



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

125TACD2024



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a dependent relative tax credit for the years 2022 and 2023 (“the relevant years”).
2. On 6 March 2024, the Appellant duly appealed to the Commission. In accordance with the provisions of section **949U TCA 1997**, this appeal is adjudicated without a hearing.
3. The Appellant submitted a Notice of Appeal, Statement of Case and certain supporting documentation which the Commissioner has considered in this determination. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this determination.

Background

4. The Appellant made a claim *inter alia* for a dependant relative tax credit in relation to her relatives (“the Appellant’s relatives”) who reside in [REDACTED].
5. The Appellant submitted that both her father in law and mother have never had formal employment and their only source of income is subsistence farming in [REDACTED]. Moreover, the Appellant submitted that her relatives do not work and do not have an entitlement to social welfare payments or pension payments.
6. The Appellant submitted that the income the Appellant’s father in law and mother derive from subsistence farming, is not sufficient for them. Therefore, the Appellant sends funds to the Appellant’s relatives [REDACTED]. The Appellant stated that the amounts sent were in the sums of €4,383 for the relevant years and [REDACTED] payment receipts have been furnished to the Respondent, in support of her claim.
7. The Respondent has refused the Appellant’s claim for a dependant relative tax credit, on the basis that the Appellant has not shown that the requirements of section 466 TCA 1997 have been met, such that the claim was absent income certificates and proof of old age or infirmity.

Legislation and Guidelines

8. The legislation relevant to this appeal is as follows:-
9. Section 466 TCA 1997, Dependant relative tax credit, *inter alia*, provides:-

(1) *In this section "specified amount" means an amount which does not exceed by more than €280 the aggregate of the payments to which an individual is entitled in a year of assessment in respect of an old age (contributory) pension at the maximum rate under the Social Welfare Consolidation Act 2005, if throughout that year of assessment such individual were entitled to such a pension and*

- (a) *has no adult dependant or qualified children (within the meaning, in each case, of that Act),*
- (b) *is over the age of 80 years (or such other age as may be specified in that Act for the time being in place of 80 years),*
- (c) *is living alone, and*
- (d) *is ordinarily resident on an island.*

(2) *Where for any year of assessment a claimant proves that he or she maintains at his or her own expense any person, being –*

- (a) *a relative of the claimant, or of the claimant's spouse, incapacitated by old age or infirmity from maintaining himself or herself,*
- (b) *the widowed father or widowed mother of the claimant or of the claimant's spouse, whether incapacitated or not, or*
- (c) *a child of the claimant who resides with the claimant and on whose services the claimant, by reason of old age or infirmity, is compelled to depend,*

and being an individual whose total income from all sources for that year of assessment does not exceed a sum equal to the specified amount, the claimant shall be entitled in respect of each individual whom the claimant so maintains to a tax credit (to be known as the 'dependent relative tax credit') of €245 for the year of assessment.

Submissions

Appellant's submissions

10. The Commissioner has set out hereunder, a summary of the submissions made by the Appellant in her Notice of Appeal and Statement of Case:-

"I have been refused Dependent Relative Tax Credit for 2022 & 2023 for my mother (date of birth: 20/03/1958) and my father-in-law (date of birth: 11/02/1942). The two have never had formal employment and their source of livelihood is subsistence

farming [REDACTED] As a result, they don't have Income Statements required by Revenue as a precondition for the tax credit in question.

Subsistence farming is not enough to survive [REDACTED] and we periodically send cash for other expenses and needs through [REDACTED] €4383 in total for 2022 & 2023. [REDACTED] receipts have been submitted to Revenue.

I would also like to point out that in [REDACTED] there are no social welfare payments, so culturally parents who don't work depend on working children for their survival. [REDACTED] is a poor country and one of the reasons to immigrate to Ireland was so that we could help out back home.

On the basis of the above argument, I think it's unfair for the Dependent Relative Tax Credit to be refused. I would appreciate a review and I look forward to your decision.

.....

The two dependents do not work, do not have social welfare entitlements [REDACTED] [REDACTED], and they don't have pensions. So in such a scenario, there is no way of getting income statements which are the basis of Revenue refusal for dependent relative tax credit"

Respondent's submissions

11. The Commissioner has set out hereunder, a summary of the submissions made by the Respondent in its Statement of Case:-

2.1 Fact 1 – Case opened to examine RTR 2023. Dependant relative added for 4 people for 2023 and for 2 claimants in 2022. Also included in initial letters was a request for tuition fee receipts for 2023 and health expense receipts for 2022 and 2023.

