

Appeal No. VA13/2/003

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

Environmental NGOS Core Funding Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Property No. 2211926, Office(s) at Lot No. 23.24 - Floor 2 Room S03, Green Street, Inns Quay C, Inns Quay, County Borough of Dublin.

B E F O R E

Niall O'Hanlon - BL

Deputy Chairperson

James Browne - BL

Member

Michael Connellan Jr - Solicitor

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 10TH DAY OF DECEMBER, 2013

By Notice of Appeal received the on 18th day of June, 2013, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are attached in Appendix 1.

Introduction

By Notice of Appeal received by the Tribunal on the 18th of June, 2013, the appellant appealed against the determination of the respondent in respect of the property the subject matter of the present appeal.

An oral hearing in respect of this appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 9th day of October, 2013. Mr. John Kenny B.L. appeared on behalf of the appellant. Mr. David Dodd B.L., instructed by the Chief State Solicitor, appeared on behalf of the respondent.

The Issue Arising

This case turns on a net issue: Whether the appellant comes within the definition of a charitable organisation as set out in section 3 of the Valuation Act 2001 (hereafter the Act).

The appellant contends that if it comes within the aforementioned definition, that it follows, on the facts of the case, that the subject property comes within paragraph 16(a) of Schedule 4 of the Act and that accordingly, pursuant to section 15(2) of the Act, that the said property is not rateable.

Section 15(2) provides that, subject to sections 16 and 59 of the Act, which are not relevant for the purposes of this appeal, relevant property referred to in Schedule 4 shall not be rateable. Under Schedule 4 relevant property not rateable includes, pursuant to paragraph 16(a), any land, building or part of a building which is occupied by a body, being a charitable organisation that uses the land, building or part exclusively for charitable purposes and otherwise than for private profit.

The appellant contends that it comes within the definition of a charitable organisation by virtue of the provisions of its memorandum and articles of association, as amended on the 7th of October, 2009, (hereafter “the old memorandum”).

In the alternative, the appellant argues that it comes within the definition of a charitable organisation by virtue of the provisions of its memorandum and articles of association, as amended on the 20th of June, 2013, (hereafter “the new memorandum”).

The Tribunal notes, that in so arguing, the appellant placed reliance on the provisions contained in its memorandum of association and that it did not seek to place any reliance on the provisions contained in its articles of association.

The respondent asserts that the appellant fails to come within the definition of a charitable organisation on the basis of the provisions of either the old or the new memorandum. Further, the respondent contends that the appellant is not entitled to seek to rely on the provisions of the new memorandum in this appeal.

The Evidence Adduced by the Parties

Mr Justin Byrne gave evidence on behalf of the appellant. He was described as performing an administration role in relation to the appellant. He outlined the activities of the appellant. Mr. Byrne indicated that the appellant was mainly funded by the Department of Environment, Community and Local Government with the balance of funding coming from the National Parks and Wildlife Service.

Mr Joseph Turley gave evidence on behalf of the respondent. He was described as a valuer employed by the respondent. In his evidence Mr. Turley set out the basis for his finding that the appellant did not come within the definition of a charitable organisation within the meaning of the Act.

The Relevant Provisions of the Valuation Act 2001

The relevant part of section 3 of the Act provides as follows:

“charitable organisation” means a company or other body corporate ... which complies with the following conditions—

(b) in the case of a company–

- (i) the memorandum of association or articles of association, as appropriate, of the company comply with the conditions specified in subparagraphs (iii) and (vii) of paragraph (a) of this definition (and, for this purpose, the reference in clause (III) of that subparagraph (vii) to trustees or other persons shall be construed as a reference to the directors or any other officer of the company), and*
- (ii) there is contained in that memorandum or those articles a provision, with respect to a case of its being wound up, that is similar to the condition specified in paragraph (a)(ix) of this definition.*

The relevant subparagraphs of paragraph (a) provide:

- (iii) states, as its main object or objects, a charitable purpose and specifies the purpose of any secondary objects for which provision is made to be the attainment of the main object or objects,*
- (vii) (I) provides for the application of its income, assets or surplus towards its main object or objects,*
(II) prohibits the distribution of any of its income, assets or surplus to its members, and
(III) prohibits the payment of remuneration (other than reasonable out-of-pocket expenses) to its trustees or the members of its governing board or committee or any other officer of it (other than an officer who is an employee of it),
- (ix) provides for the disposal of any surplus property arising on its being wound up to another charitable organisation (within the meaning of this Act), the main object or objects of which is or are*

similar to its main object or objects or, if the body receives a substantial proportion of its financial resources from a Department of State or an office or agency (whether established under an enactment or otherwise) of the State, to such a Department, office or agency.

The Submissions of the Parties

The appellant submitted that the old memorandum complied with the requirements of section 3 of the Act.

The Tribunal notes that the old memorandum comprises four clauses. The first clause specifies the company's (appellant's) name; the second clause contains the objects and powers of the company; the third clause provides that the liability of the members is limited; the fourth clause provides for the members of the company to contribute to the assets of the company in the event of its being wound up.

