[2020] IEHC 295

THE HIGH COURT

[Record No. 2017/196 R.]

IN THE MATTER OF A CASE STATED PURSUANT TO SECTION 941 OF THE TAXES CONSOLIDATION ACT, 1997

BETWEEN

COLM MURPHY

APPELLANT

AND

THE REVENUE COMMISSIONERS

RESPONDENT

JUDGMENT of Ms. Justice Pilkington delivered on the 4th day of June , 2020

1. This is an appeal by way of case stated from the judgment of His Honour Judge Comerford on the 28th February, 2017.

2. In the case stated signed by the Judge on the 23rd August, 2017, nine questions are raised for consideration by the High Court. They are as follows:-

"(1) Was I correct in holding that there was no rule of law (other than as might arise by way of estoppels) that precluded the taking of any steps in a Revenue Audit, while a Revenue Enquiry was in being.

(2) In respect of my ruling that assessments raised in this case were not prohibited by the terms of Section 955(2) of the 1997 Act, and on the proper construction of that Section 955, was I correct in holding that there was no rule of law (other than as might arise by way of estoppels) that any steps taken in the course of Revenue Audit, as at the time when a Revenue Enquiry was in place, would only be determined to take effect when effective notice was given that the Revenue enquiry was no longer proceeding.

(3) In respect of my ruling that assessments raised in this case were not prohibited by the terms of Section 955(2) of the 1997 Act, and on the proper construction of Section 955, was I correct in holding that the requirement that returns made by a taxpayer make full and material disclosure of all matters necessary to make an assessment is a precondition without which a taxpayer cannot rely upon any time limit imposed by s. 955 and that the disclosure of full details by way of prompted disclosure or otherwise in the course of a Revenue Audit, subsequent to the making of returns, does not satisfy this condition.

(4) Was I correct in holding that the legal rules relating to the strike out of civil proceedings for gross and inordinate delay had no effective application in this Revenue Appeal.

(5) Was I correct in holding that it not within the scope of this Appeal to apply the European Convention on Human Rights as might arise from any delay on the part of the Revenue Commissioners.

(6) Was I correct in holding that the law relating to estoppel arising from conduct on the part of the Revenue Commissioners could be applied by the Circuit Court within a Revenue appeal from the decision of an Appeal Commissioner to the Circuit Court.

(7) Was my finding that no estoppels arose on the facts of this case in accord with the law relating to estoppel.

(8) Was I correct in holding that an error in a statement of an amount assessed, in a statement of the total or any amounts assessed, or in a statement of an amount due, on the face of any document giving notice of an assessment or assessments does not preclude the establishment at hearing before the Appeal Commissioner or the Revenue Commissioners of a different amount.

(9) Was I correct in law holding that it was not necessary to consider the detail of the appellant's dispute with a third party, save and to the extent that I deemed it to be of potential relevance to the operation of any estoppel."

3. The appeal was heard in Tralee, County Kerry on 7th February, 2017 and is an appeal pursuant to s. 942 of the Taxes Consolidation Act, 1997 ("TCA").

4. It concerns the following Revenue assessments:-

Tax	Period/Time	Amount
Income Tax	2006	€149,687
CGT	2006	€98,137
VAT	01/04/05 – 31/08/05	€49,160
VAT	01/01/06 – 28/02/06	€4,176
VAT	01/09/06 – 31/10/06	€1,334
	Total:	€302,494

5. The income tax assessment arose pursuant to a notice of amended assessment issued on the 27th September, 2013.

6. The CGT assessment arose pursuant to a notice of assessment of 26th September, 2013.

7. The VAT assessments issued pursuant to notice of assessments on 2nd October, 2013.

8. Those assessments arose following a Revenue audit commenced in April, 2009, which was suspended in May, 2009 as a result of the taxpayer's affairs coming under Revenue enquiry, with the audit resuming in May, 2013.

9. Within the case stated itself, His Honour Judge Comerford states that the issues that arose for his determination were as follows:-

"(a) Whether any legal issues arose concerning the delay between the commencement of the Revenue Audit in April, 2009 and the issue of the Assessments in September/October, 2013;

(b) Whether the letter of the 20th January, 2014 issued to the Taxpayer indicating that the Revenue enquiry was not proceeding was of any legal significance in the context of the Assessments that had issued;

(a) Whether any legal issue turned on the fact that the VAT Assessment dated 2nd October, 2013 contained a computational error;

(b) Whether the Taxpayer's dispute with his professional body was of any legal significance in the context of the appeal before me."

