



09TACD2017

BETWEEN/

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against assessments to income tax and to VAT. The notice of assessment to income tax in the sum of €5,368.13 was raised in July 2014 in respect of the tax year of assessment 2012, based on accounts for the period ended 31 March 2012. The notice of assessment to VAT in the sum of €2,643.00, was raised in July 2014 in respect of the VAT period of assessment, 1 April 2011 to 31 March 2012. By agreement of the parties, this appeal is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

2. The Appellant is self-employed and is engaged in the trade of [REDACTED] and of agricultural contracting in addition to carrying out general maintenance & construction work for [Company A] in [LOCATION REDACTED].



3. The principal issue of difference between the parties in this appeal relates to the adequacy of records in relation to sales in the Appellant's business and in particular, the relevance to be attached to a series of missing invoices.

Legislation

Section 951 TCA 1997 – Obligation to make a return [subsequently repealed by FA 2012 s.129 and Schedule 4].

- (1) *Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form of -*
- (a) *in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment –*
- (i) *all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under section 877, if the period specified in such notice were the year of assessment which is the chargeable period, and*
- (ii) *where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to those matters and particulars referred to in subparagraph (i), all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under section 879, or*
- Etc.

s.956 TCA 1997 – Inspector's right to make enquiries and amend assessments [subsequently repealed by FA 2012 s.129 and Schedule 4].

- (1)(a) *For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector –*
- (i) *may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and*
- (ii) *may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by preference to such statement or particular.*



(b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in paragraph (a)(i) shall not preclude the inspector

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- (i) From making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular and*
- (ii) Subject to section 955(2), from amending or further amending an assessment in such manner as he or she considers appropriate.*

s.955 TCA 1997 –Amendment of and time limit for assessments [subsequently repealed by FA 2012 s.129 and Schedule 4].

(1) Subject to subsection (2) and to section 1048, an inspector may at any time amend an assessment made on a chargeable person for chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

s.959Y TCA 1997 – Chargeable persons and other persons: assessment made or amended by Revenue officer

(l) Subject to the provisions of this Chapter, a Revenue officer may at any time-

(a) make a Revenue assessment on a person for a chargeable period in such amount as, according to the officer's best judgment, ought to be charged on the person,

(b) amend a Revenue assessment on, or a self assessment in relation to, a person for a chargeable period in such manner as he or she considers necessary, notwithstanding.

(i) tax may have been paid or repaid in respect of the assessment; or

(ii) the assessment may have been amended on a previous occasion or

on previous occasions.



... etc.

s. 959Z TCA 1997 – Right of Revenue officer to make enquiries

(1) A Revenue officer may, subject to this section, make such enquiries or take such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to-

- (a) whether a person is chargeable to tax for a chargeable period,*
- (b) whether a person is a chargeable person as respects a chargeable period,*
- (c) the amount of income, profit or gains or, as the case may be, chargeable gains in relation to which a person is chargeable to tax for a chargeable period, or*
- (d) the entitlement of a person to any allowance, deduction, relief or tax credit for a chargeable period.*

(2) The making of an assessment or the amendment of an assessment in accordance with section 959Y(2) by reference to any statement or particular referred to in paragraph (a) of that section does not preclude a Revenue officer from, subject to this section, making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular

... etc.

s. 886 TCA 1997 -Obligation to keep certain records

(2)(a) Every person who—

- (i) on that person's own behalf or on behalf of any other person, carries on or exercises any trade, profession or other activity the profits or gains of which are chargeable under Schedule D,*



