



33TACD2018

BETWEEN/

NAME REDACTED

Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against an assessment to Capital Acquisitions Tax ('CAT') raised on 29 March 2016, in the sum of €173,091, in respect of the period 01 September 2009 to 31 August 2010.
2. The question to be determined is whether the Appellant is entitled to claim an exemption from CAT pursuant to section 79 of the Capital Acquisitions Tax Act 2003 ('CATCA 2003') in relation to an inheritance from his son, (hereafter referred to as 'James Ryan') who passed away on 20 March 2009. In addition, the Appellant submitted that the Respondent was precluded from raising the assessment on the basis that the assessment was out of time pursuant to section 49 CATCA 2003.

Background

3. The Appellant's son, James Ryan (hereafter 'the deceased') died intestate in March 2009. The Appellant, being the sole beneficiary of the deceased's estate, inherited the entirety of the estate which was valued at €1,362,957. In March 2010, the Appellant executed a disclaimer of the inheritance for consideration of €1,091,677.

4. In his return filed in March 2010, the Appellant claimed an exemption in respect of CAT pursuant to section 79 CATCA 2003. Section 79 permits an exemption in relation to an inheritance taken by the parent of the disponent, where the parent made a non-tax exempt gift to the disponent within five years immediately prior to the date of death of the disponent.
5. The Appellant stated that he withdrew €5,000 cash from his post office, account number E696755, on 16 May 2005 and 17 May 2005 and gifted it to his son James, on the occasion of his birthday which was 16 May 2005. James Ryan's birth certificate was included in the papers furnished and his date of birth was 16 May 2005. It was submitted on behalf of the Appellant that he had intended to withdraw the full amount of €5,000 on 16 May 2005 but that the post office maintained a daily cash withdrawal limit of €3,000 and therefore the Appellant, having withdrawn €3,000 on 16 May 2005, returned the next day and withdrew €2,000.
6. The post office savings account statements detailed the withdrawals and the Respondent accepted that the sum of €5,000 had been withdrawn as a matter of fact however, the Respondent contended that there was insufficient evidence of receipt of the monies by James Ryan. As a result, the Respondent refused the exemption and on 29 March 2016, the Respondent raised an assessment to CAT in the sum of €173,091.

Legislation

Section 79 CATCA 2003 - Exemption of certain inheritances taken by parents S.79.

Notwithstanding any other provision of this Act, an inheritance taken by a person from a disponent is, where—

- a) that person is a parent of that disponent, and*
 - b) the date of the inheritance is the date of death of that disponent,*
- exempt from tax and is not taken into account in computing tax if that disponent took a non-exempt gift or inheritance from either or both of that disponent's parents within the period of 5 years immediately prior to the date of death of that disponent.*



Submissions

7. The Appellant submitted that he was entitled to claim an exemption pursuant to section 79 CATCA 2003, in respect of the inheritance from his late son, James Ryan, on the basis that the Appellant made a non-exempt gift to his son within five years immediately prior to the date of his son's passing.
8. While the Respondent accepted that a cash sum of €5,000 had been withdrawn from the post office by the Appellant on 16 May 2005 and 17 May 2005, the Respondent contended that there was insufficient evidence of receipt of the cash sum, by the deceased and that as a result, the Appellant could not avail of s.79 CATCA 2003.
9. In addition to the dispute in respect of s.79 CATCA2003, the Appellant submitted that the assessment raised by the Respondent was out of time in accordance with section 49 CATCA 2003. The Respondent submitted that the return which was filed by the Appellant was not a true and correct return and that as a result, the Respondent was entitled to raise the assessment outside the four-year statutory period, in accordance with section 49 CATCA 2003.
10. During the hearing, a question arose in relation to whether a group threshold for CAT purposes constituted an exemption from CAT for the purposes of s.79 CATCA 2003. As submitted by the Appellant, group thresholds apply when calculating tax however, there is no exercise in calculating tax when an exemption applies. In addition, group thresholds are to be found in Schedule 2 CATCA titled 'Computation of Tax' whereas exemptions to CAT are contained in Part 9 CATCA which is titled 'Exemptions'. In short, I am satisfied that a group threshold is not an exemption and I do not consider that this question necessitates further elaboration.

Evidence

Affidavit Evidence

11. The hearing took place at the Tax Appeals Commission in June 2017. The Appellant, who was aged 87 at the time of the hearing, was formally excused from attendance on medical grounds having suffered heart failure and hip replacement surgeries in March 2017. On 5 May 2017, he remained an in-patient in [NAME REDACTED] Hospital and was stated by his treating doctor to be '*absolutely unfit to attend a court proceeding*' and also suffering '*severe progressive dementia*'.