10. I understand that the taxpayer appellant ("the taxpayer") appeared as a litigant in person. I further understand he is a legally qualified person.

11. The court has also set out the facts not in dispute between the parties in the following terms:-

(a) The taxpayer made income tax returns for 2006 and 2007 on the 30th day of March, 2009 showing a liability of €4,669.72 and €4,545.42 respectively. A supplementary VAT return for the period from April to August, 2005 was aslo filed seeking a VAT repayment in the sum of €32,184.

(b) A Revenue audit letter issued on the 6th April, 2009 and the audit commenced on the 29th April, 2009. During the course of the audit, the taxpayer withdrew the VAT repayment claim referred to in the preceding paragraph. During the course of the audit, the taxpayer also made three prompted disclosures in respect of income tax, CGT and VAT. By letter dated 18th May, 2009, the taxpayer was informed by the Revenue that his tax affairs were currently under Revenue enquiry and that this enquiry superseded all audit and other related checks and that the Revenue audit was being suspended for the present.

(c) There was no evidence of any interaction between the Revenue and the taxpayer between June, 2009 and May 2013.

(d) In May, 2013, the taxpayer was contacted and told that Revenue intended to continue the audit commenced in 2009.

(e) By letter of 19th May, 2013, the taxpayer took issue with the delay by Revenue in finalising the matter and asserted that Revenue were not now entitled to recommence the audit and that any assessments raised on foot of the partly completed audit were null and void and invalid.

(f) The Revenue issued the assessments in September and October, 2013. The assessment in respect of VAT dated 2nd October, 2013 assessed three figures in respect of VAT and the total of these calculated correctly would be €61,575. The assessment indicated that the total amount assessed on foot of these three assessments was €211,588 and that the amount due on foot of these assessments, taking into account payments made, was €201,359. Revenue had indicated that this was a computational error. There was a dispute on the facts whether the notification of the error was given on the 9th October, 2013 or the 14th January, 2014. At the hearing before the Appeal Commissioners and the Circuit Court, Revenue further indicated that there should be a further reduction in the amount assessed for the period 01/04/05 – 31/08/05.

(g) On the 20th January, 2014, Revenue indicated to the taxpayer that, once the Revenue audit was resumed in May, 2013, the implication was that the Revenue enquiry was not proceeding and that the letter was formally confirming that the revenue enquiry was not proceeding.

12. The taxpayer contended:-

(a) That the assessments which issued in September and October, 2013 should be deemed to have issued on the 20th January, 2014 when the taxpayer was formally told that the Revenue enquiry was no longer proceeding.

(b) If the date of the assessments was deemed to be the 20th January, 2014, then the assessments were not issued within the time period specified in s. 955(2) of TCA.

(c) There was inordinate and inexcusable delay in issuing the assessments between commencement of the audit in May, 2009 and the issue of the assessments in September/October, 2013.

(d) The notice of assessment for VAT issued on the 2nd October, 2013 was invalid on the basis that it included an incorrect total of €211,588.

(e) The taxpayer had been involved in a dispute with his professional body since 2004 which is still on-going. The dispute was on-going over the relevant period between May, 2009 and October, 2013.

13. The Revenue contended:-

(a) Any consideration of the validity of the assessments other than pursuant to s. 955(2) of TCA was outside the jurisdiction of the Circuit Court and was more a matter for judicial review.

(b) The assessments were issued within the four year time limit set out in s. 955(2) of TCA and were, therefore, valid.

(c) If it was determined the tax payer had made a full and true disclosure, then the assessments were made in time.

(d) If it was determined that the taxpayer had not made a full and true disclosure, the time limit in s. 955(2) was not applicable.

(e) The totalling error in the VAT assessment could not invalidate the VAT assessment itself.

14. Within the appellant's submissions they have indicated that they do not require an answer to the questions raised in the case stated at paras. 4, 5 and 9.

15. It is also noteworthy and has already been identified by His Honour Judge Comerford in his judgment of the 28th day of February, 2017 that both the appeal from the Tax Commissioners to his court (and indeed the case stated to this court) does not in any sense involve any determination in respect of any financial assessments raised. This matter did not concern any computational analysis in respect of any taxation matters, but rather what issue, if any, arise from the very specific facts of this case. Those agreed facts are clearly set out above.

