06TACD2017

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal in relation to amended assessments raised in respect of the tax years of assessment 2011, 2012 and 2013. The dispute relates principally to the amount of monies to be added back in relation to the private use of motor vehicles in the Appellant's [**REDACTED**] practice.

Background

2. In 2015, the Respondent carried out an audit in relation to the tax years of assessment 2011, 2012 and 2013 on foot of which, after a period of discourse and correspondence, amended assessments issued.

3. During the tax years of assessment, the Appellant added back 33.33% in relation to motor expenses, representing private use of motor vehicles in the Appellant's practice. While accepting that there had been a measure of private use in relation to motor vehicles, the Appellant had not included an add back in relation to fuel and capital allowances. The Respondent contended that an add back of 33.33% should be applied in relation to fuel and capital allowances for the relevant years of assessment. The Appellant agreed that the private usage of motor vehicles should be reflected in fuel and capital allowances figures, but contended that private use was approximately 10% and not 33.33%. The Appellant's submitted that the add back of 33.33% was included in the returns in error. The Respondent submitted that the Appellant, being subject to

the self-assessment provisions of the Taxes Acts, was confined by the 33.33% add back on the basis that this was the amount he declared in the returns.

4. In addition to the matter of motor expenses, the Appellant disputed whether the Respondent was entitled to impose civil penalties in accordance with the civil penalties provisions of Part 47 of the Taxes Consolidation Act 1997 as amended ('TCA 1997') and Chapter 3 of Part 13 of the Vat Consolidation Act 2010 ('VATCA2010').

5. Prior to this appeal, the parties corresponded at length in an effort to resolve their differences regarding the matters in dispute in this appeal. I have read and considered *inter alia*, letters dated 16th February 2016, 24th February 2016, 26th February 2016, 3rd March 2016, 14th March 2016 and a letter from the Appellant's accountant dated 1st March 2016.

Legislation

Section 81 TCA 1997 – General rule as to deductions

(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts.

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of -

(a) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession;

(b) any disbursements or expenses of maintenance of the parties, their families or establishments, or any sums expended for any other domestic or private purposes distinct from the purposes of such trade or profession;

(c) the rent of any dwelling house or domestic offices or any part of any dwelling house or domestic offices, except such part thereof as is used for the purposes of the trade or profession, and, where any such part is so used, the sum so deducted shall be such as may be determined by the inspector and shall not, unless in any particular case the inspector is of the opinion that having

regard to all the circumstances some greater sum ought to be deducted, exceed two-thirds of the rent bona fide paid for that dwelling house or those domestic offices;

(d) any sum expended for repairs of premises occupied, or for the supply, repairs or alterations of any implements, utensils or articles employed, for the purposes of the trade or profession, over and above the sum actually expended for those purposes;

(e) any loss not connected with or arising out of the trade or profession;

(f) any capital withdrawn from, or any sum employed or intended to be employed as capital in, the trade or profession;

(g) any capital employed in improvements of premises occupied for the purposes of the trade or profession;

(h) any interest which might have been made if any such sums as aforesaid had been laid out at interest;

(i) any debts, except bad debts proved to be such to the satisfaction of the inspector and doubtful debts to the extent that they are respectively estimated to be bad and, in the case of the bankruptcy or insolvency of a debtor, the amount which may reasonably be expected to be received on any such debts shall be deemed to be the value of any such debts;

(j) any average loss over and above the actual amount of loss after adjustment;

(k) any sum recoverable under an insurance or contract of indemnity;

(l) any annuity or other annual payment (other than interest) payable out of the profits or gains;

(m) any royalty or other sum paid in respect of the user of a [patent;]

[(n)

….. etc.

Submissions and analysis

Civil Penalties

8. The first matter in dispute related to the imposition of civil penalties in accordance with the civil penalties provisions contained at Part 47 of the TCA 1997 and Chapter 3 of Part 13 of the VATCA2010.

9. The Appellant disputed the entitlement of the Respondent to impose civil penalties, citing the doctrines of legitimate expectation and unjust enrichment in support of this submission. The Appellant also opened and relied upon various provisions of the Code of Practice for Revenue Audits.

