worked nights and he had use of it during the day time. One of the reasons he took out the insurance was that this would give him a history for when he required insurance. The Applicant knew nothing of the letter from Mac Cabs certifying that he was employed by them between the 19th July 1985 until 30th November 1994. He was not the registered owner of 91D 5068. He did not pay the insurance premium. At the time the insurance was changed, the 1st February 1995, he sought a job from D McG and bought a car from him. The price of the car was £4,000 the Applicant to take over repayments outstanding. While waiting to get the car plated his PSV licence was revoked. The loan which he applied for to TSB on the 3rd February 1995 was to enable him to pay for the car and also pay the insurance premium. By reason of his PSV licence being revoked he was unable to obtain a hackney plate until 1996. At this time he renewed insurance on the car again for the benefit of D McG for a further year although the car was still not plated and could not be used as a hackney. When Mr. MacE was added to the policy as a named driver the Applicant signed the form. With regard to the application for insurance with a Mr. H as a second driver the Applicant agreed that he had signed the form but that it had been filled in by someone in his broker's office. He did not get his own PSV licence until May 1996 and went into business in May 1996 and is still in that business. The loan which he took out in September 1996 from Trustee Savings Bank was to enable him to buy his own taxi. In December 1995 his wife received an award on foot of a personal injury claim for just under Stg. £150,000.

33. In cross examination the Applicant said his wife's accident had occurred early in 1994. She was retired on pension in April or May 1995 and received a lump sum of Stg. £20,000 at that time. His wife banked in Belfast. The Applicant opened an account in Dundalk in 1995 and he put money into the same and borrowed money. In filling out the forms to obtain a loan from the Credit Union he would do what was necessary to get the loan and would not necessarily answer questions truthfully. In particular having come down from Northern Ireland he had no employment history and would make up one. For a considerable time he had been a prisoner in Portlaoise Prison and would wish to disguise this. The Applicant met D McG at the premises of A1 Cabs in the early part of 1994 where Mr. McG was a driver and the Applicant was socialising. The Applicant got the car 91D 5068 from A1 Cabs which was owned by Mr. McG. The Applicant himself purchased the car 93LH 1691. The Applicant received the proceeds of a personal injury claim before Christmas in 1994: he could not remember if the claim included a claim for loss of earnings. The Applicant identified an application for loan made by him to his Credit Union at the beginning of 1995. He borrowed the sum of £4,000 which he spent on a house which he was then renting. The details of employment which he gave on the loan application form were false. In relation to the proposals for car insurance the Applicant signed the same in blank and they were filled out by the insurance broker who filled in details but the Applicant did not give the broker the details. While the proposal for car insurance which he filled out on the 7th December 1994 stated that he was a named driver on his wife's car and on another taxi he had no recollection of this. The Applicant made a social

welfare claim in 1993 upon the basis that his wife was then living with him: in fact she was not. In answer to a question as to his spouse's earnings on the form he answered none and this also was incorrect. The Applicant borrowed money from his Credit Union in 1995 the stated purpose of the loan being the purchase of a car. In fact he used the money to tide the family over until his wife's personal injury claim was completed. Some of the money was used to buy furniture for his new house. He agreed that he described himself on the application as a taxi driver. In the period in which the Applicant had a PSV licence up to June 1995 he did not avail of the same because he had not got a plate. He was being kept under surveillance by the Gardai at that time and he could not possibly drive a taxi illegally. The reason Mr. H had been put on the Applicant's insurance was that he was an experienced taxi driver and the Applicant wished him to show him the ropes. If the Applicant was driving a taxi illegally in Dundalk as he was being watched every day the Gardai would have been aware and he would have been reported to the Authorities.

34. Detective Garda Eric McGovern gave evidence. There is a system in the Garda Síochána whereby a Criminal Intelligence Report is made on sightings of a person who is suspected of criminal activity. On the 7th January 1995 he stopped the Applicant and thereafter made a Criminal Intelligence Report and he forwarded it to the Criminal Intelligence Section. The Applicant when stopped gave him his name and address. The Applicant produced a PSV badge No. B99626. In answer to questions the passenger of the car said he was getting a lift home and that he had hired the Applicant to bring him and that he was under the impression that it was a hackney. The Applicant said the car was operating as part of the Fone - Cab in Francis Street, Dundalk. The car registration was 91D 5068.

35. Detective Inspector Sheridan gave evidence. In 1992 he was a Detective Garda with Special Branch based in Dundalk. He regularly saw the Applicant at the premises of A1 Cabs and his car parked outside. He believed that he was operating as a hackney and taking fares from there. He had seen passengers in the car and assumed they were paying for hire. He was aware that the Applicant was trading illegally but this was not part of his concerns and he did not report it. This activity of the Applicant continued throughout 1992 and 1993. He assumed that while carrying on the taxi business the Applicant was falsely claiming social welfare payments: again he did not see this as a concern of his and did not report it to the Authorities. He never personally saw the Applicant being paid by a passenger.

