

THE HIGH COURT

**IN THE MATTER OF A CASE STATED PURSUANT TO THE TAXES
CONSOLIDATION ACT, 1997 (AS AMENDED) AND THE FINANCE (TAX
APPEALS) ACT, 2015**

[2022] IEHC 199

[2020 17 R]

BETWEEN

ANN CORCORAN

RESPONDENT

AND

THE REVENUE COMMISSIONERS

APPELLANT

[2020 18 R]

BETWEEN

JOSEPH CORCORAN

RESPONDENT

AND

THE REVENUE COMMISSIONERS

APPELLANT

JUDGMENT of Ms. Justice Emily Egan delivered on the 5th day of April, 2022

Introduction

1. This is an appeal by the Revenue Commissioners (“revenue”) by way of case stated against an *ex tempore* determination of the Tax Appeal Commissioner of 14th December, 2015. The case stated was drafted after the relevant Appeal Commissioner (“the commissioner”) had vacated office, and as such falls to be dealt with under ss. 29 and 30 of the Finance (Tax Appeals) Act, 2015, which provides for a case stated to be signed by a commissioner other than the original commissioner.

2. The matter appealed is the determination that the appellants before the commissioners, the respondents to the case stated, Ms. Ann Corcoran and her brother, Mr. Joseph Corcoran, (save where otherwise necessary, “the respondents”) were not liable to a domicile levy for the relevant tax years of assessment.

3. Briefly, the domicile levy is a levy which was introduced in 2010, with a view to ensuring that wealthy individuals who are domiciled in Ireland paid a levy of €200,000 if they were not already paying income tax of at least that amount.

4. The provisions setting out the domicile levy are to be found in Part 18 C (ss. 531 AA to 531 AK) of the Taxes Consolidation Act 1997 (“TCA”). The domicile levy applies to an individual, *inter alia*, whose “*world-wide income*” exceeds €1 million. The primary issue before this court is whether the “*world-wide income*” of the respondents for the purposes of the domicile levy exceeds €1 million for each of the years in question. This in turn depends upon whether wear and tear allowances of the respondents’ hotel trade are deductible in computing “*world-wide income*” for the purposes of the domicile levy. The commissioner determined that wear and tear allowances under s. 284 TCA were deductible in arriving at the respondents’ “*world-wide income*”, which thus fell below €200,000. Revenue has appealed against that determination.

5. While the above is the key issue in this case, the case comes before the High Court by way of a case stated and the court has been asked to consider four particular questions which are set out at the end of this judgment. All of these questions can be decided in the affirmative or negative, depending upon the court's judgment on this key issue which I will therefore consider first.

6. It is common case that the jurisdiction of the High Court on hearing a case stated is as set out by the Supreme Court in *DA MacCarthaigh, Inspector of Taxes v. Cablelink Ltd* [2003] 4 IR 510 where earlier case law (including *Mara (Inspector of Taxes) v. Hummingbird Ltd* [1982] ILRM 421) was considered to have established, *inter alia*, that if the court's conclusions show that the commissioner has adopted a wrong view of the law, then the determination should be set aside. This appeal turns entirely upon an issue of law in respect of which the doctrine of curial deference does not apply.

Statutory provisions

7. It is convenient to now set out the main statutory provision in issue. Other relevant provisions will be set out and discussed as they arise.

8. S. 531 AB TCA sets out the charge to the domicile levy as follows:

“Subject to this part, with effect from 1 January 2010 a levy, to be known as ‘domicile levy’ shall be charged, levied and paid annually by every relevant individual and the amount of such levy shall be €200,000.”

9. S. 531 AA defines a “*relevant individual*” as:

“ ... an individual-

a) who is domiciled in, and is a citizen of, the State in the tax year

b) Whose world-wide income for the tax year is more than €1 million

c) Whose liability to income tax in the State for the tax year is less than €200,000 and

d) *The market value of whose Irish property on the valuation date in the tax year is in excess of €5 million.*”

10. The facts as agreed or as found by the commissioner were that the respondents were Irish tax resident, ordinarily resident and domiciled in Ireland for the years in question; that during the relevant years, the respondents operated a hotel trade in partnership and that subsequently the trade was incorporated. The parties agree that the respondents meet conditions a), c) and d) of the above definition of a “*relevant individual*”. There is dispute only as to whether the condition b) is satisfied.