- (ii) *is chargeable to tax under Schedule D or F in respect of any other source of income, or*
- (iii) *is chargeable to capital gains tax in respect of chargeable gains, shall keep, or cause to be kept on that person's behalf, such records as will enable true returns to be made for the purposes of income tax, corporation tax and capital gains tax of such profits or gains or chargeable gains.*
- (b) *The records shall be kept on a continuous and consistent basis, that is, the entries in the records shall be made in a timely manner and be consistent from one year to the next.*
- (c) *Where accounts are made up to show the profits or gains from any such trade, profession or activity, or in relation to a source of income, of any person, that person shall retain, or cause to be retained on that person's behalf, linking documents.*
- (d) *Where any such trade, profession or other activity is carried on in partnership, the precedent partner (within the meaning of section 1007) shall for the purposes of this section be deemed to be the person carrying on that trade, profession or other activity*

(3) Records required to be kept or retained by virtue of this section shall be kept-

- (a) in written form in an official language of the State, or*
- (b) subject to section 887(2), by means of any electronic, photographic or other process.*

(4)(a)[Notwithstanding any other law], linking documents and records kept in accordance with subsections (2) and (3) shall be retained by the person required to keep the records-

- (i) for a period of 6 years after the completion of the transactions, acts or operations to which they relate, or*
- (ii) in the case of a person who fails to comply with [Chapter 3 of Part 41A] requiring the preparation and delivery of a return on or before the specified return date for a year of assessment or an accounting period, as the case may be, until the expiry of a period of 6 years from the end of the year of assessment or accounting period, as the case may be, in which a return has been delivered*



showing the profits or gains or chargeable gains derived from those transactions, acts or operations.

Etc...

s. 84 VATCA 2010 –Duty to keep records

- (1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.*
- (2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business.*
- (3) The following:*
- (a) records kept by a person pursuant to this Chapter or section 124 (7) and that are in the power, possession or procurement of the person;*
 - (b) any books, invoices, copies of customs entries, credit notes, debit notes, receipts, accounts, vouchers, bank statements or other documents whatsoever which relate to the supply of goods or services, the infra-Community acquisition of goods, or the importation of goods by the person and that are in the power, possession or procurement of the person; and*
 - (c) in the case of any such book, invoice, credit note, debit note, receipt, account, voucher, or other document, which has been issued by the person to another person, any copy thereof which is in the power, possession or procurement of the person,*

shall, subject to subsection (4), be retained in that person's power, possession or procurement for a period of 6 years from the date of the latest transaction to which the records, invoices, or any of the other documents, relate.

Submissions

4. Audit notification issued to the Appellant by letter in April 2014 and the audit commenced in May 2014. During the audit the Appellant informed the Revenue officer that the Appellant issued sales invoices from a hand written invoice book. Invoices in the book were numbered and in sequence. The Revenue officer discovered that invoices numbered 301 to 326, which were part of the period under



audit, were missing from the invoice book and from the sales listings produced by the Appellant. The officer requested that these invoices be furnished however the Appellant did not produce them. The Revenue officer spoke with the Appellant's spouse however the invoices were not located.

5. On examination of bank statements for the tax year of assessment 2011, the Revenue officer noted an electronic funds transfer to the Appellant's bank account in the sum of €10,555.50. The Appellant informed the Revenue officer that the invoices related to work done for [Company A]. The Appellant could not locate the invoice. The officer requested the Appellant to contact [Company A] in order to obtain a copy of the invoice. The Appellant did so and subsequently furnished a copy of the invoice which duly reconciled. The invoice, no. 321, fell within the series of missing invoices from the invoice book. The officer also requested the other outstanding invoices and followed up on this request by letter to the Appellant's agent, in May 2014. The Appellant replied in July 2014 stating that: *'...the missing invoices were pulled from the book as the invoices were spoiled or written in error (with the exception of the [Company A] invoice).'*
6. In his written submissions the Appellant stated that his spouse *'maintained the sales invoice books ... and she is adamant that the only reason that these sales invoice books were missing is that she either made a mistake on the invoice or that these invoices were used for quotations and she pulled out these invoices at the end of each year as she thought they were not required'*.
7. The Appellant also stated that he went back to the customers he had issued invoices to for the year ended 31 March 2012 and that no customer had a sales invoice which matched the missing invoices in the invoice book. He stated that errors were made regularly in relation to sales invoices and that such invoices were discarded.
8. In his written submissions the Appellant stated: *'I have been .. self-employed for over 20 years and I have always maintained my records to the best of my ability. From time to time a sales invoice has been missing because it has been written in error or the invoice has been duplicated by not inserting the proper divider. I have never deliberately understated my sales by issuing sales invoices and then discarding the copy. I feel Revenue have been most unfair in assessing me for taxes on sales invoices that have been scrapped. If Revenue were to produce copies of sales invoices that I had not*



