THE HIGH COURT

[2023] IEHC 710

Record No.: 2023/38R

BETWEEN

SIOBHAN FAHY

APPELLANT

AND

THE REVENUE COMMISSIONERS

RESPONDENT

Judgment of Mr Justice Oisín Quinn delivered on the 14th day of December 2023

Introduction

1. This is an appeal by way of a Case Stated against a Determination of the Tax Appeals Commissioner ("TAC") of 22 August 2022. The Case Stated seeks the opinion of the High Court on three questions pursuant to section 949AQ of the Taxes Consolidation Act 1997 as amended ("TCA 1997").

Background

2. The Appellant taxpayer ("the Appellant") is a practising solicitor and sole trader who filed an appeal to the TAC against an amended notice of assessment of income tax in the sum of €112,458.68 in respect of the tax year 2014. This amended notice of assessment was raised on 21 December 2016 and disallowed a deduction of €220,000 which had been claimed by the Appellant in respect of services which she said were provided by a company MLG Legal Services Ireland Ltd ("MLG") of which the Appellant was also a director and 99% shareholder.

3. Her appeal to the TAC raised the question as to whether or not she had established that charges raised by MLG to the Appellant in the sum of €220,000 which were claimed as expenses of the Appellant's trade as a solicitor qualified for deduction on the basis that those expenses were wholly and exclusively laid out or expended for the purposes of the trade or profession in accordance with the provisions of section 81(2) of the TCA 1997.

4. In her written Determination of 22 August 2022, the TAC determined that the expense of €220,000 was not allowable, not being money wholly and exclusively laid out or expended for the purpose of the trade or profession in accordance with the provisions of section 81(2) of the TCA 1997. In addition, the TAC determined that the Appellant had failed to discharge the onus of proof of the

appeal and accordingly she determined that the amended notice of assessment of tax in the sum of €112,458 would stand.

5. In a letter of 10 September 2022, the Appellant pursuant to section 949AP of the TCA 1997 requested the TAC to state a case for the opinion of the High Court. Section 949 AP (2) of the TCA 1997 provides that a party who is dissatisfied with a determination as being erroneous on a point of law may by notice in writing require the Appeal Commissioners to state and sign a case for the opinion of the High Court.

6. The TAC took the view that the correspondence on behalf of the Appellant of 10 September did not disclose any valid ground of appeal. However, the Appellant in her notice and in correspondence had expressed dissatisfaction with the TAC Determination therefore the TAC decided to nonetheless propose questions for consideration to the High Court and the Case Stated was ultimately finalised with the agreement of the Appellant on this basis. As explained in the Case Stated, the TAC proposed three questions for consideration. The third question relates to whether or not the TAC was correct to decline to adjudicate on a particular legal question raised on behalf of the Appellant as to the validity of the income tax assessment on the basis that it did not fall within the jurisdiction of the TAC to do so, same being a matter that should be brought by way of judicial review to the High Court. In this regard the Appellant through her adviser accepted that the TAC did not have jurisdiction to deal with this third question but requested the TAC to include it in the Case Stated.

<u>The Case Stated</u>

7. The Case Stated contains the following three questions of law for the opinion of the High Court:

    I. Whether, upon the facts proved or admitted, the evidence adduced and my application of the provisions of section 81 TCA 1997, to the evidence, I erred in law in disallowing the deduction of €220,000 on the basis that the sum deducted was not wholly and exclusively laid out or expended for the purpose of the trade or profession, pursuant to the provisions of section 81(2) TCA 1997.
    II. Whether, upon the facts proved or admitted and the evidence adduced, I erred in law in my application of the provisions of section 81 TCA 1997 in not reducing the notice of amended assessment to nil.
    III. Whether I erred in law in determining, on the question of validity of the assessments the subject of the appeal, that public law challenges of this nature are reserved

exclusively to the jurisdiction of the High Court and do not fall within the remit of the Tax Appeals Commission.