11. S. 531 AA defines “*world-wide income*” as follows:

““***world-wide income***” in relation to an individual, means the individual’s income, without regard to any amount deductible from or deductible in computing total income, from all sources as estimated in accordance with the Tax Acts and as if any provision of those Acts providing for any income, profit or gains to be exempt from income tax or to be disregarded or not reckoned for the purposes of income tax or those Acts were never enacted, and –

without regard to any deduction – [listed thereunder] and

having regard to a deduction for – [listed thereunder]

determined on the basis that the individual, if not otherwise resident in the State for the year, was resident in the State for the tax year;”

12. As noted by Twomey J. in *Louis Fitzgerald v Revenue Commissioners* [2021] IEHC 487, in very broad terms, the definition means that, in determining the “*world-wide income*” of a person, no account is taken of various deductions which a person might normally make when calculating their tax bill. As will become apparent when I further consider *Fitzgerald* below, Twomey J. held that a tax payer’s allowance losses could not be deducted from his “*world-wide income*” in order to bring it below €1 million.

13. The income of both respondents for the years in question after deduction of the relevant wear and tear allowances is said to be €526,6373 in 2010, €610,804 in 2011 and €543,871 in 2012. If, however, the wear and tear allowances claimed by both respondents are ignored, then their income in each case rises above €1 million attracting the domicile levy of €200,000. After deduction of income tax from the said levy amount of €200,000 in respect of each respondent, the sums in issue, in respect of Ann Corcoran are €61,213.49 for the year 2010, €34,113.00 for the year 2011 and €57,510.81 for the year 2012. In respect of Joseph Corcoran, the relevant amounts are €68,978, €41,435 and €68,847 respectively.

The determination

14. The case stated records that, in the determination, the commissioner paraphrased the definition of “*world-wide income*” as follows: “*the individual’s income estimated in accordance with the Tax Acts with a further qualification that no regard should be had for any amount deductible from or deductible in computing total income.*”

15. The commissioner then went on to determine that the only relevance of the definition of “*total income*” in the definition of “*world-wide income*” was that “*if anything is within the Acts deductible from total income, it shall not be deducted from world-wide income but that is the extent of the relevance of the total income*”. [commissioner’s own emphasis].

16. The difficulty with this formulation is that it appears to ignore the fact that the definition of “*world-wide income*” provides that no regard shall be had to any amount deductible from or deductible in computing total income. As will become apparent, this de-emphasis of the “*deductible in*” component of the definition appears to continue throughout the determination.

17. The commissioner noted that it was common ground between the parties before him that the phrase “*without regard to any amount deductible from or in computing total income*” does not refer to items such as expenses in the individual’s profit and loss account. It was similarly common case before this court that such expenses as are wholly and exclusively

expended for the purpose of the trade, within the meaning of s. 81 TCA, (as to which, see further below) may be deducted in arriving at an individual's "world-wide income". It was agreed that the deduction of these expenses is part of the initial estimation of income in accordance with the Tax Acts.

18. The commissioner then stated that the correct exercise was: "*after arriving at total income, and following the deduction of all those expenses which are necessary for the purposes of the business ... what other items are left which are deductible from total income and that will not be allowed as a deduction for world-wide income purposes.*" In thus describing "*the exercise*", the commissioner appears to have focused only upon amounts deductible from total income and, perhaps, to have overlooked the importance of also disregarding amounts deductible in computing total income. This appears to be apparent from the commissioner's framing of the issue before him in the following terms: "*the issue arising therefore is whether capital allowances are on the side of the deductions from total income or on the side of the expenses of the activity in question i.e. deductions in computing total income.*" (commissioner's own emphasis)

19. Therefore the commissioner appears to have formed the view that any "*expenses of the activity in question*" ought not be disregarded in arriving at "*world-wide income*". It further appears that the commissioner was prepared to include wear and tear allowances in the "*expenses of the activity in question*".