36. Mr. D McG swore an Affidavit on the 24th October 2002. He avers that he owned a business A1 Cabs from 1991 to 2001. He first became acquainted with the Applicant in the Summer of 1994 as the Applicant was friends with some of the Deponent's employees. In Winter 1994 he needed to insure the car ----- as he needed an extra car for Christmas. He asked the Applicant to insure the car for him as it would have been more expensive for him to insure it himself. The Applicant did not work for him at this time. In February 1995 the vehicle was replaced by a Toyota Carina and he asked the Applicant to change over insurance to this vehicle which the Applicant did. The Applicant did not work for him at this time. Early in 1995 the Applicant asked the witness for a job as a hackney driver but before any position was offered the Applicant's PSV licence was revoked. Early in 1996 the Applicant came into the witness's business as a part time driver but left in November 1996 to set up his own business.

37. Mr. McG attended for cross examination. In cross examination he said that he at first worked in A1 Cabs but purchased the business in 1994. In the period in which he was involved with A1 Cabs he had bought as many as 30 vehicles. He also had a company A1 Cars and because of this it was not necessary that he should register vehicles in his own name. He would however insure them in his own name as taxis. The Applicant was friendly with the previous owner of A1 Cabs and frequented its premises on a social basis. The witness could not explain how car ----- which was his was registered in the Applicant's name. He had purchased it from a finance company. It was also insured in the Applicant's name. The Applicant did not use it as a hackney but it was available for him to use. The Applicant commenced work as a hackney driver in 1996 and used that car because he was working for the witness. The Applicant purchased the car from the witness in 1996. The Applicant also had a loan of the vehicle from time to time from the previous owner Mr. C.

38. On re-examination the witness confirmed that the Applicant looked after his children following his wife's accident. Many people dropped into the premises of A1 Cabs to socialise. The premises were open 24 hours a day. The policy of insurance arranged on ----- covered driving by the Applicant only and not by the witness. The car 93LH 1691 was similarly insured. It was possible that the witness had other insurance on both these cars but he accepted that the policies taken out by the Applicant did not cover his driving. He did not produce the letters as to previous employment which formed part of the application for cover.

39. In the course of his cross examination of Detective Chief Superintendent McKenna Counsel for the Applicant put the Plaintiff's case on this issue in the alternative: either the Plaintiff had no income whatsoever or in the alternative if he had income the assessments were excessive in relation to the same.

40. It is on the basis of the foregoing evidence that I am asked to hold that the assessments raised are arbitrary and unreasonable and out of line with the evidence. This Court cannot act by way of an appeal against the assessments. To that extent the view which the Court takes of the evidence adduced on this issue as to where the truth lies is irrelevant. The assessments were of course in a sense arbitrary but there was no alternative as the Applicant had failed to engage with the process. All that can be asked of the Inspector in these circumstances in the words of Murphy J. in *Deighan v Hearne* is that he use his best judgment on whatever information is available to him. Again I recognise as did Murphy J. that in these circumstances the possibility of an error in the assessment is increased. However the taxpayer in such circumstances has his rights of appeal. In the present case there are clearly conflicts of evidence. As Finlay C.J. said in *Deighan v Hearne* at 506 -

"Firstly the Plaintiff has appealed against the decision of the learned High Court Judge declining to try as an issue of fact and preliminary to any other issue in the case a question as to whether during the periods in respect of which assessments were made on him, as has been set out in the decision of the Court, the Plaintiff was carrying on business as a furniture wholesaler.

The learned High Court Judge decided that having regard to the provisions of the Income Tax Code and the procedure for assessment in default of the making of returns which had been outlined in the decision of the Court that the Court could only intervene to set aside or vary an assessment otherwise than under the procedure provided by the Income Tax Acts if it were established either that the procedure carried out was ultra vires the statutory provisions or that one or other of those statutory provisions was invalid having regard to the provisions of the Constitution. The Court could not try an issue of fact arising from an assessment made in default of a return otherwise than through the appeal procedure provided in the Income Tax Code."

41. In dealing with this ground therefore it is only necessary for me to hold that on the balance of the evidence before me which I have outlined above the Applicant has failed to satisfy me that for the years in question assessments in any amount or in the alternative assessments in the amount actually assessed were arbitrary and unreasonable.

42. As to the fifth, sixth and seventh grounds relied upon by the Applicant I am satisfied that there was no valid appeal under section

933(1)(a) of the Taxes Consolidation Act 1997: see the decision of the Supreme Court in *Keogh v Criminal Assets Bureau* 2004 ILRM 481. There was no appeal to the Appeal Commissioners pursuant to section 933(1)(c). Returns were not delivered until the 26th November 2001 well outside the 30 day period prescribed. Accordingly pursuant to the provisions of section 933(6)(a) the assessments became final and conclusive. See *Keogh v Criminal Assets Bureau* at page 493. See also my judgment in *Criminal Assets Bureau v P.S. Unreported* 19th October 2004. The appeal referred to in section 933(6)(a) is the appeal referred to in section 933(1)(a): it does not refer to a late appeal under section 933(7)(a). Accordingly proceedings can be commenced before the twelve month period provided for in section 933(7)(a) has expired.

