

Appeal No. VA96/3/028

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Tipperary Oils Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Oil Depot at Map Reference 13E, Townland: Rathbeg, ED: Fennor, RD: Slieveardagh,  
Tipperary S.R., County Tipperary

**B E F O R E**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**Finian Brannigan - Solicitor**

**Member**

**Michael Coghlan - Solicitor**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 6TH DAY OF JULY, 2000**

By Notice of Appeal dated the 27th day of July 1996, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £150 on the above described hereditament.

The grounds of appeal as set out in the Notice of Appeal are that

- "(i) The valuation is excessive and inequitable and
- (ii) The valuation is bad in law."

## Valuation History

The relevant valuation history is that the property was first valued in 1995/3 revision. According to the written submission from the respondent, received by the Tribunal on the 11<sup>th</sup> June 1997 a rateable valuation of £210 was fixed, but due to an administrative oversight a figure of £105 RV was entered in the lists.

At the appeal stage an RV of £150 was fixed on the subject.

A written submission, prepared by Ms. Sheelagh O'Buachalla, B.A, A.R.I.C.S, A.S.C.S. on behalf of the appellants, was received by the Tribunal on 16<sup>th</sup> June 1997.

A further written submission from Ms. O'Buachalla, described as an addendum was received by the Tribunal in 1<sup>st</sup> February 1998.

This latter document set out the basis for arriving at a rateable valuation of the subject hereditament as follows:

Valuation of tanks:

*(1) Using acquisition cost.*

Cost 1985	-	£50,000	
Adjusted to 1988	- @ 5% pa (7,500)	=	£57,500
NAV @ 15%	=	£8,625	
RV @ 5%	=	£43	

**(2) Contractor's Basis - (See C below)**

a) Buildings & Yard

	Sq. ft.		£		£
Office	839 @	2.00	=	1,678	
Stores	1,060 @	1.00	=	1,060	
Canopy	237 @	0.20	=	47	
Yard	13,000 @	0.10	=	<u>1,300</u>	
		NAV		4,085	
		@	<b>0.5% RV</b>	<b>20</b>	

**b) Agreed gallonage 167,000 gallons - Tank only.**

**Estimated replacement cost from Irish Shell information in VA97/4/001 - say £38,500**

c) Estimated replacement cost for tanks and all equipment by Appellant - £75,000 (1997)

Less 30% to 1988 = £52,500

NAV @ 6.5% = £3,412

**RV £17**

**Total RV £37**

The Tribunal also received from GVA Donal O'Buachalla on 19<sup>th</sup> June 1997 a written schedule which set out rents for five fuel depots in the Irish Republic.

Also on 1<sup>st</sup> February 1998, the Tribunal received two copy letters from Donal O'Buachalla. One copy letter was dated the 2<sup>nd</sup> of September 1992 and was from Irish Shell to Donal O'Buachalla & Co Ltd. This letter gave details of construction costs in connection with the Oriel Oil case VA95/1/055.

The other copy letter was from Mr. Des Doyle of the Valuation Office to Mr. Donal O'Buachalla & Co Ltd. and set out the basis of the contractors method which was used to arrive at an RV of £75 on the Navan Oil Depot, which property was later the subject of an appeal to the Tribunal VA97/4/001.

A written submission prepared by Mr. Kevin Heery, B. Comm, M.I.A.V.I, on behalf of the respondent, was received by the Tribunal on the 11<sup>th</sup> June, 1997. Mr Heery is a District Valuer with twenty six years experience in the Valuation Office.

The written submission set out the basis for the rateable valuation as follows:

Office	893 sq. ft.	@	£3.00psf	= £2,679
Stores	1060 sq. ft.	@	£1.75psf	= £1,855
Loading Gantry	237 sq. ft.	@	£1.25psf	= £296
Yard (concrete)	1,300 sq. ft.	@	£0.20psf	= <u>£2,600</u>
			NAV	= £7,430
			RV @ 0.5%	= £37.15
Tanks 167,000 gal.	@ £0.70 per 1,000 gallons			<u>= £116.90</u>
				=£154.05
			<b>Say RV</b>	<b>£150</b>

Mr. Heery's written submission contained a schedule of four comparisons. The written submission also contained a schedule of comparisons used by the Valuation Office in *Oriel Oil Ltd. VA95/1/055*. Mr. Heery's written submission also contained some photographs of the subject property.

A further written submission prepared by Mr. Heery was received by the Tribunal on the 12<sup>th</sup> January, 1998.