20. The commissioner went on to note that one of the principle aims of the accountancy profession is to determine "*true profits*" on a year by year basis. If a business incurs a capital expenditure on something that is going to contribute to its profits over a period of years, it would not be considered appropriate in accountancy terms to write that expenditure off in the year in which it has been incurred but rather by virtue of an allocation of the cost of the capital asset over the period of its expected useful life in the form of wear and tear allowances. The

commissioner noted that “*if one didn’t take account of such depreciation then the income would be overstated.*”

21. The commissioner referred to the principles that clear words are necessary in order to tax an individual; that there is no room for any intendment and “*no equity about a tax*”; that “*there is no presumption as to a tax*”; and that if a provision is ambiguous or reasonably capable of two alternative meanings, the tax payer is entitled to the benefit of the doubt and to the more favourable of the alternative meanings.

22. The commissioner found that there was a lack of clarity concerning capital allowances for the purposes of the definition of “*world-wide income*” in s. 531 AA TCA. He stated that it was “*reasonable that the taxable profits in this case were the profits after deduction of the capital allowances.*”

23. The commissioner’s approach in this regard appears to be based upon what he considered to be “*reasonable*” i.e. that only taxable profits would be included within the scope of “*world-wide income*”. The commissioner went on to hold that in his view it was the intention of the domicile levy to look at the “*plain vanilla profits, taxable profits of a trade without applying any exceptions*” and that it was the intention that normal trading expenses be allowed. The question, he stated to be asked was: “*the bog standard question of what were the taxable profits in this case without any of the frills*”. Essentially, therefore, the commissioner interpreted the phrase “*income.. from all sources as estimated in accordance with the Tax Acts*” as equivalent to taxable income. Indeed, the respondents made a similar argument to this court.

24. On this basis, the commission determined that as taxable profits were computed “*after deduction of capital allowances*”, therefore capital allowances were allowable deductions in computing “*world-wide income*” for the purposes of the domicile levy.

25. In reaching his determination, the commissioner’s decision was framed as follows:

- “taking into account the important principle that if there is any doubt about the matter the tax payer must be given the credit for it and;
- looking at the words used which are definitely obscure and attempting to apply the principles of s.5 of the Interpretation Act, capital allowances were allowable deductions in computing “world-wide income” for the purposes of the domicile levy.”

Principles of statutory interpretation

26. Revenue submits that the commissioner was in error in adopting the above outlined approach to statutory interpretation, particularly in his reliance on s. 5 of the Interpretation Act.

27. In *Bookfinders Ltd v. Revenue Commissioners* [2020] IESC 60, which of course post-dated the commissioner’s determination by some years, O’Donnell J. (as he then was) stated that he was satisfied that s. 5 of the Interpretation Act should not be applied in the interpretation of taxation statutes.

28. However, although s. 5 does not apply, *Bookfinders* and *Dunnes Stores v. Revenue Commissioners* [2019] IESC 50 make it abundantly clear that the focus of all interpretative exercises is to find out what the legislature meant and that, even when invoking secondary aids to interpretation in the case of a statutory provision which is imprecise or ambiguous, the task of the court remains exactly the same, which is, insofar as possible to identify the will and intention of parliament.

29. Equally though, as is apparent from these two Supreme Court judgments, the exercise to be undertaken is not an artificial or constrained parsing of language involving placing words under a microscope in an effort to detect some anomaly. Thus, in *Dunnes Stores*, McKechnie J. stated at paragraph 62:

“In such circumstances one would have thought and one is entitled to expect, that the imposing measures should be drafted with due precision and in a manner which gives direct and clear effect to the underlying purpose of the legislative scheme. That can scarcely be said in this case. That being so, the various imposing provisions must be looked at critically. If, however having carried out this exercise, and notwithstanding the difficulty of interpretation involved, those provisions, when construed and interpreted appropriately, are still capable of giving rise to the liability sought, then such should be so declared.”

30. Therefore revenue correctly emphasises that, merely because the task of statutory interpretation is complex, does not in itself render the statutory provisions under interpretation ambiguous such as to justify a departure from the plain and ordinary meaning. Difficulty in interpretation and ambiguity are not the same thing. O’Donnell J. stated in *Bookfinders* at paragraph 54:

“It means, in my view that it is a mistake to come to a statute – even a taxation statute – seeking ambiguity. Rather the purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case the function of the court is to seek to ascertain their meaning. The general principles of statutory interpretation are tools used to achieve a clear understanding of a statutory provision. It is only if, after that process has been concluded, a court is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text construed given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.”