12. An affidavit sworn by the Appellant on 1 Oct 2009, when he had full legal capacity and which had been furnished to the Respondent in or around that date was tendered in evidence at the hearing. The Respondent did not object to the admission of the affidavit or its contents. The Affidavit provided: *"I made a birthday gift of €5,000 to my son [James] on the 17th Day of May 2005 In order to make this gift, on the 17th day of May 2005 I withdrew cash in the sum of €3,000 from my post office savings account no. [REDACTED] held in post office being the allowable limit on my account on the 16th day of May 2005. I withdrew a further cash sum of €2,000 from my post office savings account no. [REDACTED] held in the same post office."*
13. Documentary evidence of the withdrawals in the form of copy statements from the Appellant's post office account, were tendered in evidence.

Witness Evidence

Ms. A

14. Ms. A. is a daughter of the Appellant and sister of the deceased. Ms. A. advised that her brother worked as a mechanic. She also advised that her brother had purchased a property at the height of the market, shortly before receiving the cash gift from the Appellant. She stated that the property was in a poor condition and required a lot of renovation work.
15. Ms. A. was aware of the gift made by the Appellant to her brother and she said it was not unusual that her brother did not deposit the money. She said it was likely he spent it on building materials for the new house or on motor parts.
16. Ms. A. in direct evidence detailed her father's generosity towards his children during his lifetime. She advised how he paid for fees when they were students and provided financial assistance for their weddings or if they needed help.
17. During cross examination, Ms. A. was asked why the deceased would have accepted a gift from the Appellant at a time when he had a balance of approximately €60,000 in his bank account. Ms. A. replied that her brother probably declined to accept the gift initially but eventually accepted it. She said it wasn't so much about the money as it was about her father wanting to benefit his son out of a sense of parental affection.



Ms. B.

18. Ms. B. is a daughter of the Appellant and sister of the deceased. Ms. B. gave evidence that she accompanied the Appellant to the post office on 16 and 17 May 2005 when he made the withdrawals. Ms. B. stated that she remembered her father withdrawing the €5,000 to give to her brother [James]. She advised that her father *'wanted to do something for [James]'* particularly in light of her brother's property purchase. She explained how her father could not withdraw the money in one lump sum due to a cap on the amount which could be withdrawn in one day. She stated that she remembered how her father had to go back to the post office the following day to withdraw the balance.
19. Ms. B. read from an affidavit sworn by her on 1 October 2009 which provided in part; *'My father made a birthday gift of €5,000 to my brother [James] on the 17th day of May 2005'*. Ms. B. also gave evidence in relation to her father's generosity towards his children over the course of their lives. She advised how her father had part-paid for her wedding and how he had surprised her by paying for a horse and carriage. She also stated that her father went guarantor on the first property she purchased in 1987 in the amount £7,000 and that he paid for kitchen floor tiling and appliances. Ms. B. stated that her father also bought her children a piano which cost €5,000. In total, the Appellant had given her approximately €15,000 over her life in gifts.
20. Ms. B. stated that her father received a pension from [COMPANY REDACTED] in addition to the State Pension and that her mother received a disability pension. She stated that her parents were very conscientious about saving regularly.

Ms. C.

21. Ms. C. is a daughter of the Appellant and sister of the deceased. Ms. C. gave evidence in relation to her father's generosity towards his children over the course of their lives. She stated that her father had little interest in money and that if he had it, he would share it.
22. Ms. C. stated that her father had given her many gifts over the years. He had paid for the kitchen in her first house and had given her €5,600 in cash towards her wedding. She also stated that she had been ill when she was 13 years of age and that her father had paid to send her to the United States. When she repeated her leaving certificate,



her father paid for her to be privately educated. Ms. C. stated that her father had gifted her in excess of €25,000 in total.

23. Ms. C. also confirmed that her brother had bought a property at the height of the market, which required a lot of renovation work. She stated that her father felt that her brother had paid too much for the property and wanted to help him out financially. She also stated that her father knew this would be the deceased's 'home for life' and that her father wanted to give him the money as this was something which he had done for his other children. Ms. C. confirmed that her brother dealt in cash all of the time, buying and selling cars and car parts.

Ms. D.

24. An affidavit on behalf of Ms. D., daughter of the Appellant and sister of the deceased, sworn on 1 June 2017 was furnished in evidence. The Respondent did not object to admission of the affidavit. The Affidavit provides *inter alia*;

I say that the Appellant gifted me in total the sum of euro 10,000 to assist with the purchase and renovation of my family home at [ADDRESS REDACTED] in or around 1995-1998.

I say that the Appellant upon the purchase of my first house with my sister [Ms. B.] in or around 1989 purchased flooring and kitchen white goods.

I say that the Appellant gifted to his children at important times in their lives, to assist with the costs of a wedding, or the purchased of a house or a birthday.

Analysis

25. Section 79 of the CATCA 2003 provides for an exemption from CAT where a person takes an inheritance from a disponent in circumstances where that person is a parent of the disponent and where the parent had made a non-exempt gift to the disponent in the five years immediately prior to the death of the disponent.
26. The issue to be determined in the within appeal is whether the Appellant made a non-exempt gift of €5,000 cash to his son, in the five years before his death.



