

Appeal No. VA03/3/007

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

Dance Theatre of Ireland Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Dance Studio at Map Ref. 1106494, Bloomfield Centre, Lower George's Street, Dun Laoghaire, County Dublin

B E F O R E

Fred Devlin - FSCS.FRICS

Deputy Chairperson

Michael McWey - Valuer

Member

Frank O'Donnell - B.Agr.Sc. FIAVI

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 29TH DAY OF JUNE, 2004

By Notice of Appeal dated the 29th day of December, 2003, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €81.26 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"The occupier of the property in question is a Charity, as recognised by the Revenue Commissioners under Section 207 Taxes Consolidation Act, 1997. Any profits are put back into the company for its charitable aims. The property, being occupied by a charity, i.e. established for charitable purposes only, should be excluded."

1. This appeal proceeded by way of an oral hearing held in the offices of the Tribunal at Ormond House, Ormond Quay Upper, Dublin 7 on the 7th of April, 2004. At the hearing the Appellant was represented by Ms. Paula Fearon of Messrs McCann Fitzgerald Solicitors. Mr. James Devlin BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Evidence of fact in relation to the formation of Dance Theatre of Ireland Ltd. and its day-to-day operation was given by its Co-Artistic Directors, Ms. Loretta Yurick and Mr. Robert Connor.

2. The Property.

The relevant property comprises a dance studio at first floor level in the premises known as the Bloomfield Shopping Centre, Dun Laoghaire.

3. The Issue.

The only issue in dispute in relation to this case is whether or not the appellant is entitled to exemption from the payment of rates in accordance with the provisions of the Valuation Act 2001 and in particular Schedule 4 thereof.

4. The Grounds of Appeal.

The grounds of Appeal contained in the Notice of Appeal dated the 29th December 2003 forwarded to this Tribunal are as follows:

“(6)(c)(iii) The occupier of the property in question is a charity, as recognised by the Revenue Commissioners under section 207 Taxes Consolidation Act 1997. Any profits are put back into the company for its charitable aims. The property, being occupied by a charity, i.e. established for charitable purposes only, should be excluded.”

5. The Law.

All Rateable Valuations are now assessed in accordance with the provisions of the Valuation Act 2001. Schedule 4 of the said Act deals with “Relevant Property Not Rateable”. In regard to this Appeal paragraphs 16 & 17 of the Schedule are particularly relevant and are as follows:

*“16-Any land, building or part of a building which is occupied by a body, being either-
(a) a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit, or*

(b) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit and-

- (i) the principal activity of which is the conservation of the natural and built endowments in the State, and*
- (ii) the land, building or part is used exclusively by it for the purpose of that activity and otherwise than for private profit.*

17- Any land, building or part of a building occupied by a society established for the advancement of science, literature or the fine arts and which is used exclusively for that purpose and otherwise than for private profit.”

6. Preliminary Matter.

Section 34 of the Valuation Act 2001 provides for appeals to this Tribunal and Section 35 deals with the grounds of appeal. Section 35 states:

“ An appeal made under section 34 shall, as appropriate-

(a) specify-

- (i) the grounds on which the appellant considers that the value of the property, the subject of the appeal (in this section referred to as “the property concerned”), being the value as determined or confirmed by the Commissioner under section 33, is incorrect, and*
- (ii) the value the appellant considers the Commissioner ought to have determined under section 33 as being the value of the property concerned,*

(b) specify the grounds on which the appellant considers any detail in relation to the property concerned (other than the property’s value) as stated in the valuation certificate concerned issued under section 33(2) or in the notification concerned made under that section is incorrect,

(c) specify the grounds on which the appellant considers that the property concerned ought to have been included in, or, as the case may be, ought to have been excluded from, the relevant valuation list by the Commissioner under section 33(2), and, in

case the appellant considers the property concerned ought to have been so included, what he or she considers ought to be determined as the property's value.

Compliance with section 35 is mandatory and there is no provision or authority in the Act for this Tribunal to allow the grounds of appeal once stated to be amended or extended.

On the face of it the grounds of appeal in this instance as stated by the appellant sought exemption on the basis of paragraph 16 of Schedule 4. At the oral hearing the appellant sought to extend the grounds of appeal to include paragraph 17 of Schedule 4 but this course of action was objected to by the respondent. The Tribunal, having considered submissions from both parties, held for the respondent which finding was accepted by the parties.

7. The Evidence of Mr. Robert Connor

(Co- Artistic Director of Dance Theatre of Ireland Ltd)

Mr. Connor said that the company was established by himself as Co-artistic Director and three others in order to promote contemporary dance in Ireland. This objective was met by a number of means including the production of contemporary dance performances, the promotion of dance in schools and in the studio and generally by disseminating knowledge and understanding of contemporary dance and other related activities. Dance classes were held in the studio in the evenings and they were available to members of the public at large and a junior dance group met on Sunday afternoons. All activities held in the subject property were dance related and under the direct control of the company.