31. The task of this court therefore is to determine what is the purpose of the legislature in enacting the relevant provisions pertaining to the domicile levy and what is the meaning of

“*world-wide income*” in particular. If the natural and ordinary meaning of the provision excludes wear and tear allowances from the calculation, then this must be given effect to.

32. Further at paragraph 56 O’Donnell J. stated:

“I would merely add that the principle of strict construction is, like many other principles of statutory interpretation, a principle derived from the presumed intention of the legislature, which is not to be assumed to seek to impose a penalty other than by clear language. That approach should sit comfortably with other presumptions as to legislative behaviour, such as the presumption that legislation is presumed to have some object in view which it is sought to achieve.

..

A literal approach should not descend into an obdurate resistance to the statutory object, disguised as adherence to grammatical precision.”

33. O’Donnell J. went on to state at paragraph 57 that in his view:

“The present case is a good illustration of the distinction. The case is not, in my view a contest between a simple requirement of clarity on the one hand and a broad purposive approach on the other. Instead, the approach of the [the taxpayer] depends not merely on strict statutory language, but on an artificial interpretation of the words used, to produce an unrealistic reading of the Act.”

34. All of the above observations and guidance apply to the present case. If on its natural and ordinary meaning, the definition of “*world-wide income*” reveals an intention on the part of the legislature to exclude wear and tear allowances from the computation, then the court must adhere to the statutory wording and effectuate the intention of the legislature. This is the case, even if the provision is complex and difficult to interpret. This applies irrespective of whether the result might appear harsh to the taxpayer and regardless of whether, in the words

of the commissioner another approach might, by avoiding the “*overstate[ment]*” of trading income, appear more “*reasonable*”.

Issue for the court

35. Pursuant to the definition of “*world-wide income*” in s. 531 AA, one has to determine whether each respondents’ “*income... from all sources as estimated in accordance with the Tax Acts*” exceeds €1 million.

36. Slightly unpacking this definition, one sees that “*world-wide income*” is defined as (A) “*income .. from all sources as estimated in accordance with the Tax Acts*”, and (B) “*without regard to any amount deductible from or deductible in computing total income*”. Where convenient, I will distinguish between parts (A) and (B) of the definition of “*world-wide income*”.

37. The part of the definition at (A) is, effectively the definition of “*total income*” as per s. 3 TCA. This defines “*total income*” as “*income from all sources as estimated in accordance with the Income Tax Acts*”.

38. As the part of the definition at (B) makes clear, in arriving at this estimation of total income for the purposes of the “*world-wide income*” definition, regard is not to be had “*to any amount deductible from or deductible in computing total income.*”

39. Are wear and tear allowances under s. 284 part of the estimation of one’s “*income... from all sources ...in accordance with the Tax Acts*”, within the meaning of (A), in which case the amount of the relevant allowance would be deducted in arriving at the respondents’ “*world-wide income*”? This is the interpretation for which the respondents contend.

40. Alternatively, is total income estimated without deducting those wear and tear allowances; and is it therefore only after this estimation that wear and tear allowances are “*deductible from or deductible in computing total income*” within the meaning of (B)? If so,

“*world-wide income*” is to be calculated without regard to those deductions. This is the interpretation for which revenue contends.

41. Do wear and tear allowances form part of the exercise at (A) or part of the exercise at (B)?

Submissions of the parties

42. Revenue rely upon the statutory framework and accepted practice for the calculation and charging of income from various sources to tax.

43. Under the schedular approach or source principle, income tax is charged by reference to the Schedules of the Tax Acts, such that the annual profits of a trade are taxed under Schedule D, Case I. Revenue contend that, in so far as concerns trading income, the exercise at (A) comprising the estimation of an individual’s income from all sources in accordance with the Tax Acts, is essentially the exercise of computing trading profit or gain (as opposed to “gross” income). This permits only the deduction, pursuant to s. 81 TCA, of trading expenses such as wages, light and heat, but does not permit the deduction of any capital allowances/ wear and tear allowances. Revenue contends that, only once this initial exercise comprising, in this instance the estimation of Schedule D, Case I trading profits, has been completed does one then deduct from that profit wear and tear allowances under s. 284 TCA. Revenue argue that, both as a matter of tax practice, and as a matter of statutory construction, capital allowances/ wear and tear allowances are deducted only after Schedule D, Case I trading profits have been estimated and therefore fall within (B).