Questions within grounds 4, 5 and 9 of the Case Stated

16. In respect of questions 4, 5 and 9 of the case stated, the appellant's submission states that "in circumstances, it is submitted that it is unnecessary for the court to consider this question". The respondent seeks an affirmative answer. Accordingly, for the avoidance of doubt, I confirm the answer of 'Yes' in respect of these three categories within the case stated.

17. Accordingly, I deal with the remainder of the questions raised with the case stated in turn. In doing so it must be noted that some of the facts and legislation overlaps, within the different questions raised, with each case stated category.

Question 1 - Is there any rule of law that precludes the taking of any steps in a Revenue audit whilst a Revenue enquiry is in being?

18. The appellant appears to take no issue with the fact that an enquiry was instituted but thereafter that he should properly have been informed of its termination and further and in what circumstances a "reactivation" of the audit procedure was permissible.

19. The operative correspondence appears to be a letter from the Revenue to the taxpayer dated the 18th May, 2009 which states:-

> "I wish to advise you that your tax affairs are currently under Revenue enquiry.
>
> This enquiry supersedes all audits and other related checks that Revenue may have initiated".

20. It appears that nothing further was done by the respondent in respect of that enquiry. The next item of correspondence within the papers is a letter to the appellant of the 27th September, 2013 which begins as follows:-

"I refer to your meeting with Billy Thompson and I on 20/5/13 in relation to the ongoing audit of your tax affairs.

Having consulted with colleagues in the Revenue legislation services and Revenue solicitor's office, the Revenue opinion is that despite the time elapsed since the commencement of the audit there is an entitlement under s. 955 TCA to raise and amend assessments outside the four-year limit where the relevant returns filed did not contain a full and true disclosure of all material facts necessary for the making of an assessment for a chargeable period.

On the basis of the additional liability disclosed by you in your accountant… during the audit meeting of 29/4/09 and 13/05/09 I have now raised the following assessment, amended assessment or inspector's estimate as appropriate …

I wish to thank you for your ongoing cooperation and I sincerely apologise for the undue delay by Revenue in recent years in progressing this audit …".

21. The appellant contends that unless or until there was formal notification of the conclusion of the revenue enquiry, no audit could continue and no assessment raised on foot of it. No statutory basis was advanced by the appellant in respect of this contention and the case stated is carefully drafted so that the issue of estoppel is not raised within this question.

22. It is clear that within the case stated the learned judge is seeking to determine whether there are any points of law that would necessitate consideration of matters outside of his judgment in determining any issues surrounding the resumption of the audit process.

23. Section 956 TCA headed "Inspector's Right to Make Inquiries and Amend Assessments" states:

"(1)(a) For the purpose of making an assessment on a chargeable person for a chargeable period or for the purpose of amending such an assessment, the inspector—

(i) may accept either in whole or in part any statement or other particular contained in a return delivered by the chargeable person for that chargeable period, and

(ii) may assess any amount of income, profits or gains or, as respects capital gains tax, chargeable gains, or allow any deduction, allowance or relief by reference to such statement or particular.

(b) The making of an assessment or the amendment of an assessment by reference to any statement or particular referred to in paragraph (a)(i) shall not preclude the inspector–

(i) from making such enquiries or taking such actions within his or her powers as he or she considers necessary to satisfy himself or herself as to the accuracy or otherwise of that statement or particular, and

(ii) subject to s. 955 (2), where amending or further amending an assessment such manner as he or she considers appropriate

(c) Any enquiries and actions referred to in paragraph (b) shall not be made in the case of any chargeable person for any chargeable period at any time after the expiry of the period of 4 years commencing at the end of the chargeable period in which the chargeable person has delivered a return for the chargeable period unless at that time the inspector has reasonable grounds for believing that the return is insufficient due to its having been completed in a fraudulent or negligent manner.

(2)(a) A chargeable person who is aggrieved by any enquiry made or action taken by an inspector for a chargeable period, after the expiry of the period referred to in subsection (1) (c) in respect of that chargeable period, on the grounds that the chargeable person considers that the inspector is precluded from making that enquiry or taking that action by reason of subsection (1)(c) may, by notice in writing given to the inspector within 30 days of the inspector making that enquiry or taking that action, appeal to the Appeal Commissioners, … and the Appeal Commissioners shall hear the appeal in all respects as if it were an appeal against an assessment."