accounted for, I would gladly hold my hands up however they have not produced even one sales invoice to show that I have understated my sales’.

9. Based on the series of missing invoices, the Appellant’s explanation for the non-availability of the missing invoices and the discovery of the missing invoice issued to **[Company A]** (no. 321) in the sum of €10,555.50, the Revenue officer formed the view that records were significantly incomplete and that it was likely that at least some of the missing invoices were issued for work done for the relevant tax periods of assessment. As a result, and taking into consideration the pattern of income and sales throughout the year, the Revenue officer concluded that there was a likelihood that sales had been understated. The officer submitted that she arrived at the figure of €20,000 additional gross income (giving rise to an income tax liability in the sum of €5,368.13 and a VAT liability in the sum of €2,643) according to her best judgment, in accordance with the relevant legislation.

Analysis and findings

10. The Appellant submitted that the Revenue officer did not produce any sales invoices to show that income received was omitted in the Appellant’s books and accounts. The Appellant submitted that the Revenue Commissioners *‘appear to be relying on the fact that some of my sales invoices copies in one particular sales invoice book are no longer in place’.*
11. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant. In appeals against assessments, the Appellant must prove on the balance of probabilities that the assessments are incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated:

‘The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.’
12. In the High Court case of *TJ v Criminal Assets Bureau*, [2008] IEHC 168, at para 50, Gilligan J. stated:-



'The whole basis of the Irish taxation system is developed on the premise of self assessment. In this case, as in any case, the applicant is entitled to professional advice, which he has availed of, and he is the person who is best placed to prepare a computation required for self assessment on the basis of any income and/or gains that arose within the relevant tax period.'

13. In addition to the above, section 886 TCA 1997 imposes a statutory obligation on taxpayers to retain records for income tax purposes for a period of 6 years after the completion of transactions to which they relate. The same statutory obligation exists in relation to the retention of VAT records, pursuant to section 84VATCA 2010.
14. The Respondent is not required to produce the Appellant's missing sales invoices. The Appellant is the person who has access to all of the facts and documents pertaining to his own tax affairs. In a tax appeal, if the Appellant cannot succeed in demonstrating that the assessment is incorrect, then the assessment shall stand.
15. The Appellant in this appeal contended that if the missing invoices were produced, the invoices would prove that either; (a) mistakes had been made on the invoices or they were written in error or, (b) that the invoices had been used to provide quotations only. In short, the Appellant submitted that none of the missing invoices related to paid work for the relevant periods of assessment. However, because the Appellant did not produce the invoices, he was unable to prove the propositions put. As a result, the Appellant did not succeed in discharging the burden of proof in this appeal, thus I determine that the assessments shall stand.

Conclusion

16. The burden of proof in tax appeals rests on the Appellant who must prove his/her case on the balance of probabilities. The Appellant, being the person with access to all of the facts and documents relating to his/her own tax affairs, is bound not only to retain documentation in accordance with the requisite statutory provisions (section 886 TCA 1997 and section 84VATCA 2010) but also to produce such documentation as may be required in support of his/her appeal so as to meet the burden of proof. The Appellant in this appeal did not succeed in proving on the balance of probabilities that the assessments were incorrect and therefore did not discharge the burden of proof and thus I determine that the assessments shall stand.





17. The appeal is thus determined in accordance with section 949AK TCA 1997

APPEAL COMMISSIONER

August 2017