Mr. Connor stated that the total annual income of the company was in the order of €450,000 and of this 60% was grant aid from the Arts Council. The remainder of the income was derived from grants from Dublin City Council, other local and statutory bodies, box office receipts and teaching fees. The finances of the company were conducted in a most careful and stringent manner and any surplus, if any, was ploughed back and not accumulated or distributed.

Mr. Connor said that on occasions the studio was made available to other dance groups on payment of a nominal fee. Total income under this heading was approximately €10,000 and as such was minimal in the context of the overall operation of the company. The subject property, he said, was the only purpose-built dance studio in Ireland.

8. The Evidence of Ms. Loretta Yurick

(Co-Artistic Director of Dance Theatre of Ireland Ltd)

Ms. Yurick said that the company was a non-profit-making venture and its primary aim was the furtherance of contemporary dance. Whilst the company made the studio available to other dance companies on an occasional basis when the studio was not otherwise in use the charges for it were nominal. Income from dance classes which are run on a regular and continuing basis was an important source of income but not significant in comparison with the other income derived from the Arts Council and other local and statutory bodies.

9. Submission on behalf of the Appellant.

Ms. Fearon said that the claim for exemption was being sought under paragraph 16 of Schedule 4 of the Valuation Act 2001. The subject property she said was occupied exclusively by the appellant and used solely for its own purposes which are charitable in nature. The Memorandum and Articles of Association of Dance Theatre of Ireland Ltd. met fully the requirements of the Valuation Act 2001 and the company had been granted charitable status by the Revenue Authorities. Hence the company was entitled to claim exemption from the payment of rates.

Ms. Fearon said that the spirit of the Valuation Act 2001 as far as charitable purposes is concerned is that the term has the same meaning as it has for the purposes of the Taxes Act and Irish law generally. Accordingly, the same considerations should apply and exemption from rates follows as a natural consequence. In support of her claim for exemption Ms. Fearon relied upon a number of authorities as set out in the Appendix attached to this judgement.

Ms. Fearon further contended that since section 63 of the Poor Relief (Ireland) Act 1838 had been repealed the Tribunal is no longer bound by court decisions regarding exemption on grounds of charitable purposes but is free to interpret the Valuation Act 2001 in a manner more

consistent with the circumstances and thinking that now exist in relation to what is or what is not charitable purposes.

10. The Respondent's Submission

Mr. Devlin, on behalf of the respondent, submitted that the changes in the law in relation to exemption brought about by the introduction of the Valuation Act 2001 did not alter the existing situation to any significant degree. Whilst the Act defines "charitable organisation" it does not define or give any clarification as to what is or is not "charitable purposes". In the absence of such definition or clarification the Tribunal is per force bound to rely upon the existing body of case law that has been built up over the past many years. When the 2001 Act was being drafted, he said, and subsequently discussed by the legislature there was ample opportunity to address the meaning of charitable purposes and if it wished to set aside the existing and established precedents it would have done so explicitly. The fact that the legislature did not avail of this opportunity is an implicit acceptance on its part of the status quo in relation to charitable purposes as understood in rating law. In this regard, he said, the appellant was primarily relying on case law applicable to charitable organisations and charitable purposes under taxation law. However, it is long established in this State that the definition of charitable purposes in rating law is different from and more restrictive than that used in taxation law. To that extent the authorities relied upon by the appellant are not relevant to this appeal and offer no guidance as to whether or not the subject premises are used for charitable purposes. The fact that the appellant is a charitable organisation within the definition contained in the Act of 2001 is not of itself sufficient to warrant exemption. It is the actual use of the premises in this instance that is the determining factor, not the status of the occupier.

Mr. Devlin submitted that paragraph 16 of Schedule 4 cannot be looked at in isolation but must be interpreted in conjunction with existing case law. Mr. Devlin referred to the findings of this Tribunal in the appeal **Leitrim County Childcare Committee v The Commissioner of Valuation (VA02/4/054)** which supports this view. Mr. Devlin submitted that the appellant had adduced no evidence or legal precedent sufficient to sustain a claim for exemption under rating law. Hence the appeal on the grounds as stated, i.e. paragraph 16 of Schedule 4, must fail.

Findings

1. The Tribunal has carefully considered all the evidence adduced and submissions made by Ms. Fearon and Mr. Devlin on behalf of the appellant and respondent respectively. The Tribunal has also considered the complete list of cases and authorities cited by the parties.

2. It is common case that the only question for determination by the Tribunal is whether the premises occupied by the appellant being a charitable organisation within the meaning of the Valuation Act 2001 are used exclusively for charitable purposes in accordance with paragraph 16 of Schedule 4 to the Valuation Act 2001.