44. The respondents, for their part, do not dispute that, as matter of practice, revenue has correctly set out the main practical steps involved in the calculation and charging of income from various sources including trading income, in accordance with the Tax Acts. They do not

appear to dispute that capital allowances/ wear and tear allowances, like trading losses, may only be availed of after the Schedule D, Case I profit or gain has been first estimated.

45. However, like the commissioner the respondents contend that the part of the definition at (A), “*income.. from all sources as estimated in accordance with the Tax Acts*”, connotes only that portion of an individual’s income as is charged to tax in any given year of assessment. The respondents’ primary source of income for the relevant years is their Schedule D, Case I income arising from the hotel trade. The respondents argue that, in order to ascertain their Schedule D, Case I source income, their taxable profits must be first calculated in accordance with the rules under Schedule D, Case I (by the deduction of s. 81 TCA trading expenses) but that their capital allowances/ wear and tear allowances must then also be deducted from this figure before one arrives at their estimated Schedule D, Case I income such as is charged to tax. This exercise, the respondents contend, is encompassed within the estimation of their “*income .. from all sources as estimated in accordance with the Tax Acts*” and forms part of the exercise at (A). The respondents therefore say that, in addition to trading expenses such as wages, heat and light which are deductible in computing a profit or gain pursuant to s. 81 TCA, these capital allowances/ wear and tear allowances are amounts deductible when and not in estimating a person’s total income. By this reasoning, capital allowances are not “*an amount deductible from or in computing total income*” within (B) and these allowances are not disregarded for the purposes of calculating “*world-wide income*”.

46. Further, the respondents, emphasise that it is “*reasonable*” that “*world-wide income*” refers only to profits after the deduction of capital allowances/ wear and tear allowances because such allowances are a bona fide and relevant expense of the respondents in their trade and ought to be treated as equivalent to other trading expenses pursuant to s. 81 TCA. Were it otherwise, to use the words of the commissioner, the respondents’ “*income would be overstated.*”

Analysis

47. S. 65 TCA sets out the basis of assessment for Schedule D, Case I and Case II income and provides:

“65.—(1) Subject to this Chapter, income tax shall be charged under Case I or II of Schedule D on the full amount of the profits or gains of the year of assessment.”

48. Pursuant to this provision, one is not charged to tax on one’s gross income but rather one’s profit or gains. To this end, s. 81 TCA provides in material part:

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

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

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

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

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

49. S. 81 (2)(a) thus provides that in computing the amount of profits or gains to be charged to tax under Case I (or Case II) of Schedule D, expenses wholly and exclusively expended for the purposes of the trade may be deducted.

50. Conversely, s. 81 (2)(f) and more particularly s. 81 (2)(g) makes it clear that items of capital expenditure may not be deducted in like manner. Rather, deductions for capital expenditure are effected by means of capital allowances pursuant to which the relevant capital expenditure is deducted at a standard rate over a period of time. This is known as a capital

allowance. Capital allowances, of which wear and tear are but one example, are provided for by Part 9 TCA, to which I will refer below.

51. The combined effect of s. 65 and s. 81 TCA is that it is not gross revenue that is charged to tax but rather profits or gains estimated after the deduction of, for example trading expenses, in accordance with s. 81 (2)(a), together with any other allowable expenses as set out in that section. Both the respondent and revenue are agreed that total income is not the same as gross income and that, at a minimum, trading expense under s. 81 TCA must be deducted from “*world-wide income*” for the purposes of the domicile levy.

52. As I point out above at paragraph 37, the first part of the definition at (A) is, effectively the definition of “*total income*” as per s. 3 TCA. As both parties agree that this must allow for the deduction of trading expenses, their arguments effectively mean interpreting total income in part (A) of the definition of “*world-wide income*” as meaning “*profit or gain*”. This is not without difficulty because, the phrase “*total income*” as separately defined in s. 3 does not, on its face, cross refer to the concept of profit or gain. However, as the Tax Acts have been promulgated and consolidated over many years, a process which has involved the combination and grafting together of pre-existing statutes over time, words and phrases used therein are unfortunately not always used or defined consistently. I accept that, at least for the purposes of the definition of “*world-wide income*”, total income - as it appears in part (A) of that definition - cannot simply mean gross receipts. Amongst other reasons, this is because the phrase “*income... from all sources as estimated in accordance with the Tax Acts*” suggests that some process of estimation has been necessary. If one were simply adding up gross receipts, without making any allowances for expenses laid out wholly and exclusively for the purposes of the trade under s. 81, no process of estimation would be involved. Therefore, particularly as there is no difference between the parties on this point, I accept that the estimation of total income

at (A), is an exercise which incorporates at least the deduction of trading expenses and of other amounts properly deductible pursuant to s. 81.

