THE HIGH COURT
REVENUE

[2014 No. 308 R]

BETWEEN

THE REVENUE COMMISSIONERS

APPELLANTS

AND
ANSOUND LIMITED (IN LIQUIDATION)

RESPONDENT

PURSUANT TO SECTIONS 941 AND 943 OF THE TAXES CONSOLIDATION ACT 1997, BY HER HONOUR JUDGE JACQUELINE LINNANE, A JUDGE OF THE CIRCUIT COURT, FOR THE OPINION OF THE HIGH COURT

JUDGMENT of Mr. Justice Gilligan delivered on the 30th day of July, 2015

1. This is an appeal by way of case stated from Her Honour Judge Linnane, Judge of the Circuit Court, who delivered her decision on the 12th day of July, 2011. The case stated relates to the refusal of James Byrne, an authorised officer of the Revenue Commissioners, dated 22nd March, 2007, to issue a "film 2 certificate" for the purposes of relief pursuant to s. 481 TCA 1997. The refusal was on the basis that he had not been supplied with sufficient evidence to verify that all the necessary requirements had been met. The Appeal Commissioner Mr. Ronan Kelly upheld that refusal by decision of 18th December, 2009. The respondent appealed to the Circuit Court and the Circuit Court Judge found that the conditions attaching to the Minister's certificate had been satisfied. The appellants (The Revenue Commissioners) appeal that decision by way of case stated.

2. The question for determination by the High Court is whether the learned Circuit Court Judge misdirected herself in deciding that the conditions in the certificate granted by the Minister had been met and in particular whether she misdirected herself in finding that the conditions of the Minister's certificate had been satisfied by the evidence and that the sums invested by the investors and used by the respondent to pay the amounts invoiced by Concorde to the respondent constituted a "relevant investment" for the purposes of the applicable legislation.

3. In respect of a second issue, the Circuit Court Judge did not make any determination as to the powers of the appellants to effectively investigate if all the Minister's conditions were complied with, given her finding on the first issue.

Background Circumstances
4. The scheme of the Act and facts are set out in the case stated and in brief, under the scheme of relief for investments in films provided for by s. 481 TCA as it applied at the time of the investment, a "qualifying company" must apply to the Minister for Arts, Heritage, Gaeltacht and Islands (hereinafter "the Minister") for a certificate that the film which it intends to produce may be treated as a "qualifying film" for the purposes of that provision. Such certificate is issued subject to such conditions as the Minister may consider appropriate. An investor's claim for relief in respect of an investment in a "qualifying company" must be accompanied by a certificate issued by the "qualifying company" (hereafter "a Film 3 certificate") certifying that the conditions for the relief, insofar as they apply to the company and to the film, are or will be satisfied in relation to that investment.

5. A "qualifying company" may not issue an investor with a Film 3 certificate until an authorised officer of the appellants has issued "a Film 2 certificate". A Film 2 certificate may issue on the receipt of a completed Film 1 form, which sets out the matters described at s. 481(13) TCA, including a statement that the "qualifying company" satisfies or will satisfy the conditions for the relief insofar as they apply in relation to the company and a film. The company is also required to furnish such other information as the appellants may reasonably require.

6. The respondent applied for authority to issue a Film 3 certificate and after an exchange of correspondence, by letter dated 22nd March, 2007, Mr. Jim Byrne, an authorised officer of the Revenue Commissioners refused to issue a Film 2 certificate, and as a result the respondent could not issue Film 3 certificates to its investors.

7. The respondent was incorporated and promoted by Merlin Films Limited ("Merlin") for the purpose of producing a film "The Moving Target".

8. The Minister granted a certificate under s. 481(2) TCA, 1997 with conditions, including *inter alia:-*

- Not more than IR£823,729 was to be raised for the project under s. 481 TCA;
- The sum raised under s. 481 TCA should not exceed 60% of the actual cost of the production of the film;
- All of the s. 481 investment was to be actually spent in the production of the film;
- Direct expenditure on the employment of Irish personnel and on the purchase of Irish goods and services in the production of the film was to be IR£997,074;
- The term "Irish" was defined, in relation to the direct employment, as meaning domiciled, resident or ordinarily resident in the State, and in relation to the provision of goods and services, as meaning goods and services provided by Irish resident companies or persons domiciled, resident or ordinarily resident in the State.

