Appeal No. VA92/6/047

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 1988

VALUATION ACT, 1988

International Mushrooms Limited **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Factory and Grounds at Lot No. 1B Townland of Balreask Old, E.D. Navan Rural, R.D. Navan Co. Meath
Agricultural Exemption - Mushroom spawn production

B E F O R E

Henry Abbott	**S.C. Chairman**
Brian O'Farrell	**Valuer**
Veronica Gates	**Barrister**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 30TH DAY OF JULY, 1993

By Notice of Appeal dated the 2nd November, 1992 the appellants appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £180 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that "the appellant is involved in the horticultural sector in connection with the growing of mushrooms. The appellant uses millet grain and mushroom spores in a process to make mushroom spawn (the end product). This involves the plantation of germinating spores of mushrooms which produce the spawn. The spawn is mixed with compost and sold to mushroom farmers and as an integral part of the horticulture and agriculture industry and under Section 3(1) Valuation Act should be exempt from rateable valuation".

The Property

The property is located in the Beechmount Industrial Estate on the outskirts of Navan. It consists of an industrial building with brick faced two storey office section, double skin apex cladded roof on steel and concrete portal framed trusses. General eaves height of 18 feet. Part of the factory buildings has air conditioned cold room storage facilities.

The total area of the premises is 25,583 square feet with ancillary plant rooms of 167 square feet. Only 17,956 square feet were included in the present valuation as the balance 7,627 square feet comprised a new raw storage and cold room facility which was incomplete at revision date in November, 1991.

All main services are connected to the property.

Valuation History

It was valued as a furniture factory in 1981 at a rateable valuation of £40. It was purchased and extended by the current occupiers between 1987 and 1991. In 1991 it was listed for revision by Meath County Council to value premises extended. The valuation was fixed at £180 and no change was made by the Commissioner of Valuation at revision.

Written Submissions

A written submission was received on the 8th February, 1993 from Steen O'Reilly & Company, Solicitors on behalf of the appellant.

In the written submission the appellant set out the background to the establishment of the Company in 1987. The submission states that the company employs 24 people, one administrative staff member, six science graduates and 17 grower operatives. Particulars of the operation, which consists of the creation of a mushroom spawn in addition to other technical details on the cultivation of mushroom spawn were set out in detail in the written submission appended to this judgment as Appendix A.

It was contended that spawn processing is now an integral part of the growth of a mushroom which is a vegetable and comes within the ambit of horticulture. The appellant referred to the Supreme Court decision in **Nixon -V- Commissioner of Valuation (1980)** I.R. 340 to support their contention that this was a horticultural activity. Appellant also referred to the Tribunal decision in **Cork County Council -V- Commissioner of Valuation VA/88/348 and VA/88/340.** The appellant submitted that the lands in question were developed for horticulture or alternatively agriculture and were outside the categories of Fixed Property deemed to be

Rateable Hereditaments by Section 2 and 3 of the Valuation Act, 1986. In the further alternative it was stated that the property is a hereditament or tenement pursuant or following to the provisions of Section 14 of the Valuation (Ireland) Act, 1852.

A written submission was received from Mr. Noel Rooney, a Chartered Surveyor and District Valuer in the Valuation Office with over 20 years experience in the practice of Valuation Surveying. In his written submission Mr. Rooney described the property, its location and valuation history. He set out the development costs of the factory as follows:-

Development Costs:

Old Factory purchased 1987 -	£ 24,000
Modification Costs	c. £ 34,000
Extension 1989 -	£177,000
Extension 1991 -	£135,000
Air Conditioning -	£ 55,000

I.D.A. Grants:

Small business grant payments up to and including 1991 - total £288,081

Research and Development grant payments in 1991 - £20,296.

He described the process carried on in the subject premises as the production of mushroom spawn.

Mr. Rooney stated that it was the Commissioner's contention that the subject hereditament falls to be valued under Section 12 of the 1852 Act and that the buildings were neither farm buildings nor lands developed for horticultural use.

Oral Hearing

The oral hearing took place in Dublin on the 22nd February, 1993 and continued on the 26th February, 1993. Mr. John Gallagher S.C. instructed by Steen O'Reilly & Company, Solicitors appeared on behalf of the Appellant and Mr. Andrais O'Caoimh B.L. instructed by the Chief State Solicitor appeared on behalf of the Respondent.

