THE COURT OF APPEAL

Neutral Citation Number: [2020] IECA 73

Record Number: 2019/222

Donnelly J.
Ní Raifeartaigh J.
Power J.

BETWEEN

J.S.S., J.S.J., T.S., D.S. AND P.S.

APPELLANTS

- AND –

TAX APPEAL COMMISSION

RESPONDENT

- AND –

CRIMINAL ASSETS BUREAU

NOTICE PARTY

JUDGMENT of Ms. Justice Power delivered on the 13th day of March 2020

1. This is an appeal against the judgment of the High Court delivered on 5 April 2019 wherein the trial judge refused to grant an order of *certiorari* in respect of a series of decisions made by an Appeal Commissioner of the Tax Appeal Commission ('the Commissioner') following a preliminary hearing on whether certain tax appeals sought by the appellants should be admitted. The hearing before the Commissioner was held on 21 June 2017 and his decision issued on 26 April 2018. Essentially, the Commissioner admitted appeals in respect of years wherein the appellants had delivered tax returns and he refused to admit appeals in respect of years in which either no tax returns had been delivered and/or no self-assessed tax liabilities had been paid. It was in respect of the decision to refuse to admit certain appeals that judicial review proceedings were instituted. The central complaint in the judicial review proceedings concerned the alleged failure of the Commissioner to provide reasons for his decision not to admit the aforesaid appeals.

Background

2. The appellants—a father and his four sons—are members of the Irish Travelling community and have addresses in Rathkeale, County Limerick. Living a nomadic lifestyle, they stay in their caravans and work as tarmacadam contractors in various locations abroad for several months each year. Their primary claim before the Commissioner was that as members of the travelling community they were non-resident or not ordinarily

resident for tax purposes in Ireland. That being so, they claimed, that the relevant provisions of the Taxes Consolidation Act 1997 ('the 1997 Act'), which required the delivery of tax returns and/or the payment of self-assessed tax liabilities as a pre-condition to the admission of an appeal, did not apply to them as non-residents.

3. On 31 March 2016, the notice party—the Criminal Assets Bureau ('CAB')—issued to the appellants or to a number thereof, various income tax assessments or amended income tax assessments in respect of years ranging from 2004 to 2014 inclusive. The appellants disputed these assessments and by letter dated 26 April 2016 asked to have appeals admitted to the Tax Appeal Commission in relation thereto. CAB claimed that the appellants' income tax compliance history had varied over the years in question. It had no objection to appeals being admitted in respect of years in which tax returns had been delivered and/or self-assessed tax liabilities had been paid. However, it did object to the admission of appeals in respect of years where either no tax returns had been delivered and/or where self-assessed tax liabilities had not been paid. Its objection in this regard was based on its contention that the appellants had failed to fulfil the statutory conditions required for the admission of an appeal.

4. The respondent arranged for a preliminary hearing pursuant to s. 949E(2) of the 1997 Act to decide whether the appeals, to which CAB objected, ought to be admitted.

The Tax Appeal Commission Hearing

5. At the hearing, counsel for the appellants made the following submissions. As members of the travelling community, they spend very little time—approximately two months per year—in Ireland. The rest of the year they travel throughout Europe. As non-residents they are not 'chargeable persons'. Not being 'chargeable persons', they are not obliged to file returns in Ireland. As non-residents they are obliged to have an agent acting on their behalf in Ireland and they do—an accountant, Mr. Loughran, from Tralee. The reasons they were given for the non-admission of their appeals were outstanding taxes and the failure to file returns. They denied that there were any outstanding taxes. They are not obliged to file returns because, as stated, they are not chargeable persons. Where a person is resident in Ireland, income returns are made in that person's name. Where a person is not resident in Ireland, that person does not make returns. Returns are made by that person's agent. In the case of a non-resident, it is the agent who is responsible, that is, 'assessable' and 'chargeable' for tax purposes. The appellants do not spend 183 days in the country in any year or 280 days in any two years. Consequently, they are clearly non-resident. No issue had ever been taken with this and CAB had certainly not exercised its right to dispute the question of residence in the manner prescribed.

6. A number of provisions of the 1997 Act were then opened in support of the appellants' claim that as non-residents they are not 'chargeable persons' and thus are not themselves obliged to file income returns. The first provision to which the Commissioner was referred was s.18(1)(a) of the 1997 Act. It provides:

"Tax under this Schedule shall be charged in respect of-

(a) the annual profits or gains arising or accruing to-

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

(iii) ***any person****, whether a citizen of Ireland or not, although* ***not resident in the State****, from any property whatever in the State, or* ***from any trade****, profession* ***or employment exercised in the State****, and*

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State." (Emphasis added.)

Counsel submitted that this section establishes that the scope of Schedule D (which covers taxable business income) is such that whereas a non-resident may certainly be chargeable within the State, such charge is only in respect of activities that are actually carried on in the State.

7. The Commissioner was then referred to s. 1034 of the 1997 Act, the relevant part of which provides:

> *"****A person not resident in the State****, whether a citizen of Ireland or not,* ***shall be*** *assessable and* ***chargeable to income tax in the name of any*** *trustee, guardian, or committee of such person, or of any factor, agent, receiver, branch or manager, whether such factor,* ***agent****, receiver, branch or manager has the receipt of the profits or gains or not, in the like manner and to the like amount as such non-resident person would be assessed and charged if such person were resident in the State and in the actual receipt of such profits or gains; . . . ."* (Emphasis added.)