2.2 Fact 2 – Initial Dependant Relative claim in 2023 for mother and father-in-law and two grandparents.

2.3 Fact 3 – 4 DR 1 forms sent in for Mother and father-in-law, claims disallowed by caseworker [REDACTED] as no income certificates had been provided. It should also be noted that proof of incapacity by old age or infirmity has not been provided. Relatives are both working as subsistence farmers.

2.4 Fact 4 - It should be noted that the appellant has stated that both are working as subsistence farmers.

2.5 Fact 5 – Dependant Relative Tax Credit withdrawn for 2022 and 2023 due to non submittal of supporting documents which resulted in a liability due of €313.52.

2.6 Fact 6 - Tuition fees and health expenses were verified and allowed".

Material Facts

12. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

12.1. The Appellant's father in law and mother work as subsistence farmers in [REDACTED]

12.2. The Appellant's relatives do not have income statements required by Respondent.

Analysis

13. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. states that:

"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".

14. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

15. The Appellant's appeal relates to a refusal by the Respondent of a claim for a dependent relative tax credit for the relevant years, in accordance with the provisions of section 466 TCA 1997. The Commissioner notes that the Appellant submitted that the claim relates to the Appellant's relatives who reside in [REDACTED] and that their only income is subsistence farming that does not provide sufficient income to them. Therefore, the Appellant is required to send funds to the Appellant's relatives to support them. The Appellant has submitted [REDACTED] payment receipts for the relevant years that the Commissioner has considered in this appeal.

16. The Respondent has refused the claim for a dependant relative tax credit for the relevant years, on the basis that the Appellant has not furnished to the Respondent sufficient documentation to support the claim. The Respondent submitted that the claim was absent income certificates and proof of old age or infirmity. The Commissioner notes that the Appellant argued that the Appellant's relatives do not have income statements for subsistence farming nor do they have social welfare entitlements or pension entitlements.
17. The requirements of section 466 TCA 1997 are twofold, namely that the dependant relative must be a relative who is *inter alia* unable to maintain themselves due to incapacity by old age or infirmity and an individual whose total income from all sources for that year of assessment does not exceed a sum equal to the specified amount. Hence, the Respondent made a request of the Appellant for certain documentation to ensure the requirements of section 466 TCA 1997 were met. Moreover, the legislation is unambiguous in its terms, such that it is for a claimant to prove the requirements set out in section 466(2) TCA 1997. In this regard, the Commissioner notes the words "...a claimant proves..."
18. Having considered the facts and documentation submitted in this appeal, the Commissioner is satisfied that the requirements of section 466 TCA 1997 have not been met, because there has been no evidence adduced by the Appellant to prove that the Appellant's relatives are individuals who are unable to maintain themselves due to incapacity by old age or infirmity and are individuals whose total income from all sources for that year of assessment does not exceed a sum equal to the specified amount.
19. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. As stated, the Commissioner has considered the [REDACTED] receipts furnished by the Appellant. However, the Commissioner observes that the name that appears on the receipt under "sender" is not that of the Appellant named herein and there was no evidence submitted identifying the "sender" named on the receipt. In addition, no evidence was submitted identifying the name that appears on the receipt under "recipient". Furthermore, the Commissioner observes that no evidence whatsoever has been submitted by the Appellant in relation to the Appellant's relatives, such as a bank statement, documents relating to subsistence farming, formal identification documents issued by the government of [REDACTED] or any other formal verifying documentation that would support the Appellant's claim herein.

20. Therefore, the Commissioner must determine that the dependant relative tax credit is not available to the Appellant, in circumstances where the facts of this appeal do not support the requirements of section 466 TCA 1997 having been met.
21. The Commissioner notes that the Appellant stated that it is unfair to deny the Appellant's claim, in circumstances where the Appellant's relatives have no income statements given their employment and circumstances in [REDACTED] Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation or disproportionality, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.
22. The scope of the jurisdiction of an Appeal Commissioner, has been confirmed in the decision of the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18 and is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be.
23. Unfortunately, the Commissioner has no discretion to assist in these circumstances, as the Commissioner is bound to apply the relevant legislative provisions. Hence, the appeal is denied.

Determination

24. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the claim for a dependant relative tax credit under section 466 TCA 1997.
25. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
26. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

27. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section

949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

28. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
5 July 2024