This written submission commented on the schedule relating to five fuel depots attached to the Donal O'Buachalla & Co Ltd. letter dated the 19<sup>th</sup> June 1997. The written submission also contained some observations on the valuation of the Irish Shell Oil Depot at Navan.

The oral hearing took place on the 2nd of February, 1998, at the Tribunal Office in Dublin. The appellant was represented by Mr. Andrias O'Caoimh S.C, now Mr. Justice O'Caoimh, instructed by Arthur Cox & Co solicitors. The respondent was represented by Mr. Eamonn Marray B.L. instructed by the Chief State Solicitor.

Mr. Liam O'Sullivan, the manager of the appellant company gave sworn testimony. He described the location of the subject property. It was located three miles from Urlingford in a very rural area. He confirmed that the total gallonage at the facility was 167,000 gallons.

In further testimony Mr. O'Sullivan described the buildings of the subject property. They were very basic with block walls and a slate roof. The buildings were roughly finished. The store was old and in a bad condition. The canopy was a shelter with rough stairway and railing and the oil was measured out there.

Mr. O'Sullivan said he had seen the Vale Oil premises at Thurles from the road. It looked a better premises than the subject. This property was the fourth comparison of the respondent.

Mr. O'Sullivan said that he understood that the subject facility was sold for £50,000 in 1985 to the appellant.

In further testimony Mr. O'Sullivan said the tanks had a life span of fifty years if they were properly maintained. He said that he sought quotations and on that basis he had concluded it would cost £75,000 to construct the tanks at today's prices.

Under cross-examination by Mr. Marray, Mr. O'Sullivan stated that he had been working for the appellant company for the last ten months.

In further replies Mr. O'Sullivan stated that the facility had been constructed by a local man. The business subsequently went into receivership and was purchased by the appellant company in 1985.

Mr. Marray then said that he would put in evidence a copy document which showed that the appellant was in possession of the subject property in 1981. This document was an application for planning permission dated 1<sup>st</sup> October 1981. Mr. O'Caoimh said he accepted this document as evidence.

Ms. Sheelagh O'Buachalla gave sworn testimony. She said that she had used two methods of valuation which were contained in her addendum document which was received by the Tribunal on 1<sup>st</sup> February, 1998. With respect to the contractor's methods of valuation for the tanks, she had used the present replacement costs of £75,000. This figure was obtained from Mr. O'Sullivan. She then had reduced this figure by 30% to bring the replacement cost back to 1988.

In further testimony, Ms. O'Buachalla said the tankage facility was a specialised property which was not often rented. Therefore the contractor's methods of valuation was an appropriate method to use in arriving at a rateable valuation when the replacement costs of the facilities were known.

With reference to her valuation of the buildings on the property she said it was very difficult to find comparisons in a rural area. Again the facility here had been built by a private individual unlike the comparisons which had been built by oil companies to a high specification. In fixing values for the buildings she had looked at superior comparisons and made an allowance for the state of the subject. The stores at the subject had a corrugated iron roof with concrete block walls. The canopy was mostly open to the elements.

Under cross-examination by Mr. Marray, Ms. O'Buachalla accepted that the contractor's method was sometimes the method of last resort. This description of the method arose because rental evidence was the preferred method.

In further replies Ms. O'Buachalla said the contractor's method is not an imprecise approach. One has actual costs on which to base the calculation. Furthermore the contractor's method can be checked against alternative methods. Again Ms. O'Buachalla said there are guidelines for the application of the contractor's method. Finally, Ms. O'Buachalla said that the contractor's method usually included site costs but here she had valued the yard separately.

In his sworn testimony, Mr. Heery adopted his written submissions as his evidence to the Tribunal. He said the subject hereditament was located in a rural area near the main Dublin to Cork road. The buildings were of average quality and the tanks were in good condition.

In further testimony Mr. Heery said that in valuing the tanks he had used a comparative approach, namely a monetary rate per 1000 gallons. This comparative method had been in use since the 1970's and it had been accepted by independent valuers. Mr. Heery said he did not know the historical reason for the origin of this comparative approach.

In dealing with the fixing of a rate per 1000 gallons on the subjects tanks, Mr. Heery said he had recommended 70p per 1,000 gallons. This rate was supported by his comparisons in particular the Oriel Oil Company which had a rate of 75p per 1,000 gallons. The subject tanks had a capacity of 167,000 gallons while the tanks at Oriel Oil had a capacity of 148,358 gallons.

Mr. Heery said he had reduced the rateable valuation from £154 to £150 to reflect the basic nature of the buildings at the subject hereditament.