9. The respondent raised IR£823,729 from individual investors by way of investments under s. 481 TCA. The respondent engaged a studio company resident in Ireland – Concorde Anois Teoranta ("Concorde") and an Isle of Man company – Twoflowers Limited to provide pre and post production work. Both companies were in effect owned by Mr. Roger Corman.

10. The sum of IR£1,027,074.00 was paid to Concorde (including the IR£823,729 above). These monies were paid on foot of five invoices (attached to case stated at Appendix C). In addition, the respondent paid the sum of IR£345,807 to Twoflowers Limited, a non Irish company.

11. In respect of the sum paid to Concorde the sum of IR£438,501 was vouched in the books and records of Concorde as having been expended by it on outlays that it had incurred in the provision by it of services on the production of the film. The appellants make no complaint in respect of that amount. Concorde was invoiced the sum of IR£435,000 by a non Irish company Transpacific Corporation,

incorporated in the Philippines. Transpacific Corporation is ultimately owned by Mr. Corman.

12. The learned Circuit Court Judge found that the s. 481 investment monies, that is IR£823,729, were actually expended in the production of the film, The Moving Target.

13. The first principle issue that arises in this instance is the actual finding of the trial judge in the Circuit Court and her decision to allow, in effect, the appeal from the decision of Mr. Ronan Kelly, Appeal Commissioner, of 18th December, 2009, wherein he upheld the decision of Mr. James Byrne, an authorised officer of the Revenue Commissioners who refused to issue the relevant film 2 certificate for the purposes of relief pursuant to s. 481 of the Taxes Consolidation Act 1997.

14. In the case stated within which bounds I am constrained to remain, the trial judge who duly signed the case stated sets out at para. 5(n) as follows:-

> "Having taken evidence from Mr. Columba Heneghan, Mr. Tim O'Donoghue and Mr. Joe Binchy (all three of whom were called by the respondent) and Ms. Breda Ruddle (called on behalf of the appellants) and having examined the backup documentation containing details of the work done by Concorde and the invoices that the respondent paid in respect thereof, I found as a fact that the s. 481 investment had been actually expended in the production of The Moving Target, the appropriate sums had been invested in the production of a "qualifying film", the conditions attached to the Minister's certificate had been satisfied and the requirements for the grant of relief under s. 481 TCA had been met."

15. In *Mara (Inspector of Taxes) v. Humming Bird Ltd* [1982] ILRM 421 at 426, Kenny J. set out the approach of the court when considering a case stated as regards an Appeal Commissioner's (or Circuit Court Judge's) conclusions or inferences from primary facts:-

> "A case stated consists in part of findings on questions of primary fact, *e.g*. with what intention did the taxpayers purchase the Baggot Street premises. These findings on primary facts should not be set aside by the courts unless there was no evidence whatever to support them. The Commissioner then goes on in the case stated to give his conclusions or inferences from these primary facts. These are mixed questions of fact and law and the court should approach these in a different way. If they are based on the interpretation of documents, the court should reverse them if they are incorrect for it is in as good a position to determine the meaning of documents as is the Commissioner. If the conclusions 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 misdirected himself as to the law or made a mistake in reasoning. Finally, if his conclusions show that 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 the law or a wrong interpretation of documents, they should not be set aside unless the inferences which he made from the primary facts were ones that no reasonable Commissioner could draw."

16. This particular aspect was dealt with further in the Supreme Court case of *D.A. McCarthaigh, Inspector of Taxes v. Cablelink Limited* [2004] 1 ILRM 359 in which the Court (Fennelly J.) considered the scope and extent of an appeal by way of case stated from the Appeal Commissioner (or Circuit Court Judge). The court having cited the *Mara (Inspector of Taxes) v. Hummingbird Limited* decision and the passage above went on to point out that the passage was further considered by Blayney J. in *O'Culachain v. McMullan Brothers Limited* [1995] 2 IR 217 and quoted Blayney J. wherein he extracted the following principles:-

> "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 had 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 conclusion should not be disturbed (even if the court does not agree with them, for we are not re-trying 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."

17. In essence, in this case the learned Circuit Court judge made findings of primary fact and insofar as inferences are drawn from those findings, I am satisfied that the following situations arise as a matter of law.