Applicable Legal Principles

8. There was no substantial disagreement as to the legal principles applicable to a Case Stated pursuant to the TCA 1997. These principles are helpfully summarised in the decision of the Supreme Court in *Mara v Hummingbird* [1982] ILRM 421 where at page 426 Kenny J. states in the fourth paragraph thereof as follows:

> *"A case stated consists in part of findings on questions of primary fact… These findings on primary facts should not be set aside by the courts unless there was no evidence whatever to support them. The commissioner then goes on in the case stated to give his conclusions or inferences from these primary facts. These are mixed questions of fact and law and the court should approach these in a different way. If they are based on the interpretation of documents the court should reverse them if they are incorrect for it is in as good a position to determine the meaning of documents as is the commissioner. If the conclusions from the primary facts are ones which no reasonable commissioner could draw, the court should set aside his findings on the ground that he must be assumed to have misdirected himself as to the law or made a mistake in reasoning. Finally, if his conclusions show that he has adopted the wrong view of the law, they should be set aside. If, however they are not based on a mistaken view of the law or a wrong interpretation of documents, they should not be set aside unless the inferences which he made from the primary facts were ones that no reasonable commissioner could draw."*

Submissions Regarding Questions I and II

9. In relation to questions one and two raised in the Case Stated counsel for the Revenue Commissioners submitted that the appropriate test in relation to how the Court should approach these questions is that set out in *Mara* as cited above.

10. The Appellant submitted that the TAC was in error in considering her own evidence as part of the decision to disallow the expense claimed. She submitted this by relying on an argument as to what she said was the correct meaning of section 949AG which provided (it has since been appealed) as follows:-

> *"Unless the Acts provide otherwise, in adjudicating on and determining an appeal, the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or were required by the Acts to have regard –*
>
> *...*
>
> *(b) in making or amending an assessment,*
>
> *...*
>
> *In relation to the matter under appeal." (underlined for emphasis).*

11. The Appellant contended that this provision confined the TAC to considering matters that the Revenue Commissioners had *actually* had regard to when making the initial decision. In other words, it was submitted on behalf of the Appellant that under this provision, the TAC are only to consider matters which *were already considered* by the Revenue Commissioners. Applying this logic, the Appellant submitted that for the TAC to have considered the Appellant's oral evidence during the Appeal hearing in her Determination was a breach of the legal regime set out by section 949AG as that evidence, by definition, had never been considered by the Revenue Commissioners.

12. The evidence in that regard is the evidence summarised in the Determination of the TAC and in particular at paragraphs 37 and 38 and also in paragraph 53 of the Determination where it is stated as follows: -

> *"37. Based on the evidence, I find as a material fact that the Appellant identified no benefit or gain to the solicitor's trade (Fahy Law) for the expenditure incurred for services provided by MLG. Post-acquisition of the services, Fahy Law operated in precisely the same manner as before. The non-legal/admin work continued to be performed by the Appellant and there was no advantage, added resource, efficiency or gain acquired by the Fahy Law for the substantial expense incurred to MLG.*
>
> *38. In accordance with the Appellant's evidence, I find as a material fact that payment of the sum €220,000 to the company was motivated by the Appellants desire to provide for and ameliorate her pension.*
>
> *...*

> 53. *While I have concluded above that the expense was not deductible in accordance with the provisions of section 81(2) TCA 1997 on the basis there was no identifiable benefit or advantage to the trade for the expenditure incurred, it is clear that independent of that conclusion, the expense is wholly disallowable 'not being money wholly and exclusively laid out expended for the purpose purposes of the trade or profession' on the ground that the sole objective of the Appellant's services been supplied to her solicitor's trade through the company was to provide for and ameliorate the Appellant's pension.***"**

13. Counsel for the Revenue Commissioners submitted that the Appellant's interpretation of section 949AG was incorrect and that it ignored the words *"...may or were required by the Acts to have regard ...*". The evidence of the taxpayer as to why this arrangement was put in place (namely with a view to facilitating the taxpayer's plans in relation to providing for a pension) was, it was submitted, clearly material and could have been taken into account by the Revenue Commissioners when they considered making or amending the assessment as to income tax if it had been available to them. The reasoning for this submission was because this evidence was and is clearly material to the question that arises under section 81(2) TCA 1997, that question being whether the sum deducted can be appropriately deducted given the provisions of that section.

14. Section 81(2)(a) of the TCA 1997 provides as follows:-

> *"(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;"*

15. This provision involves the Revenue considering whether the amount being deducted by the taxpayer has been both *wholly* and *exclusively* laid out or expended for the purposes of the trader the profession. The word "wholly" requires that the *full* amount laid out was expended for the purposes of the trade or profession. The word "exclusively" requires that the full amount must also have been *only* expended for the purposes of the trade or profession to enable the taxpayer to deduct the sum. In other words, there cannot be a duality of purpose or a different purpose behind the expenditure.