27. The evidence in this case, which was supported by the post office statements of account, was that €5,000 was withdrawn in cash on 16 May 2005 and 17 May 2005 respectively. The Appellant expected that he would be in a position to withdraw the full €5,000 on 16 May 2005. However, due to a daily withdrawal limit of €3,000, the Appellant was required to withdraw the sum in tranches of €3,000 and €2,000 on consecutive days which he duly did.
28. Ms. B. gave evidence that she accompanied the Appellant to the post office on 16 May 2005 and on 17 May 2005. Ms. B. stated that she remembered her father withdrawing the €5,000 cash sum to give to her brother James on the occasion of his birthday. She advised that her father *'wanted to do something for [James]'* particularly, in light of her brother's recent property purchase. A copy of the deceased's birth certificate was furnished.
29. The Respondent accepted that the Appellant withdrew €5,000 from his post office account on 16 May 2005 and 17 May 2005 however, the Respondent was not satisfied that there was sufficient evidence of receipt of the monies by the deceased. In particular, the Respondent relied on the fact the deceased's bank accounts were analysed for the relevant period and that his bank statements showed no corresponding lodgements.
30. While there was no documentary evidence of the deceased having lodged the sum to a bank account, this does not mean that the Appellant's case was bound to fail, as contended by the Respondent. On receipt of this cash gift the deceased had the option to either lodge the money to a bank account or to retain it in cash form. The absence of evidence of lodgement proves that the monies were not lodged to the deceased's bank accounts and this is a factor that falls to be considered in light of the evidence as a whole.
31. As regards the generosity of the Appellant towards his children over the course of their lives, detailed evidence was led by the Appellant's children in this regard. There was no evidence from the children that the Appellant transferred monies into their bank accounts *via* credit transfer. Based on the evidence, the Appellant preferred to give tangible things, to pay for significant purchases, or, to gift cash sums.
32. The evidence also indicated that the deceased bought his property near the peak of the market and renovations were ongoing in respect of the property in 2005. The Respondent stated that while the Appellant referred to renovations in respect of the



property, the Appellant did not furnish receipts in respect of the renovations. The Appellant, through his counsel, submitted that when this assessment was raised some 11 years after the gift, the Appellant and his family were unable to furnish receipts as they had simply not been retained.

33. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments raised are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that the taxpayer falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.
34. The Appellant's evidence was supported by documentation proving that the sum of €5,000 had been withdrawn from the Appellant's post office account on 16 and 17 May 2005 and this was accepted by the Respondent. The withdrawals coincided with the deceased's birthday on 16 May 2005. In addition, the Appellant's children gave detailed evidence regarding the numerous gifts they received from the Appellant throughout their lives. The evidence in relation to the Appellant's finances was corroborative insofar as it supported the Appellant's ability make and provide such gifts to his children.
35. The Respondent relied on fact that there was no evidence of lodgement of the cash sum in the deceased's bank accounts at the relevant time. The Respondent tested the witnesses by conducting detailed cross-examinations of the witnesses, raising the point with each witness that on examination of the deceased's bank account statements at the relevant time, no lodgement of €5,000 cash or similar sum could be identified. The witnesses and the Appellant, through his counsel, accepted that this was correct as a matter of fact.
36. Section 79 CATCA 2003 does not stipulate that a gift must be in the form of a credit transfer or that where a gift is made in cash, it must be lodged to a bank account by the recipient. Undoubtedly, it would be prudent to retain documentation in support of cash gifts when they are made. However, in this appeal, there was no documentary proof of receipt of the cash amount.
37. The sole evidential submission advanced by the Respondent was the absence of evidence of lodgement of the monies in the deceased's bank accounts. As against that, I consider the evidence on behalf of the Appellant and his children together with the





documentary evidence of the withdrawal of monies by the Appellant which coincided with the deceased's birthday, to be reliable and credible evidence.

38. Having considered and evaluated the evidence as a whole, I am satisfied that the Appellant has, on the balance of probabilities, succeeded in proving his case. As a result, I determine that the Appellant is entitled to the exemption in accordance with s.79 CATCA 2003 and on this basis, the assessment shall be reduced to zero.

Determination

39. I determine that the Appellant is entitled to the exemption in accordance with section 79 CATCA 2003 and on this basis, the assessment shall be reduced to zero.
40. It follows that neglect has not been established by the Respondent as the return filed was not incorrect and as a result, the CAT assessment dated 29 March 2016 and raised outside the four-year statutory period contrary to the provisions of section 49 CATCA2003, is out of time.
41. This appeal is hereby determined in accordance with section 949AK TCA 1997.

COMMISSIONER LORNA GALLAGHER

November 2018