3. It is common case that the Revenue Authorities have granted the appellant company charitable status for tax purposes. It is not the function of this Tribunal to go behind the reasons for this decision. However, such designation is not conclusive in relation to the claim for exemption from rates where the requirements have traditionally been more stringent than those for tax exemption.

4. Whilst “charitable organisation” is defined in the Act “charitable purposes” is not. Under the repealed legislation the grounds for exemption were to be found in the provisos to section 63 of the Poor Relief (Ireland) Act 1838 and section 2 of the Valuation (Ireland) Act 1854. Neither of these enactments contains a definition of “charitable purposes” and hence it was left to the courts to shed light on how the words were to be construed. In the case **Barrington’s Hospital v Commissioner of Valuation (1957) IR299, Kingsmill Moore J** expressed the view that “charitable purposes” in section 63 had a meaning less extensive than the meaning given to those words in **Pemsel’s Case (1891) AC531-583**.

5. Over the past several years many claims for exemption have come before this Tribunal under the repealed legislation. In the case **Cork City Partnership Ltd. v Commissioner of Valuation (VA97/5/011)** the Tribunal drew attention to the distinctive codes under which the Revenue Authorities and the valuation systems operate and have underlined the principle that exemption under the Rating Code can only be obtained in accordance with the provisions of the Rating

Acts. It is the Tribunal's opinion that nothing contained in the Valuation Act , 2001 has changed or diluted this underlying precept.

6. Whilst section 63 of the Poor Relief (Ireland) Act 1838 has been repealed it does not automatically follow that the body of case law (including decisions of this Tribunal) dealing with exemptions is no longer relevant. Indeed, in the absence of any statutory definition of "charitable purposes" in the Valuation Act 2001 the precedents thus established cannot be ignored or lightly set aside. The fact that the requirement to show that the activities of the organisation in question are for the benefit of the poor is no longer necessary may extend the range of organisations qualifying for exemption providing they meet the rest of the statutory tests.

7. The primary objectives of the appellant company are "*the advancement of education by promoting the study and improving the understanding of the practice of dance theatre, art and design, music and musical composition, theatre arts and film arts.*" Additional to these the following objects are subsidiary and ancillary thereto "*to promote and develop the art of contemporary dance and in particular with a view to that end to establish a company of contemporary dancers to perform the art of contemporary dance; in theatres, studios, schools and any other suitable venue for the performance of contemporary dance; to employ choreographers and teachers to develop the Company's techniques in the art of contemporary dance and to give workshops and seminars in relation to contemporary dance in all its forms; to provide studios, classes, lectures and all and every type of facility for the education and advancement of persons interested in contemporary dance and to afford them facilities for performance, teaching, study and research and all other facilities as may be necessary and appropriate.*"

8. It is clear from the evidence both written and oral that the appellant company exists solely for the promotion of contemporary dance by education, performance and provision of such facilities and services as may be necessary or appropriate in order to meet its stated aims. It is also clear that in common with some other artistic enterprises of this nature it is not commercially viable and relies heavily on grants from the Arts Council and other publicly funded bodies and organisations to meet the cost of its activities. The receipt of these grants is a recognition of the

importance society places on the promotion of the performing arts in all its forms in Irish life and the vital role that the appellant plays in the development of contemporary dance.

9. In addition to grant aid the appellant derives some 40% of its income from box office receipts, dance tuition fees and studio hire. Access to dance lessons is open to the public at large on payment of a fee. From time to time other dance groups are permitted to use the studio for rehearsal purposes subject to the payment of a nominal hire charge. There is nothing in case law to suggest that funding coming to a charitable organisation from State or Local Authority Bodies has a bearing one way or another on a claim for exemption from the payment of rates.

10. Notwithstanding the fact that the relevant property is occasionally used by other dance companies for rehearsal purposes the Tribunal accepts as a matter of fact that the appellant is at all times in sole and exclusive use of the relevant property in pursuit of its aims and objectives.

11. The aims and objectives of the appellant as set out in its Memorandum and Articles of Association are laudable and worthy of public support. This is particularly so as they appear to meet a need which is not being directly provided by the State. It is true to say that a society in which the arts are encouraged and flourish is to be preferred to one where they do not and those organisations which exist to this end are to be encouraged.

12. The claim for exemption in this appeal is solely on the grounds that the relevant property is used “exclusively for charitable purposes”. From the evidence tendered and from an examination of its Memorandum and Articles of Association it is clear that the primary objectives of the appellant are educational in nature rather than charitable and that all its activities in the relevant property are directed towards this end. That being the case the Tribunal finds that the subject property is not being used exclusively for charitable purposes as required for exemption in compliance with paragraph 16 of Schedule 4 of the Valuation Act, 2001.