At the outset the parties set out to prove in evidence details of the actual process of production in relation to the cultivation of mycelia on a grain medium in special glass bottles in a controlled

environment. Mr. Gallagher called, Mr. O'Rourke the Managing Director of the appellant company to elaborate and Mr. O'Caoimh on behalf of the Respondent indicated that he was willing to take the narrative in the precis submitted by the Appellant in relation to the process involved, as read. The Tribunal suggested at that stage that it might make a preliminary finding in relation to the process which is carried on in the subject premises.

The Tribunal returned after a short recess and indicated to the parties that it had made a finding that the process carried on in the premises is horticulture. The hearing proceeded with intense argument in relation to how the premises was to be categorised for rating purposes in the light of this finding. Mr. Gallagher submitted that the structure was one which falls within Section 14 of the Valuation (Ireland) Act, 1852 as a farm, outhouse or office building. He said this because he deemed that horticulture is in fact part of agriculture - a specialised area of farming. He further submitted that if the Tribunal for any reason consider that the subject was not a farm building within the meaning of Section 14 of the Valuation (Ireland) Act, 1852, that the subject fell within the provisions of the 1986 Act and in particular Sections 2 and 3 of same. He stated that Section 2 of the 1986 Act provides that, for the purposes of the Act of 1852, property falling within any of the categories of Fixed Property specified in the schedule of the Act of 1852 inserted by the Act of 1986 shall be deemed rateable hereditaments in addition to those specified in Section 12 of the 1852 Act. He submitted that in effect Section 2 of the 1986 Act is adding to and perhaps clarifying the properties that would be deemed to be rateable properties in addition to those set out in Section 12 and he submitted further that it seemed to him to have been a section that was enacted for the purpose of clarifying some of the issues that had arisen in numerous judgments. While Mr. Gallagher submitted that the subject came within reference No. 1 of the Schedule inserted in the 1852 Act by the 1986 Act, he laid particular emphasis on the contention that the subject came within reference No. 2 which is land developed for any purpose other than agriculture, horticulture, forestry or sport, irrespective of whether or not land is surfaced and includes any construction affixed thereto which pertains to the development.

Mr. O'Caoimh countered Mr. Gallagher's argument by asserting that Section 11 of 1852 Act provided that the Commissioner of Valuation shall value all rateable hereditaments and that Section 12 of the 1852 indicated that all buildings are rateable hereditaments. Mr. O'Caoimh referred to the judgment of Mr. Justice Henchy in the Supreme Court case **Nixon -V- Commissioner of Valuation** (1980) I.R. 340 when he stated as follows:-

> "I considered that the words "farm buildings" in Section 14 of the 1852 Act, should be given their ordinary meaning, namely buildings on a farm which are used in connection with farming operations on a farm".

Mr. O'Caoimh cited the decision of the Tribunal in the **VA/90/1/2 Irish Rail -V- Commissioner of Valuation** in which the Tribunal held that the words "farm, outhouse or office buildings" referred to in Section 14 of the 1852 Act, related to agricultural buildings only. Mr. O'Caoimh further referred to the case of **Cork Grain Company -V- Commissioner of Valuation** (1978) I.R. 35 which followed the decision of the President of the High Court Mr. Justice Davitt in the case **Cement Limited -V- Commissioner of Valuation** 1960 Irish Reports page 283 in relation to the interpretation of "a building". In that case the President, referring to the failure to get a general definition of a building said, that "without presuming to do what others had failed to do, I may venture to suggest, that, by a "building" is usually understood a structure of considerable size and intended to be permanent or at least to endure for a considerable time". Mr. O'Caoimh submitted that the effect of Section 3 of the 1986 Act was to enlarge the category of rateable hereditaments and that while some people sought to suggest that they should be construed as reducing the category of rateable hereditaments, nowhere in the Act is there any indication that that was the legislative intention of the Oireachtas in enacting it and that it was clearly to be seen as an enactment to enlarge the category of rateable hereditaments. Mr. O'Caoimh emphasised that the reference in the second category of the Schedule inserted by the 1986 Act to "lands developed" meant that what was concerned in this category were lands the annual value of which was liable to frequent alteration and coming within the provisions of Section 4 of the 1854 Act as being liable to revision and not buildings. He developed his arguments very fully by reference to the Roadstone case in 1961 and referred to the judgment of Mr. Justice Kingsmill-Moore in that case quoting from page 255 of the judgment as follows:-

> "On an examination of the statutes, without reference to any authorities, I arrive therefore at the conclusion that the only way to give a rational interpretation to this code, the deficient drafting of which has more than once been the subject of judicial comment, is to regard land, which by reason of its use is liable to frequent alterations in annual value, as not being included in the expression "the land" in Section 11 of the 1852 Act, or "the lands" in Section 5 of the 1854 Act".