24. Upon my interpretation of that section there is nothing that precludes, as a matter of law, the resumption of the audit. The amendment of any assessment that is specifically referable to s. 955(2) at 1 (b) (ii), and (c) above, is also subject to the criteria within s. 955(2) which is dealt with below.

25. I was referred to the 2002 Revenue Audit Code of Practice and Code of Practice for Revenue Audit. Neither is a legally binding document, it does not constitute a "rule of law". In any event, whilst it sets out the circumstances in which as audit can take place, including the circumstances in which it might be suspended, it does not purport to specify any rule of practice or otherwise requiring a formal notification of the ending of the enquiry process before any assessment or resumption of the audit process can commence or continue.

26. Accordingly, in my view there is no rule of law within the question set out in the case stated to prevent any steps taken in the course of the Revenue audit whilst a Revenue enquiry was in being. The answer to question one in the case stated is "Yes".

Questions 2 & 3 - Section 955 and s. 955 (2) of TCA, 1997

27. The issue with these questions is the entitlement of the court to hold that s. 955(2) applies on the facts of this case.

28. Section 955 TCA headed "Amendment of and Time Limits for Assessments" states:-

"(1) Subject to subsection (2) and to section 1048 , an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

(2)(a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered, by reason of any matter contained in the return".

29. Subsection (3) of s. 955 states as follows:-

"(3) A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of subsection (2) may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine—

(a) that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, ...".

30. Question 2, relates to question 1, but includes a further consideration as to whether any rule of law required the revenue, prior from taking steps in respect of their audit to furnish effective notice to the appellant that the enquiry was no longer proceeding. Would the audit only be deemed to take effect once effective notice was given?

31. With regard to the subsequent Revenue enquiry, the learned Circuit Court judge held that the notification in May of 2013 that the audit was continuing, brought with it the implication that the Revenue enquiry had come to an end. Assessments were raised in September and October 2013. On 20th January 2014 in correspondence the respondent stated that once the audit resumed in May 2013, the implication was that the revenue enquiry was not proceedings but, in any event, at that point, formally confirmed that the enquiry was not proceeding.

32. I have considered this question both on the basis of the notification in May 2013 held by His Honour Judge Comerford to imply that the enquiry had concluded and the formal notice in January 2014, would come within the remit of 'effective notice'.

33. In question 2 and the applicability of s. 955(2) above, in my view, there is no rule of law within ss. 955 or 955(2) or otherwise that that the revenue audit was not deemed to take effect prior to effective notice being given that the enquiry was not proceeding. The answer to question 2 is "Yes".

34. From the statement of agreed facts, the Revenue letter seeking or informing the taxpayer of the audit issued on the 6th April, 2009 and the audit itself commenced on the 29th April, 2009. In the course of the audit the taxpayer made three prompted disclosures in respect of income tax, CGT and VAT respectively. In other words, the prompted disclosures were made after the returns were submitted. The notification of the audit process prompted the disclosures.

35. In the respondent's submissions, it is suggested that the matters contained within the prompted disclosure, in and of itself thereafter formed part of the return and accordingly that any suggestion that the four-year limit, if I might describe it as such, set out in s. 955 as quoted above, does not apply.

36. In my view this is largely a question of fact and the facts are clear. It was a prompted disclosure by this appellant. The returns had already been filed when the prompted disclosures were made. By definition if they had formed part of the return they would not be prompted disclosures. Therefore, the factual chronology "triggers" s. 955 (2) and accordingly this taxpayer or chargeable person is not permitted or entitled to avail of the four-year time limit set out within that section.

37. I consider that that also disentitles this Appellant to rely upon the time limit within s. 956 at 1 (b) (ii) and (c) above, for the same reasons.

38. In my view this is a question as to whether the four-year period applies within the statute. The case stated asks very clearly within question one as to whether there is any "rule of law" (other than as might arise by way of estoppel). That was very clearly in my view related to the statutory obligations of both parties to this application.

39. As set out above, the Revenue's Code of Practice and Customer Service Charter published by the Revenue in 2002 does not constitute a rule of law, which is the issue raised by the question in the case stated.

40. The terms of s. 955 TCA are as set out above. This question, in my view, is a matter of statutory interpretation. The agreed facts disclose that three prompted disclosures were made. This does not come within the statutory definition of "has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period". Therefore, s. 955(2) applies and the four year limit is not available to this appellant.