16. Counsel for the Revenue Commissioners helpfully drew the Court's attention to *Bentleys, Stokes & Lowless v Beeson (H M Inspector of Taxes)* 33 TC 491 and the well-known dicta contained therein at page 504, second paragraph thereof, which states as follows:-

> *"It is, as we have said, a question of fact. And it is quite clear that the purpose must be the sole purpose. The paragraph says so in clear terms. If the activity be undertaken with the object both of promoting business and also some other purpose, for example, with the object of indulging an independent wish of entertaining a friend or a stranger or of supporting a charitable or benevolent object, then the paragraph is not satisfied though in the mind of the actor the business motive may predominate. For the statute so prescribes. Per contra, if in truth the sole object is business promotion, the expenditure is not disqualified because the nature of the activity necessarily involves some other result, or the attainment or furtherance of some other objective, since the latter result or objective is necessarily inherent in the act".*

17. In addition, the Court's attention was drawn to the well-known tax case of *BNP Paribas SA v The Commissioners for HM Revenue & Customs* [2017] UKFTT 0487 (TC) TC05941, a case that concerned a claim to the FTT. In that case, the Tribunal held at para 470:-

> *"However, the fact that the financing was wholly uneconomic in the absence of the s730 benefit of itself indicates that, on the contrary, the objective was solely to obtain the s730 benefit, with the obtaining of financing at an otherwise expensive rate being a necessary element in achieving that objective. Overall, as set out above, every element of design of this scheme indicates that this was not a transaction undertaken to obtain "cheap" financing which was simply structured in a tax efficient way. On the contrary, it was an expensive financing obtained specifically to generate the s730 benefit".*

18. The Tribunal in that case then went on to hold at para 514:-

> *"We do not see this decision, therefore, as establishing a principle, as BNP argued, that if a fair price is paid for an asset of a kind used in the taxpayer's trade, that amount will necessarily qualify as deductible expenditure. In each case, the question is why, or with what object or purpose, the amount was laid out or expended. Whilst expenditure incurred in such circumstances ordinarily may well be incurred wholly and exclusively for the purposes of the trade, the decision does not establish that there is a presumption*

to that effect. There is still scope for finding that the price was not paid for the trading purposes if that was not in fact the case. The focus on the over inflated price paid by the taxpayer in Kilmorie was referred to as the main factor demonstrating that a purpose or object in paying the amount in that case was to facilitate the tax avoidance scheme."

19. Counsel for the Revenue Commissioners then submitted that by reference to the evidence before the TAC and based on the conclusions reached by the TAC that this was clearly not a decision that raised an error of law within the meaning of *Mara v Hummingbird.*

20. Those conclusions of the TAC are summarised at paragraphs 61 to 66 of the Determination as follows:-

> *"[61] The Respondent submitted that the filing, the photocopying, the placing of advertisements, the organising and all other tasks that were not legal services could have been performed by the Appellant as part of her solicitor's practice, as these tasks heretofore had been performed. When asked in evidence why she did not continue performing the work herself, as a principal solicitor in her practice she stated: 'I took the view and I made a plan as every citizen is entitled to do, and that is to effectively put in a system of tax planning to provide a pension for my retirement. One must recall now that all assets and pensions were completely wiped out, so there had to be a strategic plan, and to the best of my knowledge, then and now, I am legally entitled to do this…'*
>
> *[62] It is clear from the evidence that the Appellant did not fully comprehend the scope of the 'wholly and exclusively' test contained in s81 TCA 1997. In particular, the Appellant failed to understand that her objective in expensing her own work through the company to avail of a tax deduction to provide for her pension, would be fatal to her claim for a deduction under s81(2) TCA 1997.*
>
> *[63] In addition, it is notable that after the trade incurred the substantial expense of €220,000 (66% of the turnover for that year, which was €331,667) the trade operated in precisely the same manner as before it incurred the expense, with the Appellant performing all non-legal/admin work in addition to the legal work. No identifiable benefit, resource or advantage was acquired by the trade notwithstanding the substantial expense incurred. It is clear that the*

expenditure was not expended for the purposes of the trade as no trading purpose was identified on the evidence.