Mr. O'Caoimh referred to the Tribunal appeals in the **Turf Club Limited** case and the **Greystones Golf Club** case being appeals **VA/88/138** and **VA/88/126** respectively.

Mr. Gallagher countered that the expression in the second category of the Schedule inserted by the 1986 Act, "all lands developed for any purpose other than agriculture, horticulture, forestry or sport" included lands used for any purpose other than agriculture or horticulture, including any

constructions affixed thereto which pertained to the use, by importing the interpretation of development under the Planning Code as including use. Mr. O'Caoimh objected to the importation of concepts from another code of legislation to explain and interpret the Valuation Code. Mr. Gallagher respectfully submitted that he doubted the correctness of the decisions of the Greystones Golf Club and the Turf Club cases and said that he would rely on the facts of the cases opened by him to establish the appellant's entitlement to be exempt under the legislation.

Findings

The Tribunal has considered in particular the case of **Turf Club Limited -V- Commissioner of Valuation** VA/88/138 and has found that the arguments advanced by Mr. O'Caoimh are on a similar basis to those noted by the Tribunal in its judgment in that case, although perhaps Mr.O'Caoimh has developed them with more intensity in the instant appeal. The Tribunal notes the conclusion in the Turf Club case in relation to the issue as follows:-

> "Applying the test as suggested by these cases, the Tribunal has come to the conclusion that all the structures under appeal are "buildings" under Section 12 of the 1852 Act and that, therefore, the correct way to regard them is as "buildings" rather than as "constructions". If it were accepted that they were "constructions" rather than "buildings" then the Tribunal would have to deal with Mr. O'Caoimh's contention that the reference to "constructions affixed thereto which pertain to the development" refers back to the first 6 words of reference No. 2 and should read "all lands developed for any purpose.....including constructions affixed thereto which pertain to the development.....other than (lands developed for) agriculture, horticulture, forestry or sport. Mr. Sweetman has countered this argument by saying "that all constructions affixed to lands or tenements" is already referred to at Reference No. 1 to the schedule and that therefore the reference to "any constructions affixed thereto" if it had the meaning contended for by Mr. O'Caoimh would be simply repeating what is already contained in reference No. 1. The Tribunal thinks, on balance, that Mr. Sweetman's submission is correct in regard to this. If land is developed for sport there is bound to be some constructions affixed to it which would be part of the "development" and since land has to be given a specific meaning, its development for sport would not include any constructions at all."

The Tribunal comes to the same conclusion in this appeal that reference 2 allows an exemption to be given to a building developed for agriculture or horticulture and that in so far as the

Schedule inserted by the 1986 Act clarifies Section 12 of the 1852 Act, the subject premises is entitled to the exemption for horticulture. In relation to the question as to whether the premises are entitled to exemption under Section 14 of the 1852 Act as amended, the Tribunal has considered the implications of the Nixon case and the particular contention that a farm building must be located on a farm. The Tribunal considers that the question as to whether a farm building is located on a farm can be a question begging exercise as many farm buildings, such as piggeries, in the modern context, may well be standing on very small plots of ground which afford only the minimal manure spreading facilities and which depend on spreading facilities afforded by other land owners very often miles away so as to comply with modern pollution control requirements in relation to effluent disposal. The Tribunal notes that Mr. O'Caoimh asserted that, consistent with the Nixon case, farm buildings which traditionally have existed behind houses in country villages in some parts of the country would not be entitled to the agricultural exemption and considers that this is a very strict interpretation of the principles in the Nixon case.

The Tribunal, therefore, considers that the contention that the subject premises stands alone on a small site does not exclude it from the agricultural exemption under Section 14 of the 1852 Act, as it was not seriously contested that horticulture did not form part of the larger category of agriculture. In so far as the Schedule inserted by the 1986 Act clarifies Section 14 of the 1852 Act, the Tribunal is confirmed in this view by reason of the conclusions of the Tribunal in relation to reference 2 of that Schedule confirming exemption. The Tribunal notes that mushroom houses are generally not rated and finds that this practice is consistent with its conclusions in this case although the Tribunal has not been influenced by this fact which was revealed during the course of the proceedings.

The Tribunal does not propose to award costs to either party as the appeal was processed expeditiously and helpfully by both parties.

However, if the parties wish to address the Tribunal further on this matter they may do so by written submissions to be considered by the Tribunal.