41. Based upon the matters set out above, in my view, the answer to questions 2 and 3 is "Yes".

Questions 6 & 7 - Estoppel

42. Categories 6 and 7 relate to estoppel – the first is whether the doctrine of estoppel is applicable to the Circuit Court in circumstances of a Revenue appeal from the decision of the Appeal Commissioners and, secondly, whether, if so, the findings in respect of estoppel were in accordance with the law encompassed by that equitable relief?

43. Of course, this appeal by a taxpayer from the adjudication of the Appeal Commissioners to the Circuit Court is under the 'old regime'. In these circumstances the following statutory requirements apply and are of relevance.

44. Section 941 TCA is headed 'Statement of case for High Court'. Section 941 (6) states:-

> 'The High Court shall hear and determine any question or questions of law arising on the case, and shall reverse, affirm or amend the determination in respect of which the case has been stated or shall remit the matter to the Appeal Commissioners with the opinion of the court on the matter, or may make such other order in relation to the matter, and may make such order as to costs as to the Court may seem fit'.

45. Section 942 TCA is headed 'Appeals to Circuit Court'. Section 942(1) states that the appeal shall be reheard by a judge of the Circuit Court. Section 942(3) states:-

> "The Judge shall with all convenient speed rehear and determine the appeal, and shall have and exercise the same powers and authorities in relation to the assessment appealed against, the determination, and all consequent matters, as the Appel Commissioners might have and exercise, and the judges determination shall, subject to s.943, be final and conclusive".

46. In *Lee v. The Revenue Commissioners* [2018] IEHC 46, Keane J., dealing with a case stated, was asked to determine issues concerning the scope of jurisdiction of the Appeal Commissioners and the Circuit Court on appeal, pursuant to ss. 933 and 942 of the TCA.

47. The appellant had initially given notice of intention to appeal the assessments raised by the Revenue Commissioners to the Appeal Commissioners. One of the matters alleged was that a settlement had been made with the Revenue and had been accepted by it in full and final satisfaction. The court, in considering the nature of various reliefs stated:-

> "As the decision of Charleton J. in *Menolly Homes* demonstrates, there are plainly some questions that it is more appropriate to raise by application for judicial review. The appellant's claims that he has a legitimate expectation that his income tax liability for the assessment period(s) in question has been settled… or, obversely, that the respondent is estopped from asserting otherwise both raise questions of that kind. The doctrine of legitimate expectation is a creature of public law; that of promissory estoppel one of equity. Neither the Appeal Commissioners

nor the Circuit Court have the necessary public law jurisdiction to consider them. And, in the words of Charleton J. in *Menolly Holmes* (at para. 12), revenue law has no equity.

For those reasons, I am satisfied that, while the Appeal Commissioners (and the Circuit Court), in the exercise of the jurisdiction of each under s. 934 of the TCA, do have jurisdiction to consider a contract law claim that there exists a prior accord or settlement between the taxpayer and Revenue Commissioners that requires, where appropriate, the abatement or reduction of an assessment subsequently raised, they do not have jurisdiction to entertain a claim of legitimate expectation or promissory estoppel to the same effect. Claims of the latter sort must be raised in separate proceedings before the appropriate court."

48. Under the heading "Jurisdiction of the Appeal Commissioners", Charleton J. in *Menolly Homes v. Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, as referenced above states:-

> "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. To import into taxation legislation any notion of general obligation is to return from the modern concept of precise obligation pursuant to defined legal rules into an era when feudal ties governed the relationship of those who served a monarch… How tax becomes payable… is both defined and circumscribed are all precisely defined by modern legislation. In a similar way, what remedy that taxpayer has against a taxation demand is not general but specific. It is cut from the cloth whereby the precise liability is set by statute law and tailored individually by the legislature in the way that suits their perception of how an income tax, a corporation tax, a capital gains or acquisitions tax… should be set up as to the scope of appeal, the procedure on that appeal and the remedies available to the appellate body. In all relevant legislation in Ireland, appeal against a claim of taxation liability is to the Appeal Commissioners. But, as might be expected, that appeal is not always to be engaged in the same way…"

Within that case at para. 31, the judgment then quotes from the decision of the Supreme Court (O'Byrne J.) in the *The State (Whelan) v. Smidic* [1938] ITR 571 where in relation to the powers of Appeal Commissioners (then Special Commissioners), the court stated:-