[64] For the reasons set out above, I determine that the expense of €220,000 is disallowable, not being money wholly and exclusively laid out or expended for the purpose of the trade or profession in accordance with the provisions of section 81(2) TCA 1997.

[65] The Appellant has failed to meet the requirements of the legal test contained in section 81(2) TCA 1997 and has failed to discharge the onus of proof in this appeal.

[66] As the Appellant has not shown that the amended notice of assessment to tax in the sum of €112,455 is incorrect, the assessment shall stand".

Decision on Question I

21. I am satisfied that the submissions on behalf of the Revenue Commissioners on the issues arising under this question are correct. The principles underpinning the cases referred to above establish that the motive or purpose of the taxpayer in making an expenditure is highly relevant to any consideration as to whether the expense is therefore deductible pursuant to section 81(2) of the TAC 1997.

22. In addition, section 949AG by virtue of its clear wording entitles the TAC to have regard to any matter that the Revenue Commissioners might have had regard to when making the initial assessment (or in this case, the notice of amended assessment). If it were otherwise, the section would have restricted the TAC to considering *only* those matters *actually considered* by the Revenue Commissioners.

23. Accordingly, the TAC was clearly entitled to have regard to the Appellant's own evidence as to why she had retained MLG Ltd (essentially her own company) to provide her as a means of providing services to herself.

24. Therefore it was entirely appropriate for both the Revenue Commissioners and the TAC to consider what purpose the taxpayer had in the context of the deduction that was being claimed.

25. Furthermore, in this instance it is clear that there was evidence to support the conclusion of the TAC, namely that the expense of €220,000 had not been expended for the sole purpose of the Appellant's trade or profession and therefore could not be said to be money wholly and exclusively laid out or expended for the purpose of the trade or profession.

26. There was clearly evidence to support this conclusion, so there is therefore no error of law applying the *Mara v Hummingbird* principles referred to above.

27. Accordingly, applying the above legal principles to the first question I am satisfied that the TAC has not made an error of law in deciding to disallow the deduction of €220,000 on the basis that the sum deducted was not wholly and exclusively laid out expended for the purpose of the trade or profession pursuant to the provisions of section 81(2) of the TCA 1997.

Decision on Question II

28. For similar reasons, I am equally satisfied that no error of law had been identified by the Appellant in terms of the TAC's application of the provisions of Section 81 of the TCA 1997.

29. The facts proved or admitted are set out in paragraph 7 (a) to (e) of the Case Stated and the evidence, which is described in detail in paragraph 11 of the Case Stated over more than five pages from pages 5 to 11, makes this clear. The TAC's material findings of fact are set out on page 9 of the Determination at paragraphs 37 and 38 set out above, with the conclusion at paragraph 53, also referred to above.

30. These are all matters relevant to a correct consideration of the provisions of Section 81 of the TCA, 1997 and no error in applying the provisions of Section 81 has been identified.

31. The primary thrust of the argument on behalf of the Appellant during the hearing was simply to re-argue the points that had been argued before the TAC. This is not a sufficient or an appropriate basis on which to contend for an error of law as required by the provisions governing this hearing before the High Court.

Submissions regarding Question III

32. This question concerns an argument made by the Appellant that the amended notice of assessment should be declared void or determined to be invalid.

33. The essence of the point on behalf of the Appellant is that the notice which issued on 21 December 2016 (at page 148 in the Core Book) referred to section 959AI and then stated that accordingly no appeal could be made against the assessment and that this made the notice 'invalid'.

34. On behalf of the Revenue Commissioners, it was accepted that this was a mistake and it was explained on the basis that an incorrect template had been used by the Revenue in relation to this notice as this was not a notice of an amended assessment which was made in circumstances where the taxpayer had failed to provide an assessment. At all times in this case the taxpayer had provided her own assessment of her liability. It was observed from a practical point of view that the mistake did not seem to have created any difficulty as the taxpayer's agent, BDO Simpson Xavier, had in fact appealed within the statutory time period indicating that they accordingly realised this was simply a mistake.