Finally Mr. Heery said he had checked the planning permissions register for the subject. This showed that the appellant was the owner of the property in 1981. Mr. Heery considered that the appellant had purchased the premises before 1981, having purchased it from the receiver.

Under cross-examination by Mr. O'Caoimh, Mr. Heery said the office in the subject was adequate. In a further reply he agreed that the stores at the subject property were basic.

Mr. O'Caoimh put it to Mr. Heery that in connection with the tanks he was using a rateable valuation based on the valuation list. In reply Mr. Heery said this valuation was based on the tone of the list. In a further reply he agreed with Mr. O'Caoimh that he had not used any other method of valuation for the tanks such as the comparative rental method.

In his submissions, Mr. O'Caoimh said the respondent's valuation of the tanks was not based on any scientific method to arrive at an NAV. The respondent's valuation of the tanks was based on the comparisons of RV's and not NAV's.

Mr. O'Caoimh said that the primary statutory duty in arriving at a rateable valuation is to ascertain the NAV. Mr. O'Caoimh referred to *Davey v Commissioner of Valuation* [1956] I.R.

295 to the effect that in the ascertainment of NAV, evidence of letting value of comparable premises is relevant and admissible. This case was also an authority for the proposition that evidence of the valuation of comparable premises is of lesser value.

In further submissions Mr. O'Caomh said that the Commissioner's method for the valuation of the tanks was not based on any empirical evidence as to their construction costs. Again there were no cross checks available on the Commissioners method to test its reliability.

In contrast the contractor's method used by the appellant was an accepted one, used by valuers. The present day construction costs of £75,000 used in the method had not been challenged by the respondent. Again this method gives a figure for NAV.

In his submission, Mr. Marray said that the appellant had not produced evidence about the appropriate percentage to be used in the application of the contractor's method to the subject hereditament.

Mr. Marray said that the hypothetical tenant wants to know what commercial value the premises will give him. The passing rent for the property will show this commercial value. Mr. Marray said the commercial value of a hereditament or its net annual value was not confined to the investment cost of the hereditament.

In further submissions Mr. Marray said in the present case the respondent had provided a significant number of comparisons, which had been fairly applied. These comparisons provided a tone of the list with respect to similar character and function for these properties. In the circumstances therefore there was no need to use the contractor's method of valuation.

Furthermore, Mr. Marray stated that the Roadstone case was authority for the proposition that valuers use the best means available to them in arriving at an NAV. Again the Tribunal has stated that the valuation of properties is not an exact science and furthermore the Tribunal has accepted the method of valuation for tanks used by the respondent in this case. This comparative method has been in use and accepted for up to twenty years.



The Tribunal has considered the written submissions and the evidence offered by the appellant and the respondent.

The first issue for the Tribunal to decide is what is the appropriate method of valuation for the tanks. The use of the respondent's method in this case was paralleled by its use by the respondent in the case of *Irish Shell v Commissioner of Valuation VA97/4/001*. Judgement in that case was issued on the 13<sup>th</sup> day of April 2000. The Tribunal there decided with respect to the respondent's method of valuation of tanks that "*we are of the opinion that the method advanced on behalf of the Commissioner is fundamentally flawed and does not permit statutory compliance with section 11 of the 1852 Act and or with section 5 of the 1986 Act.*" (paragraph 18 of the judgement).

The Tribunal can find no basis for differing from that decision on the basis of the evidence presented to it in this case. Indeed the evidence of Mr. Heery in which he stated that he could give no historical explanation for the genesis of the respondent's method for valuing tanks strengthens, if anything, the Tribunal's finding in rejecting the respondent's method.

On the other hand the Tribunal finds that the appellant's evidence as to the use of the contractor's method for valuing tanks in this case was not challenged as to its evidential basis. The Tribunal therefore finds that in this case the contractor's method for valuing tanks is the most appropriate for arriving at an NAV.

As to the buildings on the site the Tribunal finds that they are not to the same specification as the comparisons offered by the respondent and some discount in values should be made for this.

Accordingly,

Office	839 sq. ft.	@	£2.50 =	£2,098
Stores	1,060 sq. ft.	@	£1.50 =	£1,590
Loading Gantry	237 sq. ft.	@	£1.00 =	£237
Yard	13,000 sq. ft.	@	£0.20 =	<u>£2,600</u>
			NAV =	£6,525

@ 0.5% = £32.62      Say RV £33

Tanks, estimated replacement cost in 1997 prices is £75,000

Less 30% to 1988      = £52,500

NAV @ 6.5%      =£3,412

@ 0.5%      =**RV £17**

**The Tribunal therefore determines the rateable valuation of the subject hereditament to be £50.**