TAX APPEALS COMMISSION

Appeal No. [REDACTED]

Between/

[REDACTED]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. *Background*

1. This appeal was brought pursuant to section 945(1) of the Taxes Consolidation Act 1997, as amended, against an assessment to Capital Gains Tax issued by the Respondent on the 17th of August 2015 arising from the disposal by the Appellant to his daughter of a property situate at **[REDACTED]** on the 23rd of December 2011.

B. *Matter under appeal*

2. On or about the 22nd of July 2011, the Appellant purchased the property situate at **[REDACTED]** (hereinafter **"the Property"**). The Appellant states that he believed the Property, which he described as being in a derelict condition but in a good area of the city, would be a good investment for his daughter and he purchased the Property for the sum of €170,000.

3. The Appellant states, and it was not disputed by the Respondent, that he carried out a very significant amount of work to the Property over the following months. As the Appellant is a builder and plasterer by trade, he carried out the great majority of the refurbishment works on the Property himself.

4. The Appellant's daughter decided that she wished to purchase another property in the city and so it was agreed that the Property would be sold to finance her purchase. The Property was advertised for sale by auction, initially on the 24th of November 2011 with an Advised Minimum Value of €230,000 and subsequently on the 1st of December 2011 with an AMV of €250,000.

5. On the 23rd of December 2011, the Appellant gifted the Property to his daughter and legal ownership of the Property was transferred to her. The Stamp Duty return filed in relation to this transaction stated that the chargeable consideration was €250,000.

6. The Appellant did not submit a Capital Gains Tax return to the Respondent in relation to his disposal of the Property to his daughter.

7. On the 1st of March 2012, the Property was sold by the Appellant's daughter to an unconnected third party for the sum of €250,000.

8. A Revenue audit of the Appellant commenced on the 6th of February 2014. In the course of that audit, the Appellant by his agent submitted a CGT computation on the 27th of November 2014 which:-

   (a) Recorded a July 2011 purchase price of €170,000 and acquisition costs amounting in total to €4,253.43;

   (b) Recorded a transfer price of €250,000 in December 2011;

   (c) Recorded enhancement expenditure on the Property amounting in total to €28,297.25;

   (d) Recorded advertising costs of €1,109.35 as a cost of disposal;

(e) Recorded "*Other costs*" (which I was informed were legal costs) of €3,446 as a cost of disposal; and,

(f) Calculated a liability to CGT of €12,868.19 on the basis of the foregoing.

9. The Respondent was unwilling to allow all of the claimed enhancement expenditure on the Property in circumstances where invoices had been issued in the name of **[REDACTED]** Limited, being the limited liability company used by the Appellant to carry on his trade, and where the Appellant was unable to establish that he had paid those invoices from personal funds rather than from funds of the company.

10. It is, I believe, relevant to note that of the 26 items of enhancement expenditure claimed by the Appellant, only 4 were challenged by the Respondent on the grounds that there was no evidence that the Appellant had personally paid the invoices and that the Appellant's company had not reclaimed VAT on the invoices. Each of the 4 disputed items were allowed in part by the Respondent and so the quantum of enhancement expenditure disallowed by the Respondent amounted to €2,617.

11. I think it is also relevant to note that the Respondent's review of the invoices and other documentation submitted by and on behalf of the Appellant resulted in them allowing the Appellant a further deduction of €1,053 in respect of enhancement expenditure which the Appellant had incurred but which had not been claimed in the CGT computation submitted on his behalf on the 27th of November 2014.

12. The Respondent was also unwilling to allow the claimed deduction of €1,109 in respect of the costs of advertising the Property for sale, on the grounds that the Property had been gifted by the Appellant to his daughter and so this item of expenditure was not an incidental cost of disposing of the asset.

13. The Respondent was also unwilling to allow in its entirety the claimed deduction of €3,446 in respect of the legal costs of disposing of the Property, on the grounds that only some of

14. these costs related to the transfer of the Property from the Appellant to his daughter while the remainder related to the cost of conveying the Property from the Appellant's daughter to the third party purchaser. The Respondent allowed the Appellant a deduction of €1,324 in respect of the legal costs of transferring the ownership of the Property to his daughter.