53. The respondents' primary argument is that this estimation of total income at (A) also incorporates the deduction of capital allowances, and in particular wear and tear allowances. For the reasons set out below, this does not appear to me to be correct.

Scheme of s. 81

54. S. 81 itself expressly excludes capital expenditure from the amounts which are deductible in computing the amount of profits or gains to be charged to tax. This suggests that expenses of the trade and capital allowances/ wear and tear allowances are intended to be treated differently.

Scheme of Part 9

55. The respondents' submission is incompatible with the scheme of Part 9 TCA governing capital allowances which, correctly understood, suggests that capital allowances are not part of the initial estimation of total income at (A) but come in at a later stage in assessing income to be charged to tax.

56. For example, s. 316 TCA confirms that expenditure on plant and machinery qualifies for capital allowances only where it does "*not include any expenditure or sum allowed to be deducted in computing .. the profits or gains of a trade.*" Amounts deductible as expenses under s. 81 TCA and amounts allowable for capital allowances are therefore mutually inconsistent.

57. In addition, s. 304 of the Act which governs capital allowances, including wear and tear allowances, provides as follows:

"304.—(1) This section and section 305 shall apply as respects allowances and charges which are to be made under this Part as it applies for the purposes of income tax.

(2) Any claim by a person for an allowance under this Part in charging profits or gains of any description shall be included in the annual statement required to be delivered under the Income Tax Acts of those profits or gains, and the allowance shall be made as a deduction in charging those profits or gains.”

58. It appears from s. 304 that, rather than being included in the initial estimation of a taxpayer’s profits and gains, a claim to capital allowances is instead advanced by way of a deduction in charging those profits or gains to tax. Capital allowances/ wear and tear allowances are therefore deductible only after the relevant profits or gains have been computed or, insofar as concerns the definition of “*world-wide income*”, after income has been estimated in accordance with the Tax Acts.

59. Furthermore, s. 321 (4) TCA provides

“321.—(4) A reference to allowances or charges being made in taxing a trade is a reference to their being made in computing the trading income for corporation tax or in charging the profits or gains of the trade to income tax.”

60. This section makes a distinction in relation to the manner in which capital allowances are treated for corporation tax purposes, on the one hand, and income tax purposes, on the other. For corporation tax purposes, capital allowances are a deduction in computing trading income in taxing the trade. However, for income tax purposes, capital allowances are a deduction in charging the profits or gains of the trade to income tax. Therefore, for income tax purposes, capital allowances are a deduction to be made in taxing the trade only after the trading profits have been estimated, in other words, after the exercise of Schedule D, Case I income estimation. Thus, for the purposes of the definition of “*world-wide income*”, capital allowances are not part of the initial total income estimation but are a deduction in computing total income for income tax purposes.

61. All of the above suggests that an “*individual’s income.... from all sources as estimated in accordance with the Tax Acts*” as per part (A) of the definition of “*world-wide income*”, incorporates only the deduction of s. 81 expenses to produce a figure for trading profits and gains. Thereafter capital allowances (together with trading losses, pension contributions etc) are deductible, as per s. 321 (4) in charging those profits and gains of the trade to income tax, or as per the definition at (B) of “*world-wide income*”, in computing total income.

Separate definition of “taxable income”; s. 458 TCA

62. I cannot accept the respondents’ argument that “*income.. from all sources as estimated in accordance with the Tax Acts*”, as per part (A) connotes such income as is charged to tax in any given year of assessment. If the legislature had intended that “*world-wide income*” would be “*taxable income*”, then surely it would have used either this phrase or a similar phrase in the definition thereof.

63. Indeed, for a number of reasons, s. 458, which deals with deductions in ascertaining “*taxable income*” suggests entirely to the contrary.

