



Between

166TACD2024

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Appellant

and

The Revenue Commissioners

Respondent

Determination

Table of Contents

Introduction	3
Background.....	3
Legislation and Guidelines	4
Submissions	4
Appellant’s submissions	4
Respondent’s submissions	6
Material Facts	7
Analysis	7
Determination	9
Notification	10
Appeal	10

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 **2021, 2022 and 2023** (“the relevant years”) in the amounts of **€490.00, €453.04 and €1,014.00** respectively.
2. On **8 April 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 for a dependant relative tax credit for the relevant years, in relation to his relatives (“the Appellant’s relatives”) who reside in [REDACTED].
5. The Appellant submitted that his claim for a dependant relative tax credit was approved for the years 2019 to 2022. However, when he applied for two additional dependants for the year 2023, the credit for 2021 and 2022 was withdrawn by the Respondent and all four claims for a dependent relative tax credit were denied for 2023. Furthermore, the Appellant submitted that the 2020 credit remains approved.
6. The Appellant submitted that during the relevant years he sent money to his spouse and niece, who manage the family’s financial matters in [REDACTED]. The Appellant submitted that they both provide for his grandmother, widowed mother, uncle and aunt due to their old age, as they have no capacity to transact with financial institutions or to travel to provide for their personal and daily needs.
7. In support of his claim for a dependant relative tax credit, the Appellant submits that he completed the DR1 Form setting out the details of his dependants and enclosed a history of remittances entitled [REDACTED] in 2021 to 2023.
8. 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 transaction records did not show that payments were made to dependent relatives.

Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:-

10. 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

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

"The tax dependents tax credit which I claimed was approved on previous occasions (from 2019 to 2022) and when I filed additional two dependents on the year 2023, the 2021 and 2022 was withdrawn and all four was denied and disapproved on 2023. We still noticed that 2020 are intact and not withdrawn. As I stated on my communication with [REDACTED], tax assessor/case worker, I sent money to my wife and my niece mostly as they are the one manage my financial matters in [REDACTED] and they are the one who are buying and providing all the needs of my grandmother, widowed mother, my uncle and my aunt due to their condition as old age and no capacity to transact with the financial institution or to travel to buy for their personal and daily needs. Our country is different from other advance countries as our place is considered remote and my dependent relatives are not capable to do open an account with atm card as [REDACTED] of the Revenue is looking for a fund transfer to their names like here in Ireland, we have here a PPS card, the banks are accessible to the old age residents and the system is advance so that is the primary reasons that is why I did not put any remittances to my tax dependent relatives. Please see the file that I attached on my my first email to you in which in our communication, I explained our condition. The amount I sent was substantial enough to support my tax dependents.

Please kindly consider my case as I am telling the truth and this will not be the first time you will encounter this kind of case as most of [REDACTED] are sending money to our family and relatives who has the capacity to transact with the financial institutions as it is very hard to both of us if the money sent will be lost due to inability of tax dependents and will be subject for scammers or hackers if the person has no knowledge in dealing the financial matters.

.....

I am a taxpayer who is paying correct taxes and contributing my part to the government but also i am a son, grandson and a nephew who is responsible, able and willing in giving support to my mother, grand mother, uncle and aunt.

In relation to the relevant facts given by Commissioner [REDACTED] herewith are my answers,

1. In regard to the "As no response received the credits were withdrawn on 28/02/2024", I sent a query dated 01/03/2024 stating that my response failed, please see below.

Dear Commissioner [REDACTED], Apologies for this response as I replied your query on 20th February but I did not realized that my response was not sent due to maybe an error on my attachment file name. In this regard, I attached all the necessary documents regarding your query. Herewith are my tax dependents form DR1, my history of remittances from 2021 to 2023, please note that most of my remittances was sent to my wife and my niece [REDACTED] as she mostly is the one who manages our finances in [REDACTED], in charge with the bills and expenses, doing the withdrawals and buying, providing all the needs of our elderly dependents especially my grandmother, my mother and my uncle.

2. In regard to "No payment on the transaction records received have paid to any of the 4 dependent", Other that stated in my email/query dated 01/03/24 (see above), I explained about the remittances, and again I explained it again on my query/email communication on March 15, 2024. Please see below.

Dear Commissioner [REDACTED]

I am attaching the 4th tax dependent relative below. I sent money through my wife and my niece mostly as they are the one managing the financial assistance that I sent to my old dependent relatives due to to their incapacity to travel, to transact with financial matters and even to buy their own foods and medicines that is why I am sending my money especially to my niece as she is the one withdrawing money and buying, providing all the needs of my old dependent relatives. My remittance was sufficient enough to support my Grandmother, widowed mother, uncle and auntie. They also have no bank account or atm card as they are too old to process this financial transactions and the system [REDACTED] is different form here..." [sic]

Respondent's submissions

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

"[The Appellant] is a PAYE taxpayer and is separately assessed to tax.

Case opened on 4 dependants in 2023 and 2 dependants in 2021 & 2022.

Level 1 intervention online enquiry issued 01/02/2024 requesting details in relation to dependant relatives. This was read by [the Appellant] on the same day.

As no response received the credits were withdrawn on 28/02/2024

Correspondence received from the Appellant 01/03/24, with details of 3 dependents living in [REDACTED] and 3 transaction records. With further correspondence on 15/03/2024 where appellant sent details of another dependant living in [REDACTED]

No payment on the transaction records received have been paid to any of the 4 dependent.” [sic]

Material Facts

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

13.1. The Appellant is employed and is a taxpayer in this jurisdiction.

13.2. The Appellant’s relatives reside in [REDACTED].

Analysis

14. 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”.

15. 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..."

16. 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].

17. 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 “*No payment on the transaction records received have been paid to any of the 4 dependent.*”
18. 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. Thus, if both requirements are satisfied then “*the claimant shall be entitled in respect of each individual whom the claimant so maintains to a tax credit*”.
19. 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...*”
20. 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. The DR1 Form submitted in this appeal did not enclose supporting documentation in this regard.
21. Furthermore, the Commissioner has considered the documents furnished by the Appellant entitled [REDACTED] purporting to be bank transfers to various recipients. The Commissioner observes the various names that appear on the documents under the heading “beneficiary”. Yet no evidence has been submitted identifying the name that appears on the receipt under “beneficiary”. The Appellant contends that the beneficiaries are usually his spouse and niece who manage the finances in [REDACTED], such that they are in charge of the bills and expenses in relation to providing for the needs of the Appellant’s relatives. The Commissioner notes that the Respondent has refused the credit on the basis that the Appellant has failed to establish that he is supporting a dependent relative as the funds do not appear in the bank account of the named dependents, which the Appellant included in the DR1 Form submitted with his application for the credit.
22. 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. The Commissioner is satisfied that no evidence whatsoever has been submitted

by the Appellant in relation to the Appellant's relatives, such as formal identification documents issued by the government in [REDACTED] or any other formal verifying documentation that would support the Appellant's claim herein. Moreover, no identification documentation has been submitted to establish the recipients of the alleged payments are in fact the Appellant's spouse and niece. The result of this is that the Commissioner has been furnished with no evidence to establish that the Appellant is supporting a dependant relative and is thus, entitled to a dependant relative tax credit.

23. 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.

24. 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 bank account or atm card as they are too old to process this financial transactions*". Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on 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.

25. 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.

26. 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

27. 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.

28. 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.

29. 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

30. 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

31. 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
16 August 2024