15. The Appellant and the Respondent were unable to reach agreement on the quantum of the former's liability to CGT and the Respondent issued an assessment to Capital Gains Tax on the 17th of August 2015 in the sum of €13,926, against which this appeal has been brought.

C. ***Grounds of Appeal***

16. The appeal submitted on behalf of the Appellant by letter dated the 15th of September 2015 submitted that:-

> *"... the charge is excessive due to the fact that: 1. Deemed market value at date of voluntary disposition is overstated 2. Full deduction has not been allowed for all qualifying expenditure incurred."*

17. By letter dated the 6th of October 2015, the Appellant, commenting on the draft Form AH1, further stated that:-

> *"When the house was transferred to my daughter, the following were not completed.*
>
> 1. *Garden and patio* *€5,000.00*
> 2. *Tiling in bathroom and kitchen* *€2500.00*
> 3. *Wooden floor and carpentry* *€1,600*
> 4. *Fireplace in sitting* [sic] *€700*
> 5. *Painting and decorating* *€3,600*
>
> *The above were completed between December and March when the sale of the house went through. All these items should be taken off the valuation as they were not in situ in December."*

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D. Relevant legislation

18. Section 547(4)(a) of the Taxes Consolidation Act 1997, as amended, provides that:-

> *"Subject to the Capital Gains Tax Acts, a person's disposal of an asset shall for the purposes of those Acts be deemed to be for a consideration equal to the market value of the asset where –*
>
> > *(i) the person disposes of the asset otherwise than by means of a bargain made at arm's length (including in particular where the person disposes of it by means of a gift), or*
> >
> > *(ii) the person disposes of the asset wholly or partly for a consideration that cannot be valued."*

19. The relevant provisions of section 549 provide that:-

> *"(1) This section shall apply for the purposes of the Capital Gains Tax Acts where a person acquires an asset and the person making the disposal is connected with the person acquiring the asset.*
>
> *(2) Without prejudice to the generality of section 547, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by means of a bargain made at arm's length."*

20. Finally, the relevant provisions of section 552 provide as follows:-

> *"(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to –*
>
> > *(a) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,*
> >
> > *(b) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and*

exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c) the incidental costs to the person of making the disposal.

...

(2) For the purposes of the Capital Gains Tax Acts as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with –

(a) in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b) in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts."

E. ***Submissions of the Parties***

21. I heard evidence from the Appellant and considered documents and submissions from both parties at the hearing of this appeal. I found the evidence of the Appellant to be honest and candid in the main.

22. In the course of the Appellant's evidence and submissions, he stated that, notwithstanding the grounds of appeal submitted, he had "*no difficulty*" with the deemed value of €250,000 placed on the Property as of the 23rd of December 2011, being the date of the gift of the Property to his daughter. He further indicated that he did not have any particular difficulty with the Respondent's position in relation to his incidental costs of the disposal of the Property.

23. It further became apparent in the course of his submissions that a principal grievance of the Appellant was that no account had been taken by the Respondent, when calculating his CGT liability, of the value of the work which he had personally done to the Property, which he submitted had transformed the Property from a derelict state to a completely refurbished, modernised and attractive condition. The Appellant's letter to the Respondent dated the 16th of April 2015 stated that the value of the work carried out on the house and garden from a builder's perspective was *"well over €100,000"* and his written submissions to the Office of the Appeal Commissioners dated the 14th of January 2016 stated:-

> *"... I worked on this project night and day for five months. I did this for my daughter not for profit. If a value could be put on my time it would be in the region of €30,000.00."*

24. Written and oral submissions were made on behalf of the Respondent in support of the position that the value of the Property as of the 23rd of December 2011 was €250,000 and in support of the Respondent's computation of the Appellant's CGT liability as outlined in paragraphs 9 to 13 above.