“458.—(1) *An individual who, in the manner prescribed by the Income Tax Acts, makes a claim in that behalf and makes a return in the prescribed form of the individual's total income shall be entitled—*

(a) for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax (in the Income Tax Acts referred to as “the taxable income”) to have such deductions as are specified in the provisions referred to in Part 1 of the Table to this section, but subject to those provisions, made from the individual's total income;”

64. It will be recalled that “*income.. from all sources as estimated in accordance with the Tax Acts*”, is largely coextensive with “*total income*” as defined in s. 3 TCA. Likewise, there

is no difference in substance between income charged to tax and “*taxable income*”. Yet s. 458 separately refers to “*total income*” and “*taxable income*”. They must therefore mean different things and so must also “*income.. from all sources as estimated in accordance with the Tax Acts*”, on the one hand, and income charged to tax, on the other.

65. In addition, s. 458 provides for the deduction from an individual’s total income of, for example, personal allowances and reliefs and tax credits etc (Part 15 deductions). Such allowances and reliefs undoubtedly fall within the scope of part (B) of the “*world-wide income*” definition as they are clearly amounts deductible from the individual’s total income. However, the legislature is assumed not to have used surplusage or to have used words or phrases without meaning. Therefore, in providing at s. 531 AA, that amounts deductible in computing total income are also to be disallowed, the legislature must have intended to disallow a broader range of amounts than those which are merely deductible from total income in accordance with s. 458.

66. In order to give meaning to the phrase “*deductible... in computing total income*” as it appears in the definition of “*world-wide income*”, one must look to the overall structure of the Tax Acts to identify that which is deductible in computing total income. This must be a prior exercise to the application of s. 458 which is a subsequent step in the journey towards ascertaining “*taxable income*”. What then is deductible in computing total income before the application of s. 458? The answer is capital allowance/ wear and tear allowances in addition for example, to trading losses and pension contributions.

On the respondents’ argument, “amounts deductible in computing total income” would have no meaning

67. The result of the respondents’ analysis would be that only amounts deductible from total income fall within the scope of (B). However, these two concepts, amounts deductible

from total income and amounts deductible in computing total income, are well known to tax lawyers and to the accountancy profession. It is surely unlikely that the legislature did not intend to refer to these well-known concepts in its exclusion at (B), and yet the respondents' submission is that, although expressly referring to both of these kinds of deductions, the legislature in fact only intended to refer to one, that is to say deductions from total income. This is unlikely.

Fitzgerald decision

68. Revenue relies upon the decision of Twomey J. in *Fitzgerald* as referred to above. In *Fitzgerald*, Twomey J. was dealing, not with the question of whether capital allowances/ wear and tear allowances were deductible in the calculation of “*world-wide income*”, but with the question of whether trading losses arising pursuant to s. 381 TCA were so deductible. Revenue fairly concedes that, although in *Fitzgerald*, the losses under examination were attributable in part to capital allowances, Twomey J.’s judgment examines the provisions of the TCA dealing with trading losses rather than capital allowances/ wear and tear allowances.

69. S. 381 (5) provides that a loss which is being used to reduce the income of an individual “*shall for the purposes of the Income Tax Acts be regarded as a deduction to be made .. in computing the person’s total income for the year.*” There is therefore an important distinction between the provisions governing losses under consideration in *Fitzgerald* and the provisions under consideration in this case because s. 381 (5) expressly states that losses are to be regarded as a deduction to be made “*in computing the person’s total income*”. By contrast, insofar as concerns capital allowances, the relevant provisions state that allowances are a deduction “*in charging*” “*profits or gains*” to tax. Undoubtedly, the wording of s. 381 (5) dovetails more neatly into the definition of “*world-wide income*” than the equivalent provisions in relation to

capital allowances/ wear and tear allowances which speak not of computing total income but rather of charging profits and gains.

70. On the other hand, Twomey J. dealt with an argument similar to that of the tax payer in the present case.

“[The taxpayer] argues that capital allowances are in fact part of the process in estimating the profits and gains brought into charge to tax under Case I of Schedule D. Thus, he says that these deductions are deductions in estimating income from all sources and not ‘a deduction in computing total income’.”

71. Twomey J. rejected this argument and found that the income must be determined or estimated before loss relief under s. 381 is considered. The same reasoning applied here. In the present case, the income under each schedule must be determined, in other words, the profit or gain under each schedule must be determined, before capital allowances are considered. This is clear from the wording of s. 304.