43. The Applicant however contends that the conduct of the Respondent in this case in proceeding to set about recovery demonstrates an intention to deny the Applicant his right of appeal under section 933(7). The chronology of events is relevant in considering this contention. The assessments issued on the 27th July 2001 and there was no valid appeal lodged within the 30 day period prescribed by section 933(1)(a) nor was there an appeal lodged pursuant to section 933(1)(c) to the Appeal Commissioners against the refusal of the appeal within the further 15 day period following the refusal therein provided for. The appeals were refused on the 29th August 2001 and accordingly by the 16th September the assessments became final and conclusive. A demand for payment was made on the 18th September 2001.

44. On the same day that the demand was delivered to the Applicant, 18th September 2001, the Respondent by letter notified the Applicant of the intention to enforce the demand after the lapse of seven days. Notwithstanding this the Applicant did not deliver returns until the 26th November 2001 the day before enforcement took place. Having regard to this correspondence I do not see that it can be said that the Respondent acted precipitously. I am satisfied that enforcement was quite properly commenced with a view to recovering tax on foot of an assessment which had become final and conclusive. The fact that the commencement of enforcement was delayed from the date upon which the assessments became final and conclusive until the 26th November is not consistent with the suggested determination never to allow the Applicant to appeal under section 933(7) of the Taxes Consolidation Act 1997. Finally with regard to the grounds at 7(c) and (d) I am satisfied that the period allowed between the assessments becoming final and conclusive and the commencement of enforcement is such that the Respondent cannot be said to have acted capriciously or oppressively in setting about the recovery of the sums due by the Respondent. Further no evidence was adduced that the Applicant could bring himself within section 933(7)(a) by showing that the Applicant was prevented from giving notice of appeal within time by absence, sickness or other reasonable cause.

45. The Applicant has failed to satisfy me on the grounds raised by him at 5, 6 and 7.

46. The eighth ground raised by the Applicant – that monies held by the Health Board on foot of Attachment Notices was not due to the Applicant and therefore could not be attached under the Taxes Consolidation Act 1997 section 1002 – arises in the following circumstances. On the 27th November 2001 a Notice of Attachment was served by the Respondent on the North Eastern Health Board. In his Affidavit sworn on the 30th day of November 2001 the Applicant deposes in paragraph 10 thereof that the Board owed him then £15,000 approximately 8/11ths of which he in turn owed to car owners who paid him an administration fee. The sum was due and owing in respect of taxi services. In a further Affidavit sworn on the 11th February 2002 the Applicant deposes that the backbone of his business was work done for the Eastern Health Board and that he bought two buses for that work which he was then using in effect as taxis carrying single passengers. W C a taxi owner swore an Affidavit on the 11th February 2002 in which he avers that he with seven other owners of taxi cars provided a taxi service to the North Eastern Health Board through the Applicant's company. The arrangement that existed was that the Health Board would pay the Applicant who would then pay the deponent and the owners of other taxis provided for the purpose of the service to the Health Board. The total amount owing to taxi drivers involved at the date of the swearing of the Affidavit was in excess of €22,000. While the Affidavit refers to a total of eight taxi drivers involved the names of nine taxi drivers are set out therein.

47. An Affidavit was filed on behalf of the Respondent by A B, Assistant Chief Executive Officer with the North Eastern Health Board. He exhibited a letter from William Clarke in the following terms –

"My name is W C. I have been appointed spokesperson, agent and have been given power of attorney by the independent contract drivers of T R C to pursue payment of work undertaken by these drivers for the months of October/November for the North Eastern Health Board. I have enclosed copy of authorisation by individual drivers and invoices detailing work completed and amounts due to the individual drivers. I would be grateful if you would arrange for immediate payment of same."

48. The Board responded to that letter on the 28th January 2002 and pointed out that it had no contractual or other relationship with the drivers in question but only with the Applicant.

49. On the basis of the evidence I am satisfied that the Applicant had a contract with the Health Board pursuant to which he was entitled to be paid sums for services provided. I accept that he used other taxi owners to provide part of that service and that he is indebted to them. This being an arrangement between the Applicant and the other taxi drivers I am satisfied that he is liable to them regardless of whether or not he is paid by the Health Board. On the other hand the only obligation of the Health Board is to pay the Applicant in accordance with their agreement.

50. The power to attach debts arises under section 1002 of the Taxes Consolidation Act 1997. The scheme of the section is that the Revenue Commissioners can serve a notice of attachment on a person whom they believe has a debt due to the taxpayer. I am satisfied on the evidence that the Health Board is such a person and is indebted to the taxpayer and accordingly that the Revenue Commissioners were entitled to attach that debt. Insofar as the owners of taxis who provided a service to the Health Board on behalf of the Applicant are concerned their debts are debts of the Applicant and not of the Health Board.

51. Having regard to the foregoing I refuse the Applicant the reliefs which he seeks.