35. Counsel for the Revenue Commissioners submitted that there was simply no jurisdiction for the TAC to engage in an argument that the notice of amended assessment was 'invalid'. It was submitted that this matter was governed by the well-established principles discussed in *Lee v The Revenue Commissioners* [2021] IECA 18. In that case the Court of Appeal was considering the scope of the jurisdiction of the TAC and the scope of the Circuit Court when hearing appeals against assessments to income tax pursuant to respectively sections 933 and 942(1) of the TCA 1997. At paragraphs [33] to [39] Murray J considers what are called the older cases, he then turns to consider the newer cases and in particular *Aspin v Estill* [1987] STC 732, *Menolly Homes Limited v Appeals Commissioner and Another* [2010] IEHC 49 and *Stanley v Revenue Commissioners* [2017] IECA 279; [2018] 1 ILRM 397. At paragraph [50] Murray J. states:-

> *"The Appeal Commissioners, he [Charleton J. in Menolly Homes] said, did not have jurisdiction to 'enquire into the validity of this assessment by the tax inspector to VAT liability' (at para. 45). Their function was limited to 'entirely abating the liability, with reducing the amount of the assessment of the tax due, leaving it stand or with increasing it ... they were concerned with the amount of the assessment only' (id.). Earlier in his judgment Charleton J. described that jurisdiction by reference to their inquiring 'as to whether the taxpayer has shown that the relevant tax is not payable' (at para. 22). The Court drew a distinction between entirely abating a liability and what Charleton J. described as 'a power to strike down' the assessment (at paras. 32). That the Appeal Commissioners did not enjoy a jurisdiction of the latter kind followed from the limitation of the appeal to 'amount' (at para. 35) and the absence of any basis on which the Appeal Commissioners could be said to have jurisdiction to enquire into whether*

> *the Inspector 'had reason to believe' that amount was due. He explained (at para. 23) 'the actual wording of the jurisdiction to appeal only the excessive nature of the amount assessed is much more central. It determines the point.' The mechanism for challenging the Inspector's belief, he decided, was Judicial Review (at para. 37)".*

36. Murray J. then turns to his conclusion at paragraph 76 and states as follows:

> *"The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933, 934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."*

37. It was submitted that this jurisprudence explains how the function of the Appeal Commissioners is essentially restricted to enquiring into and making findings as to issues of fact and law relevant to the statutory charge to tax (typically in relation to the amount) but that they do not have any *quasi* inherent powers to declare any aspect of the process or outcome of the Revenue Commissioners void or invalid, akin to the powers the High Court might have in a judicial review hearing.

38. In this case the appeal by the taxpayer to the TAC was made pursuant to Section 933 of the TCA 1997. Section 933(1)(a) provides as follows: -

> *"A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf… shall be entitled to appeal to the Appeals Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer".*

39. The provisions governing what the TAC can do with the appeal are contained in section 949AK of the TCA 1997 which provides as follows:-

> ***"Determinations in relation to assessments.***
>
> *(1) In relation to an appeal against an assessment, the Appeal Commissioners shall, if they consider that—*
>
> > *(a) an appellant has, by reason of the assessment, been overcharged, determine that the assessment be reduced accordingly,*
> >
> > *(b) an appellant has, by reason of the assessment, been undercharged, determine that the assessment be increased accordingly, or*
> >
> > *(c) neither paragraph (a) nor (b) applies, determine that the assessment stand.*
>
> *(2) If, on an appeal against an assessment that—*
>
> > *(a)assesses an amount that is chargeable to tax, and*
> >
> > *(b)charges tax on the amount assessed,*
>
> *the Appeal Commissioners consider that the appellant is overcharged or, as the case may be, undercharged by the assessment, they may, unless the circumstances of the case otherwise require, give as their determination in the matter a determination solely to the effect that the amount chargeable to tax be reduced or increased.*
>
> *(3) In relation to an appeal against an assessment on the grounds referred to in section 959AF(2), if the Appeal Commissioners determine that a Revenue officer was precluded from making the assessment or the amendment, as the case may be, the Acts (within the meaning of section 959A) shall apply as if the assessment or the amendment had not been made and, accordingly, that assessment or amended assessment shall be void.*
>
> *(4) In relation to an appeal against an assessment on the grounds referred to in section 959AF(2), if the Appeal Commissioners determine that a Revenue officer was not precluded from making the assessment or the amendment, as the case may be, that assessment or amended assessment shall stand, but this is without prejudice to the Appeal Commissioners*

making a determination in relation to that assessment or amended assessment on foot of an appeal on grounds other than those referred to in section 959AF(2)".