The Findings of the Tribunal

Having heard and considered the evidence and submissions of the parties the Tribunal holds, in relation to the old memorandum, that:

1. It does not specify, in accordance with the requirements of subparagraph (a)(iii), the purpose of secondary objects to be the attainment of the main object or objects;
2. It does not provide, in accordance with the requirements of clause (I) of subparagraph (a)(vii), for the application of the appellant's income, assets or surplus towards its main object or objects;
3. It does not prohibit, in accordance with the requirements of clause (II) of subparagraph (a)(vii), the distribution of any of the appellant's income, assets or surplus to its members;

4. The provisions of sub clause Q of the old memorandum, which provide, *inter alia*, for the distribution among the members in specie of any property of the appellant, are contrary to the requirements of clause (II) of subparagraph (vii);
5. It does not prohibit, in accordance with the requirements of clause (III) of subparagraph (a)(vii), the payment of remuneration (other than reasonable out-of-pocket expenses) to the appellant's directors or any other officer of the appellant (other than an officer who is an employee of the appellant);
6. It does not meet the requirements of subparagraph (a)(ix) in that it does not make provision for the disposal of any surplus property of the appellant arising on its being wound up, to a Department, office or agency of the State.

In the alternative, the appellant submitted that the new memorandum complied with the requirements of section 3 of the Act.

The Tribunal notes that the new memorandum comprises six clauses. The first clause specifies the company's (appellant's) name; the second clause contains the objects and powers of the company; the third clause provides that the liability of the members is limited; the fourth clause provides for the members of the company to contribute to the assets of the company in the event of its being wound up; the fifth clause provides, *inter alia*, that if, upon the winding up or dissolution of the appellant, there remains after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the appellant but shall be given or transferred to some charitable institution or institutions having main objects similar to the main object(s) of the appellant; the sixth clause provides that the income and property of the appellant shall be applied solely towards the promotion of its main object(s) as set forth in the memorandum of association and that the appellant shall be a not for profit company.

Having heard and considered the evidence and submissions of the parties the Tribunal holds, in relation to the new memorandum, that:

1. It does specify, in accordance with the requirements of subparagraph (a)(iii), the purpose of secondary objects to be the attainment of the main object or objects. However, the respondent contended that the memorandum of association did not state, as its main object or objects, a charitable purpose. In response the appellant sought to place reliance on the definition of charitable purpose contained in section 3 of the Charities Act 2009. However, the definition contained in section 3 is stated to be for the purposes of that Act. The Tribunal is not satisfied, having considered the appellant's submissions on this issue, that the definition contained in the 2009 Act applies to the Valuation Act 2001;
2. Whilst it does provide, in clause 6, for the application of the appellant's income and assets towards its main object or objects, it does not provide, in accordance with the requirements of clause (I) of subparagraph (a)(vii), for the application of the appellant's surplus towards its main object or objects. Further, the Tribunal is of the view that the statement, contained in clause 6, that the appellant shall be a not for profit company, does not meet the requirements imposed by clause (I) of subparagraph (a)(vii) in relation to the application of any surplus;
3. It does not prohibit, in accordance with the requirements of clause (II) of subparagraph (a)(vii), the distribution of any of the appellant's income or assets to its members. Further, the Tribunal is of the view that whilst the statement, contained in clause 6, that the income and property of the appellant shall be applied solely towards the promotion of its main object(s) as set forth in the memorandum of association, does meet the requirements of clause (I) of subparagraph (a)(vii), such statement cannot meet the requirements of clause (II) of subparagraph (a)(vii). The Tribunal is of the view that the requirements of clause (II) are separate to those of clause (I) and that it is necessary to make explicit and separate provision in the memorandum or articles of association in this regard;

4. It does not prohibit, in accordance with the requirements of clause (III) of subparagraph (a)(vii), the payment of remuneration (other than reasonable out-of-pocket expenses) to the appellant's directors or any other officer of the appellant (other than an officer who is an employee of the appellant);
5. It does not meet the requirements of subparagraph (a)(ix) in that it does not make provision for the disposal of any surplus property of the appellant arising on its being wound up, to a Department, office or agency of the State.

The Tribunal notes that subparagraph (a)(ix) provides for the distribution of surplus property to another charitable organisation or, if the appellant receives a substantial proportion of its financial resources from a Department of State or an office or agency of the State, to such a Department, office or agency.

The Tribunal accepts the Respondent's contention that in cases where a company receives a substantial part of its financial resources from a Department, office or agency of the State, that it is mandatory that the memorandum or articles provide for the disposal of any surplus property arising on its being wound up to such Department office or agency and that the provision for distribution to another charitable organisation contained in the new memorandum does not, contrary to the appellant's submission, meet the requirements imposed by subparagraph (a)(ix).

Further, the Tribunal does not accept the appellant's contention that the fact that the Department funding the appellant requires that monies received by the appellant be returned to the Department, in circumstances where they have not been utilised by the appellant, constitutes compliance with the provisions of subparagraph (a)(ix).

Conclusion

Accordingly, the Tribunal holds that the appellant does not come within the definition of a charitable organisation contained in section 3 of the Act.