18. Firstly, the findings of primary fact as found by the learned Circuit Court judge should not be disturbed unless there was no evidence to support them.

19. Secondly, if the judge's conclusion shows that she adopted a wrong view of the law, this should be set aside.

20. Thirdly, if the conclusions as drawn are not based on a mistaken view of the law, they should not be set aside unless the inferences which the judge drew are ones which no reasonable judge could draw.

21. Fourthly, having regard to the evidence adduced, the judge's findings are essentially a matter of degree and should not be disturbed (even if the court does not agree because the issue is not being retried), unless they are such that a reasonable judge could not have arrived at the conclusion or it is based on a mistaken view of the law.

22. The second aspect of the case stated that arises is as to whether or not the Revenue Commissioners have the right, following upon the issuance of the Minister's certificate, to go behind the accounts to ascertain if, in fact, the Minister's conditions as given in the original certificate have been fully complied with, and that in this case there was the appropriate Irish spend.

23. The basis of the original refusal by the Revenue Commissioners to issue the relevant certificate was a failure to be satisfied that there had been the required level of Irish spend by the respondent, that requirement being that a minimum of €970,074.00 was to be spent on goods and services supplied to the respondent that were Irish.

24. In summary, the Circuit Court judge had before her evidence to the effect that, *inter alia:-*

• A detailed budget had been submitted by the respondent to the Minister, detailing €997,074 of expenditure on Irish goods and services by the respondent (Annex G of the case stated);

• IR£1,013,860 worth of goods/services had been provided by Concorde as per the five detailed invoices (Annex C of the case stated);

• Mr. Heneghan (studio manager) confirmed that no parts of the film were made by any entity other than Concorde;

• Mr. O'Donoghue (Chartered Accountant) confirmed that the respondent received goods and services to the value of IR£1,013,861 from Concorde. He had also reconciled the Irish spend by the respondent, being the payments by the respondent to Concorde for production services, with what one could easily rationalise as unquestionably an Irish charge/services by Concorde and that one would not expect to find corresponding expenditure in Concorde's books for all of Concorde's charges to the respondent (Annex H of the case stated);

• Mr. Joe Binchy (Chartered Accountant) had tracked the expenses in making the film on a daily basis as a professional accountant he needed to satisfy himself that the IR£1m was Irish spend and he was so satisfied;

• Mr. Columba Heneghan was also satisfied that the respondent had received the services from Concorde as per the invoices from Concorde and that these were Irish services and correctly classified as Irish spend.

• Ms. Breda Ruddle, Assistant Secretary at the Revenue Commissioners, vouched the amount of IR£438,501.00 as Irish spend by Concorde in Concorde's books. She indicated that as regards the IR£435,000 which was the subject matter of an invoice from Transpacific Corporation to Concorde, she was concerned that if this was a payment to Mr. Corman for his expertise, then as he was a non-Irish resident, the IR£435,000 was in respect of a non-Irish spend for Concorde. She was unaware of any difficulty the Minister had with his certificate and had not inquired of his department as to its level of satisfaction with the respondent's compliance with its terms.

25. By letter dated 16th July, 2001, the Minister communicated to the appellants that the documentation and information that the respondent had furnished to the Minister demonstrated to the Minister's satisfaction that the respondent had complied with the requirements of the Minister's certificate. The Minister's certificate has never been revoked.

26. In relation to the first issue that arises, I am satisfied that there was evidence adduced before the Circuit Court judge upon which she was entitled to rely as a basis for coming to her findings of primary fact.

27. Against this background, this Court is not satisfied to set aside the findings of the Circuit Court judge and the inferences that she drew from them, as this Court is not satisfied that she adopted a wrong view of the law or that her conclusions were based on a mistaken view of the law or, that the inferences drawn are not ones which no reasonable judge could arrive at.

28. In these circumstances the court does not consider it necessary to embark on an in depth inquiry into s. 481 of the Taxes Consolidation Act as to whether or not under the scheme as applicable at that time the Revenue Commissioners were entitled, in effect, to police the obligation of an Irish spend and were required to be satisfied as to compliance with the condition in respect of the Irish spend from the point of view of tax relief being granted.

29. Accordingly, I come to the conclusion that the question as posed in the case stated of the 31st day of July, 2014, is to be answered in the negative.