10. The Respondent submitted that the Tax Appeals Commission was not the appropriate forum in which to determine whether civil penalties applied. After some discussion, the parties agreed that the matter of the imposition of civil penalties was not a matter for this Commission and thus the sole matter in dispute as between the parties was the matter of the appropriate percentage to be added back in relation to the private use of motor vehicles in the Appellant's practice.

Motor expenses

11. Both parties agreed that not all motor expenses in the Appellant's practice had been '*wholly and exclusively laid out or expended*' in accordance with section 81 TCA 1997 and that an add back fairly representing private use was merited.

12. Both parties agreed that the add back which applied to motor expenses, applied equally to fuel and to capital allowances. The parties differed in relation to the percentage to be attributed to private use. While the Respondent contended that that an add back of 33.33% as per the Appellant's return should apply, the Appellant contended that an add back of 10% correctly represented private use.

13. The Appellant in evidence stated that (s)he had instructed his/her accountant that a 10% add back correctly represented private use, to the extent that it probably exceeded actual private use. The Appellant stated that the 33.33% percentage had been entered in error by the Appellant's accountant. During the audit the Appellant's

accountant had informed the Respondent that the add back of 33.33% arose as a result of a computer error. This was not accepted by the Respondent.

14. At hearing, the Appellant furnished a signed letter from the Appellant's accountant dated 1st March 2016, which stated that the accountant had received instructions from the Appellant that a 10% add back on motor expenses represented private use. The letter stated that the computer software system on which the return had been prepared was automatically programmed to apply an add back of 33.33%. The letter provided that while this percentage should have been manually overwritten based on the Appellant's instructions, it had not been overwritten. The letter set out that the 33.33% add back was included in the return in error and contrary to the Appellant's instructions. While the Respondent made no objection to the admissibility of this letter, the Respondent did not accept the content thereof.

Evidence

15. In evidence, the Appellant described how (s)he built, managed and operated the practice. The Appellant stated that the distance from the Appellant's home to the practice was 2 miles and that (s)he kept **[PLANT & EQUIPMENT]** at the practice and not at home. (S)he stated that driving around with **[PLANT & EQUIPMENT]** resulted in high diesel costs.

16. The Appellant stated that the Appellant's sibling was an employee of the practice and was also a practicing **[REDACTED]**. The Appellant said that on Fridays, before said sibling took a vehicle for the weekend, (s)he would fill the tank of the vehicle and would be obliged to return it on Monday with a full tank which meant that if there was private use over the weekend the Appellant's sibling would cover the cost of this use.

17. The Appellant said that (s)he felt that sufficient attention had not been paid to the financial details of the practice and that (s)he had learned a lot as a result of the recent Revenue audit. The Appellant voiced an intention to take greater care in relation to the accounts going forward.

18. The Appellant was cross-examined at length by the Respondent and under cross-examination the Respondent challenged the Appellant regarding the fact that the

returns filed contained an add back of 33.33% and not 10%. The Appellant stated that (s)he instructed his/her accountant that private use in relation to motor expenses was 10% or less. The Appellant was adamant that an add back of 33.33% was incorrect.

Conclusion

19. The Respondent submitted that as the Appellant's returns contained an add back of 33.33% in relation to motor expenses, 33.33% must be the correct percentage of private use and this percentage should apply equally to fuel and capital allowances for the relevant tax years of assessment.

20. The Appellant in evidence refuted the percentage add back of 33.33% on the basis that; (a) the Appellant instructed his/her accountant that a 10% add back was sufficient to cover private use, (b) the figure of 33.33% was entered in the returns in error by the accountant in circumstances where the accountant accepted that this was so and (c) The Appellant admitted that (s)he did not take enough care to scrutinise the detail when signing the returns and thereby signed without noticing or correcting the add back percentage.

21. While the Respondent's position was put repeatedly to the Appellant in cross-examination the Appellant was credible in reply and was adamant that 33.33% was incorrect. The Appellant bears the burden of proof in tax cases and in my view, based on the evidence adduced, the Appellant met and discharged this burden.

22. Thus I determine that an add back of 10% correctly reflects private use in respect of motor expenses, fuel and capital allowances in respect of the relevant tax years of assessment. The assessments raised should be adjusted accordingly.

23. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

APPEAL COMMISSIONER

May 2017