

Appeal No. VA96/6/006

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

**Irish Shell Ltd.**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Oil Depot and Yard at Map Reference 22bc, Thomas Street, UD: Clonmel East Urban,  
Clonmel, Co. Tipperary

**B E F O R E**

**Liam McKechnie - Senior Counsel**

**Chairman**

**Barry Smyth - FRICS.FSCS**

**Deputy Chairman**

**Con Guiney - Barrister at Law**

**Deputy Chairman**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 19TH DAY OF SEPTEMBER, 2000**

**1.** By Notice of Appeal dated the 5th day of December, 1996, the appellant company appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of £125 on the above described hereditament.

The Grounds of Appeal as set out in the said Notice thereof is that "(1) the Valuation is excessive and inequitable and (2) the valuation is bad in law".

2. This appeal proceeded by way of an oral hearing, held in Clonmel on 2 March 1998. The appellant was represented by Mr. Aindrias O'Caoimh SC, (now Mr. Justice O'Caoimh), instructed by Mr Declan Fallon, Solicitor Irish Shell Ltd. Mr. Alan McMillan of GVA Donal O' Buachalla gave evidence on behalf of the appellant company. The Commissioner was represented by Mr Donal O' Donnell SC instructed by the Chief State Solicitor. Mr. Denis Maher, a District Valuer with over 20 years experience in the Valuation Office gave evidence on behalf of the respondent. In accordance with practice, the parties, prior to the commencement of the hearing, had exchanged their précis of evidence. Having taken the oath both valuers adopted their said respective précis as being and as constituting their evidence in chief. Both were cross-examined. Submissions were made and judgment was reserved.
3. At the commencement of the valuation process in relation to the above described hereditament there were three issues between the parties. Firstly, on behalf of the appellant company it was contended that the correct and appropriate percentage factor which should be used in converting the established N.A.V. into an R.V. should be 0.3% and not that as advanced on behalf of the Commissioner, namely 0.5%. Secondly, a major confrontation existed with regard to the correct method of valuing storage tanks. On behalf of the Commissioner the heretofore almost universally accepted practice of placing a rate of pence per 1,000 gallon capacity as the R.V. was challenged and in its place the appellant submitted that the correct method in this case was the contractor's basis. And thirdly, being very much a subsidiary point, was the question of quantum with regard to the balance of the hereditament above described.

**Issue No.1:**

4. Arising from the judgment of this Tribunal in the case of Telecom Eireann – VA96/6/012 it is clear that in our opinion the percentage factor advanced on behalf of the Commissioner is the correct and appropriate one for use in that and in this appeal. Accordingly for the reasons therein stated we propose in this appeal to follow and apply the ratio as given in the Telecom Case.

**Issue No.2:**

5. In the case of *Irish Shell Limited –v- Commissioner of Valuation - VA97/4/001* an issue arose for our consideration which was identical to issue No. 2 in this appeal. In that case the Commissioner’s preferred methodology of valuing tanks that was to place a rate of pence per 1,000-gallon capacity as the R.V., was once again asserted on his behalf. This practice, until the Irish Shell case, had been universally followed not only by the Commissioner but also by the rating consultants and indeed by this Tribunal. However, Mr. O’Caoimh S.C., who also appeared on behalf of the appellant in that appeal, submitted that since this process failed to ascertain a rent and thus a net annual value it was inherently flawed and incompatible with the relevant statutory provision namely section 11 of the 1852 Act as amended and accordingly ought to be rejected. He further submitted that in its place the contractor’s method should apply.

This Tribunal, in a judgment delivered on the 13<sup>th</sup> day of April 2000, initially dealt with the individual circumstances which constituted the background to that case, then commented on several miscellaneous points which arose, then referred to Section 11 of the 1852 Act and Section 5 of the 1986 Act and finally considered both the submissions made and the relevant case law as cited. In its decision it accepted as a fundamental point the requirement of having to ascertain an N.A.V. in the process of calculating an R.V. and since the method suggested by the Commissioner failed to so achieve this aim, his approach was considered unsustainable and incompatible with the statutory requirements above mentioned. Secondly, having had evidence of site value, of estimated cost of tanks and associated equipment, of an acceptable depreciation percentage and of a previously used and accepted decapitalisation factor, it also held, on these facts that the contractor’s method was an acceptable method in order to arrive at an N.A.V. and thus an R.V.

6. Having reviewed the Irish Shell decision last mentioned we, this Tribunal, are satisfied to adopt, follow and apply the reasoning therein contained and in the process, on the one hand, to reject the methodology of valuing tanks as advanced on behalf of the

Commissioner and on the other hand to accept in the absence of an alternative the Contractor's method basis, as advanced on behalf of the appellant company. As the only evidence given of this method was that of Mr. McMillan we propose to accept the entirety of such evidence with the inevitable result in N.A.V. and R.V. terms being those appearing in the manner hereinafter set forth.

**Issue No.3:**

7. The remaining segments of this hereditament, in the opinion of the rating consultant, consist solely of buildings namely offices, stores and gantry. In his view these items, collectively, should have placed thereon an N.A.V. of £2,600. In the opinion of the appeal valuer, Mr. Maher, the structures though allocated different floor areas, should nonetheless have a total N.A.V. of £2,561 placed thereon. When the case came before the Tribunal for hearing the parties agreed the NAV on the buildings. Accordingly the Tribunal applies to the entirety of the buildings an N.A.V. of £2,600.
8. Under this issue No. 3 Mr. Maher gave evidence to the effect that in his opinion a rate of £0.03 per gallon should be placed on an estimated 100,000 gallons of diesel fuel sales. If appropriate that method gave a figure for N.A.V. of £3,000 with a resulting R.V. of £15.00.
9. The cylindrical tanks sited within the compound at the above address are used to store fuel. This fuel is sold, wholesale on to retailers who in turn sell onwards mostly if not always to the ultimate consumer. This therefore from the appellant's point of view is a wholesale activity. In such circumstances where the tanks themselves are valued, it is not in our view correct to separately value throughput. To do so would be a form of double counting. Whilst the practice may have some application to an activity like a retail filling station it should have no part to play in the circumstances outlined above. This view is well supported by Tribunal precedent.

10. The result therefore is as follows:

a) Buildings		£2,600
b) Site		£3,750
c) Costings (1998):		
	Tanks	£35,000
	Foundations	£5,000
	Bund	£11,250
	Pipework	£20,000
	Pumping Equipment	<u>£7,500</u>
	<b>Total</b>	<b>£78,750</b>
Less depreciation 20%		<u>£15,750</u>
		£63,000
	N.A.V. @ 6.5%	<u>£ 4,095</u>
	N.A.V.	£10,445
	R.V. @ 0.5%	= £52.22
	Say	= £52.00

And the Tribunal so determines.