Conclusion

72. Overall, it seems to me that the plain meaning of the part (B) of the definition, “*deductible...in computing total income*”, requires that when “*world-wide income*” is estimated regard is not had to capital allowances/ wear and tear allowances, to losses (as in *Fitzgerald*), or for example, to other potentially deductible amounts such as pension contributions. As a matter of revenue practice, what these items have in common is that they are usually deductible after profit or gain from all sources is estimated and before the Part 15 deductions are made from the individual’s total income. It is further notable that the respondents were unable to offer any explanation as to explain what the phrase, “*deductible... in computing total income*” might mean, on their interpretation, or what deductions might be disallowed thereby. Rather, the respondents interpretation would effectively rob this phrase of all meaning.

73. Bearing in mind that the purpose of the domicile levy is to ensure that wealthy individuals pay a minimum of €200,000 tax, the definition of “*world-wide income*” is more akin to a person’s gross income (after deduction of expenses) and less akin to a person’s income after making various deductions for the purposes of calculating his or her tax bill. To interpret it otherwise, would be to defeat the purpose of the domicile levy because a person with a gross income of say €5 million could potentially reduce their tax bill below €200,000 by the use of capital allowances, losses, pension contributions etc. This is what the section is designed to prevent.

74. In my view, the domicile levy is, and is intended to be, different to income tax. If one were permitted to deduct from one’s “*world-wide income*” amounts such as losses and capital allowances that one is permitted to deduct from income tax then, in many cases there may be little difference between one’s income for the purposes of income tax and one’s “*world-wide income*” for the purposes of the domicile levy. This would tend to undermine the purpose of the domicile levy.

75. I further reject the arguments of the respondent, albeit only tentatively advanced that this interpretation of Part 18 C TCA is an unjust attack on their property rights. It must be recalled that on an income of over €5 million, €200,000 represents only a 20% tax rate.

76. Overall, I accept that the revenue’s approach is correct. The definition of “*world-wide income*” requires the identification of an individual’s trading income from all sources as estimated in accordance with the Tax Acts and this is effectively an individual’s profit or gain. I reject the respondents’ contention that what is required to be identified is not profit or gain but taxable income. Thereafter, once such profit or gain has been estimated, the provision under examination means that no regard is to be had to amounts deductible from that profit or gain (in other words, amounts deductible pursuant to s. 458 of the Act such as tax credits and personal allowance) and, furthermore that no regard is to be had to amounts deductible in

computing taxable income (such as pension contributions, trading losses and, in particular, capital allowances). In summary, it seems to me that the natural and ordinary meaning of the section, when interpreted in its immediate and proximate context is that wear and tear allowances under s. 284 TCA are not deductible in computing “*world-wide income*” for the purposes of the domicile levy.

77. With the above in mind, I answer the questions in the case stated as follows:

- (1) Was the commission correct in law in deciding that capital allowances of the hotel trade were deductible in arriving at the income from that source as estimated in accordance with the Tax Acts and, accordingly, in arriving at the “*world-wide income*” of the Respondent? **No.**
- (2) Was the commissioner correct in law in asking himself the question whether the capital allowances involved should be regarded “*as being on the side of the deductions from total income or on the side of the expense of the activity in question*” rather than also establishing whether the capital allowances are “*amounts deductible in computing total income*”? **No.**
- (3) Was the commissioner correct in law in seeking to establish the amount of the taxable profits of the hotel trade, given that the requirement in the definition of “*world-wide income*” relates to “*income from all sources as estimated in accordance with the Tax Acts*”? In this regard, in a domicile levy context, was he correct in holding that “*what is taxed is the amount net of capital allowances*” given that he had already held that there was no such concept as net Schedule D Case I income? **No.**
- (4) Do s. 531 AA and s. 531 AB TCA 1997 preclude the deduction of capital allowances from the profits of the hotel trade in arriving at what is the “*world-wide income*” of the respondent for the purposes of those sections? **Yes.**

Insofar as the form of order is concerned, this court would ask the parties to engage with one another to see if agreement can be reached regarding all outstanding matters without the need for further court time. If it is necessary for this court to deal with final orders, this case will be put in for mention on Thursday, 28th April, 2022 at 11 am.