F. Analysis and Findings

25. The first issue which requires to be determined in this appeal is the value of the Property as of the 23rd of December 2011, when its ownership passed from the Appellant to his daughter. Notwithstanding the indication by the Appellant in the course of the hearing before me that he was willing to accept the Respondent's valuation of €250,000, the issue was advanced as a ground of appeal and so I believe that I should nonetheless consider the available evidence in relation to this issue and reach my own conclusion in relation to same.

26. As detailed in paragraph 16 above, the Appellant listed five items of expenditure, totalling €13,400, which he stated had been carried out between December of 2011 and March of 2012, and which he submitted would have increased the value of the property between those two months. The expenditure was on (i) the garden and patio, (ii) tiling in the

27. bathroom and kitchen, (iii) wooden floor and carpentry, (iv) fireplace in the sitting room, and (v) painting and decorating.

28. In reply to this submission, the Respondent pointed to the wording of the two advertisements for the sale of the Property. The first such advertisement, dated the 24th of November 2011, stated that the Property had *"been totally re-modernised and re-furbished* [sic]" and was "[f]*inished to the highest of standards."*

29. The second advertisement, dated the 1st of December 2011, stated that the Property had *"been totally refurnished and modernised"*, featured a *"hallway with feature timber floors, open plan living room and kitchen with timber floors, fireplace"* and noted that *"Outside there is a magnificent manicured garden. The property has been totally refurbished to a modern high standard."*

30. Even allowing for the hyperbole and advertising puff so often found in estate agents' advertisements, I believe it is clear from the advertisements that the five items of work relied upon by the Appellant had been completed by the 1st of December 2011, and I believe that the Appellant was mistaken in his recollection of having carried out those works between December of 2011 and March of 2012.

31. I have also had regard to the fact that while the first such advertisement advised that the AMV for the Property was €230,000, the second advertisement, which appeared one week later on the 1st of December 2011, advised that the AMV for the Property was €250,000.

32. I have also had regard to the fact that the Stamp Duty return submitted on behalf of the Appellant in 2012 and the CGT computation submitted on his behalf in November 2014 both stated that the value of the Property as of the 23rd of December 2012 was €250,000.

33. Finally, and perhaps most importantly, I have had regard to the fact that the Appellant's daughter sold the Property for €250,000 on the 1st of March 2012 in an arm's length transaction with an unconnected third party.

34. Having regard to all of the foregoing, I am satisfied and find as a material fact that the market value of the Property as of the 23rd of December 2011 was €250,000.

35. Turning then to the second question, namely the amount of acquisition costs, enhancement expenditure and disposal costs which ought to be deducted when calculating the Appellant's liability to CGT, I note firstly that there is no dispute between the Appellant and the Respondent as to the acquisition cost and incidental costs of acquisition of the Property.

36. In relation to the enhancement expenditure claimed by the Appellant, the Respondent has refused to allow some €2,617 of the €28,297.25 claimed by the Appellant, on the grounds that the invoices relating to this expenditure are made out to the Appellant's company and not to the Appellant himself, and no evidence was produced by the Appellant to show that he, and not the company, had paid the invoices.

37. It is well-settled that the onus of proof is on the Appellant to establish on a balance of probabilities basis that the invoices were paid by him personally. In the course of the hearing before me, he accepted that he did not have receipts recording payment of the €2,617 by him personally, and he was unable to establish the fact of such payment by reference to bank statements, cheque stubs or other documentation. The Appellant argued that it was open to the Respondent to satisfy themselves, by conducting an analysis of the accounts of his company, that the company had not made these payments. However, I believe that to accept this reasoning would effectively, and incorrectly, reverse the burden of proof and require the Respondent to prove on a balance of probabilities basis that their assessment was correct. Accordingly, I reject this argument by the Appellant and I find as a material fact that the amount of enhancement expenditure incurred by the Appellant in relation to the Property amounts to €26,733, and not the €28,297.25 originally claimed by the Appellant.