> *"What, then, are the powers of the Special Commissioners on the hearing of an appeal against an assessment? Various ancillary powers are conferred upon the commissioners for the purpose of enabling them to exercise the very important function of hearing and determining appeals but, in so far as the final determination of the appeal is concerned, I am of opinion that there only powers are those contained in… they may abate, reduce or increase the assessment and, subject to such abatement or variation, the assessment stands good. I am therefore of opinion on an analysis of the material sections of the statutes, that the final*

determination of these Special Commissioners, on the hearing of an appeal against an assessment, must necessarily be in order directing"

(1) that the assessment shall abate altogether or

(2) that it be varied by increasing or diminishing it to a definite amount to be fixed by them, or

(3) that the appeal be dismissed, in which event the original assessment stands good."

49. In *Stanley v. the Revenue Commissioners* [2017] IECA 279, Peart J., considering the decision of the High Court to refuse the appellant's application by way of judicial review to quash a notice of assessment for capital acquisitions tax interest and penalties issued by the Revenue Commissioners, on the basis that it was *ultra vires* their powers being outside of the period of four-years from the date on which the appellant, had delivered what he believed to be the correct VAT return and, therefore, contrary to the legislation within the Capital Acquisition Tax Consolidation Act, 2003 (as amended).

50. In considering what the court described as the "forum issue", Peart J. stated:-

> "The jurisdiction of the Appeal Commissioners to determine appeals against assessments of tax does not, in my view, extend to determining whether or not the notice of assessment of tax which is the subject of the appeal to them is a lawful notice or whether it is unlawful by reason of being issued *ultra vires* the Revenue's statutory powers.
>
> A lawful assessment is a pre-requisite to the exercise by the Appeal Commissioners of their powers to hear and determine an appeal against an assessment. As the appellant has submitted, it is only where the notice is a valid notice of assessment that the issues of quantum of tax fall to be determined by the Appeal Commissioners on appeal. Where as in this case the issue raised is one of law and, specifically, of statutory interpretation as to the lawfulness of an assessment as opposed to the quantum of tax so assessed, the appellant was perfectly entitled to seek to have that issue determined by way of the present judicial review proceedings…
>
> In my view, therefore, the trial judge fell into error in concluding that the appellant's appropriate remedy was to pursue his appeal to the Commissioners".

51. Based upon the case law cited above, in my view, the law of estoppel does not arise in the adjudication of the Circuit Court, in circumstances of an appeal from the Appeal Commissioners. It may arise elsewhere. However, it does not arise in the calculation or computation of any assessment and, as in the decision of Peart J. above, in the interpretation of the statute as to the validity of the assessment. The issue as to whether this appellant is entitled to equitable relief arising upon that adjudication is not a matter

for adjudication by a judge of the Circuit Court, upon an appeal from the Appeal Commissioners. Section 942(3) TCA, quoted above, is also clear in its terms.

52. It is noteworthy, in my view, that s. 941(2) TCA refers to a judge of the Circuit Court who must adjudicate the appeal, which in my view is to be distinguished from a hearing before the Circuit Court. Section 942(3) TCA in my view reinforces this, by affording the same powers to that judge as held by the Appeal Commissioners in determining the appeal.

53. In my view based upon the caselaw and the statues quoted above the answer to question 6 is "No".

54. In my view, the answer to question 7 does not arise, given my answer to question 6.

Issue 8 - The Assessment

55. The final question requiring adjudication relates to an initial error in the statement of an amount assessed and whether that precludes the establishment at hearing before the Appeal Commissioners or the Revenue Commissioners of a different amount.

56. Within the very careful and considered judgment of His Honour Judge Comerford, it is clear that the relevant assessment was corrected and the position was notified to the appellant taxpayer. Given that it was corrected, thereafter, it seems that no issue can have arisen and none appears to have been raised by the appellant in seeking to challenge the assessments and within this case stated.

57. The answer to question 8 is "Yes".

58. Accordingly, the answers to the grounds within the case stated are answered as follows;

    (1) Yes

    (2) Yes

    (3) Yes

    (4) Yes

    (5) Yes

    (6) No

    (7) Not applicable, by virtue of the answer to question (6)

    (8) Yes

    (9) Yes

59. I will hear the parties as to any consequential or other orders that may be required including any as to costs.