40. It is clear that Section 949AK(1) entitles the Appeal Commissioners to reduce an assessment if they consider that the taxpayer has been overcharged, to increase the assessment if they consider that the taxpayer has been undercharged or to let the assessment stand. In a case where a taxpayer does not fall into subsection (1), the Appeals Commissioner can consider whether or not the Revenue have correctly assessed the amount that is to be chargeable to tax. In that context, the amount that is to be charged to tax can be reduced or increased in the event that there has been an error in relation to calculation of the amount of income that is to be considered chargeable to tax.

41. Where the assessment or amended assessment has been made outside of the time limit prescribed by statute then the assessment can be treated as void. This latter provision is somewhat in the nature of the role this Court might perform in the context of a judicial review, and to that extent the provisions in Sections 949AK(3) and (4) are somewhat of a statutory a departure from the legislative arrangements considered in the relevant case law as considered by the Court of Appeal in *Lee.*

42. However, while there is express provision for this limited power on the part of the Appeal Commissioners to determine that a Revenue assessment shall be void if made out of time pursuant to subsections (3) and (4) of section 949AK, it is clear that the jurisdiction of the Appeal Commissioners on an appeal such as the one governed by this Case Stated is otherwise limited to the role set out in subsections 949AK(1) and (2).

43. The Appellant submitted that section 959AF(2)(a) was relevant. This provision provides in relation to appeals of assessments as follows:

> *"(2) Where a person is aggrieved by the making of an assessment or the amendment of an assessment (being an assessment made on that person) on the grounds that the person considers that the person who made the assessment or who amended the assessment was precluded from so doing–*
>
> *(a) in the case of a chargeable person, by reason of section 959AA, 959AC or 959AD,*
>
> *...*
>
> *those grounds may be stated in the notice of appeal for the purpose of section 949I(2)(d)."*

44. The Appellant accepted that sections 959AA, 959AC and 959AD concerned time limits and did not arise in her case. Nonetheless, it was submitted by the Appellant that this provision should be read as opening up a more general or broader jurisdiction on the part of the TAC to consider other challenges to the validity of an assessment or an amended assessment to tax.

Decision on Question III

45. I am satisfied that the submissions on behalf of the Revenue Commissioners are also correct on this question and that the argument of the Appellant by reference to section 959AF is incorrect. The Appellant's contention would create an incorrect reading of the provision. There is nothing in the wording to suggest that some broader power to declare assessments or amended assessments invalid is being created by the statutory provision. The wording clearly expressly limits the ability of a person aggrieved by the making of an assessment or an amended assessment in the context of seeking to have that notice declared void to limiting the grounds in the notice of appeal to the reasons related to section 959AA, 959AC or 959AD. Each of those sections relates to time limits and the Appellant confirmed that the validity point being raised by her was not related to any of these three sections.

46. Nonetheless it is clear to me that to the extent that this point may have gone to the validity of the initial notice of amended assessment that the statutory structure in relation to the appeal in this scenario to the Appeal Commissioners and in particular section 949AK does not permit the Appeal Commissioners to consider a validity argument such as this and that the only validity arguments that would be permissible for an Appeal Commissioner to consider is that arising under section 949AK (3) which essentially relates to an assessment or an amendment of an assessment which is made by the Revenue Commissioners out of time.

47. I am satisfied that the TAC was therefore correct to determine that the question of the validity of the assessment which was raised on behalf of the Appellant was not a matter for the TAC to address. Applying the rationale of the jurisprudence summarised and analysed in *Lee*, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions as to whether the notice is 'valid' or not.

Conclusion

48. Accordingly for the foregoing reasons the Questions raised are answered as follows:-

I. Whether, upon the facts proved or admitted, the evidence adduced and my application of the provisions of Section 81 TCA 1997, to the evidence, I erred in law in disallowing the deduction of €220,000 on the basis that the sum deducted was not wholly and exclusively laid out or expended for the purpose of the trade or profession, pursuant to the provisions of Section 81(2) TCA 1997.

Answer: No.

II. Whether, upon the facts proved or admitted and the evidence adduced, I erred in law in my application of the provisions of Section 81 TCA 1997 in not reducing the notice of amended assessment to nil.

Answer: No.

III. Whether I erred in law in determining, on the question of validity of the assessments the subject of the appeal, that public law challenges of this nature are reserved exclusively to the jurisdiction of the High Court and do not fall within the remit of the Tax Appeals Commission.

Answer: No.

49. The matter will be listed to deal with the issue of costs.