38. As recorded above, it was also strongly argued by the Appellant in the course of the hearing before me that the deductible enhancement expenditure should be increased to reflect the value of the work which he personally carried out in and on the Property. In this regard, it should be recorded that it was accepted by the Respondent that the Appellant had committed significant time and labour to refurbishing and modernising the Property, and accepted that he had carried out that work to a high standard.

39. I can readily understand why the Appellant believes and argues that some account should be taken of the value of his personal work and time when calculating his liability to CGT especially when, as was common case between the parties, that time and labour had resulted in a significant increase in the ultimate market value of the Property. However, I believe that doing so would be contrary to the provisions of section 552(1)(b). That subparagraph is a restrictive provision which limits the sums allowable as a deduction from the consideration in the computation of a capital gain to "*the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal...*"

40. I believe that the wording of the relevant portion of section 552(1)(b) requires a taxpayer to have expended money or money's worth before a deduction can be claimed for the purposes of computing a liability to CGT; put another way, I believe that treating the expenditure of time or the expenditure of labour by a taxpayer personally as a "*sum*" which can be deducted from the consideration received on the disposal of the asset would do violence to the wording of section 552(1)(b) and the scheme of the section as a whole.

41. In reaching this conclusion, I am strengthened in my views by the decision of Walton J in ***Oram (Inspector of Taxes) –v- Johnson*** **[1980] 2 All E.R. 1**, where the English High Court considered the proper interpretation of paragraph 4 of Schedule 6 to the Finance Act 1965; the wording of paragraph 4 is essentially identical to the wording of section 552 in this jurisdiction.

42. Walton J noted that the taxpayer before him wished to deduct some £1,700 from his capital gain, which sum represented the value of the work which the taxpayer had himself carried out on the cottage disposed of, *"the product of his own skill and labour wholly and exclusively spent on the enhancement of the value of the cottage."*

43. Walton J went on to say as follows:-

> *"I therefore go straightaway to paragraph 4 of Schedule 6 to the Act of 1965. Paragraph 4 (1) says:*
>
> > *"Subject to the following provisions of this Schedule, the sums allowable as a deduction from the consideration in the computation under this Schedule of the gain accruing to a person on the disposal of an asset shall be restricted to. ..."*
>
> *Pausing there for one moment before one comes on to the items to which they are restricted, it says "sums allowable as a deduction." One will therefore expect to find in the following sub-subparagraphs matters set out basically in terms of money, because one can deduct from the consideration in the computation of a gain accruing to a person on the disposal of an asset only money sums; there is no machinery generally provided for deducting anything else. Then, sub-sub-paragraph (a) provides:*
>
> > *"the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset. ..."*
>
> *So there one has to reduce to pounds and pence "the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset," and it goes on to deal with incidental costs and matters of that sort, with which I am not concerned. So there undoubtedly one can take into consideration that which is given in money or money's worth wholly and exclusively for the acquisition of the asset, which might very well be in*

some cases services and matters of that nature which otherwise would not easily translate into money.

Next comes sub-sub-paragraph (b), which is the crucial one here:

> *"the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset."*

It is that sub-sub-paragraph which is the one in issue, it being conceded that the taxpayer's work was undoubtedly "reflected in the state or nature of the asset at the time of the disposal."

Mr. McCall [Counsel for HMRC] *called my attention to paragraph 4 (2), which runs:*

> *"For the purposes of this paragraph and for the purposes of all other provisions of this Part of this Act the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty) together -(a)in the case of the acquisition of an asset, with costs of advertising to find a seller, and(b)in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Schedule. ..."*

Mr. McCall submitted to me that sub-paragraph (2) tends to show, without providing a statutory definition, that "expenditure" is intended to be something which is paid out by the person incurring the expenditure. I see the force of that, but I do not

myself think that that really governs the matter sufficiently for me to be able to rely on it.

So I return basically to paragraph 4 (1) (b) "the amount of any expenditure." It seems to me that, although one does in general terms talk about expenditure of time and expenditure of effort, having regard particularly to the opening words of paragraph 4 (1), where the expenditure is to be "a deduction," the primary matter which is thought of by the legislature in sub-sub-paragraph (b) is something which is passing out from the person who is making the expenditure. That will most normally and naturally be money, accordingly presenting no problems in calculation; but that will not necessarily be the case. I instance the case (it may be fanciful, but I think it is a possible one and tests the principle) of the taxpayer employing a bricklayer to do some casual bricklaying about the premises, the remuneration for the bricklayer being three bottles of whisky at the end of the week. It seems to me that that would be expenditure by the taxpayer, because out of his stock he would have to give something away to the person who was laying the bricks, and I do not think that that would present any real problems of valuation or other difficulty.

But when one comes on to his own labour, it does not seem to me that that is really capable of being quantified in this sort of way. It is not something which diminishes his stock of anything by any precisely ascertainable amount; it is something which would have to be estimated. It has been estimated here by taking the very modest sum of £1 an hour, but the fact that the taxpayer has been modest in his demands does not enable one to escape from the crucial crunch, which is how, in a case which was contested and where the amount claimed was something which was larger than was obviously right, one would test it. It seems to me that there would undoubtedly have to be found in the end some machinery for translating into money terms the work put in by the owner of the asset himself, if that was to be allowable. But it seems to me that that does not fall into the ordinary meaning of "the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf." The wording, to my mind, just does not fit that sort of situation.

It is perhaps a matter of first impression based on the impression that the word "expenditure" makes on one; but I think that the whole group of words, "expenditure," "expended," "expenses" and so on and so forth, in a revenue context, mean primarily money expenditure and, secondly, expenditure in money's worth - something which diminishes the total assets of the person making the expenditure - and I do not think that one can bring one's own work, however skilful it may be and however much sweat one may expend on it, within the scope of paragraph 4 (1) (b)."

44. The foregoing decision is not, of course, binding upon me but I am in agreement with the reasoning contained therein and have reached the same conclusion as the learned High Court Judge.

45. I therefore find that section 552(1)(b) does not permit the Appellant to make a deduction to reflect the value of the work which he personally carried out in and on the Property when calculating his liability to CGT.

46. Finally, it is necessary to consider the incidental costs of disposal claimed by the Appellant when calculating his liability.

47. Section 552(2) provides that the incidental costs to a person of the disposal of an asset *"shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the ... disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty) ...".* Section 552(2)(b) further provides that incidental costs also include *"in the case of a disposal, costs of advertising to find a buyer..."*

48. While the Property was undoubtedly advertised for sale, and costs were incurred in advertising the Property for sale, I do not believe that the Appellant can be said to have advertised the Property to find a buyer. It was always the intention of the Appellant to gift the Property to his daughter and that was what he did on the 23rd of December 2011. The Property was advertised so that his daughter could find a buyer, but that was not a cost

incidental to the disposal of the Property by the Appellant to his daughter. I therefore find that the Respondent is correct in refusing to allow the Appellant to deduct the advertising costs of €1,109.35 when calculating his liability to CGT on the disposal.

49. It was agreed between the parties that the legal costs of €3,446 originally claimed as a deduction by the Appellant included legal costs in relation to both the transfer of the Property from the Appellant's ownership to his daughter and the transfer of ownership from his daughter to the third party purchaser. I agree with the Respondent that only those legal costs which relate to the transfer of the Property from the Appellant to his daughter can, in accordance with section 552(2), be treated as incidental costs of that disposal. I further accept the Respondent's argument, and find as a material fact, that the amount of legal costs attributable to the transfer of the Property from the Appellant's ownership to his daughter is €1,324.

G. Determination

50. Having carefully considered all of the evidence before me and the submissions made by the parties, I have for the reasons outlined found that the Appellant has not been overcharged by the assessment to Capital Gains Tax issued to the Appellant on the 17th of August 2015. I therefore determine pursuant to section 949AK of the Taxes Consolidation Act 1997, as amended, that the assessment to Capital Gains Tax issued to the Appellant on the 17th of August 2015 should stand.

Dated the day of June 2017

Appeal Commissioner