It was submitted that this section establishes, clearly, that where a person is non-resident such a person is not assessable in his or her own name but rather in the name of a trustee or guardian or agent. The Commissioner's attention was drawn to the fact that the section is drafted in mandatory terms. A person not resident in the State *shall* be assessable and chargeable in the name of a trustee, guardian or agent. Pursuant to this section, it was argued, the appellants, as non-resident persons, are not chargeable. They are obliged to have an agent in Ireland and they do, a Mr. Loughran, based in Tralee. Their counsel stressed that the key words in the section were 'assessable' and 'chargeable'.

8. The appellants, through their counsel, then referred the Commissioner to s. 950 and to the definition of the term 'chargeable person' contained therein. The definition reads as follows:

> *"...****'chargeable person'*** *means, as respects a chargeable period,* ***a person who is chargeable to tax*** *for that period, whether on that person's own account or* ***on***

account of some other person *but, as respects income tax, does not include a person…"* (emphasis added).

It was submitted that the reference to a person chargeable to tax *'on account of some other person'* was deliberately inserted into the definition to encompass agents who, pursuant to s. 1034 are responsible for accounting for tax on behalf of another (non-resident) person. Counsel for the appellants stressed that as non-residents the appellants are neither assessable nor chargeable. It is their agent who is assessable or chargeable.

9. Counsel for the appellants then addressed the Commissioner on the preconditions imposed on persons seeking the admission of an appeal under Part 41 which are set out in s. 957(2) and of s. 959AH (1) of the 1997 Act (hereinafter 'the impugned provisions.') The sections are almost identical with the former applying in respect of years of assessments up to and including 2012 and the latter in respect of assessments for the year of 2013 et seq. It is sufficient to recite only one of the impugned provisions and where reference is made hereafter to one, it includes the other. Section 959AH (1) provides:

> *"Where a Revenue officer makes a Revenue assessment, no appeal lies against the assessment until such time as-*
>
> *(a) Where the assessment was made in default of the delivery of a return,* ***the chargeable person delivers the return****, and*
>
> *(b) In all cases,* ***the chargeable person pays or has paid*** *an amount of tax on foot of the assessment which is not less than the tax which –*
>
> *(i) is payable by reference to any self-assessment included in the chargeable person's return, or*
> *(ii) where no self-assessment is included, would be payable on foot of a self-assessment if the assessment were made in all respects by reference to the statements and particulars contained in the return delivered by the chargeable person."* (Emphasis added.)

The appellants submitted that the tax payer referred to in the above section and in s. 957(2) is clearly the 'chargeable person'. Essentially, such a chargeable person is prohibited from bringing an appeal against an assessment unless he or she has delivered a return and/or has paid an amount of taxes on foot of the assessment. Those specific pre-conditions apply only to chargeable persons. Counsel submitted that he had demonstrated, clearly, that the appellants are not 'chargeable persons' having regard to the provisions of s. 1034 and s. 950 of the 1997 Act. Consequently, the appellants were not caught by the pre-conditions set out in the impugned provisions. Such pre-conditions do not apply to them and, therefore, do not present obstacles to the admission of their appeals.

10. That being so, it was submitted that in circumstances where the appellants sought to appeal an assessment, their application for the admission of such appeal falls to be

determined pursuant to the terms of s. 933. That section deals with appeals, generally. It provides:

"(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as "other officer") shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.

(b) Where on an application under paragraph (a) the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the grounds for such refusal.

(c) A person who has had an application under paragraph (a) refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal."

That section contains no restrictions or pre-conditions such as those contained in the impugned provisions. The appellants submitted that to refuse to admit their appeal based on unfulfilled pre-conditions that did not and do not apply to them as non-residents was 'completely unjust' in circumstances where 'everybody knows' that the appellants are non-resident. The balance of fairness and justice lay with admitting their appeals. If one is not obliged to make a return because one is non-resident, then one's failure to make such a return cannot be used as a reason for refusing the admission of an appeal. That was the central point made by the appellants at the preliminary hearing before the Appeal Commission.

11. All the appellants had travelled from abroad to attend the hearing. However, as it was a preliminary matter and not itself an appeal under s. 933 or s. 824 (which deals with the right to have the question of residence heard and determined) their counsel was reluctant to put them into evidence. If the hearing were, in fact, an appeal then their evidence would be relevant. The fact that they had filed returns for certain years did not change the fact that they remained non-resident and, as such, had no obligation to file returns. The fact that their agent had inserted 'not normally resident in Ireland' on returns that he had filed on their behalf did not affect the factual situation which is that all the appellants were non-resident.

12. Counsel for CAB responded by identifying the matters that appeared not to be in issue between the parties, including, that there were no returns for certain periods and that certain monies which appeared due and owing had not been paid. He then made the following points. There had been no submission made, no factual reason offered as to why a return should not be required at this stage. No reason had been given for not filing a return. Returns can be filed on a without prejudice basis. Nothing had been advanced by way of evidence or submission demonstrating any difficulty in complying with the

legislation. The Commissioner is bound to operate on the explicit words of the legislation. It is difficult to see how the interests of justice could be engaged where no reason was given for not filing a return. The legislation operates to deprive the appellants of an appeal because of a choice that they have made. The Revenue Officers approached their tasks seriously and carefully. The appellants did not point to any place of residence. All they were saying is that wherever it is, it is not Ireland. It is difficult to understand how that statement could be made in circumstances where there was no 'global picture'. From certain references made at the hearing it was established that 'economic activity' is being carried on. There was a whole range of factors to occupy the Commissioner at this stage. The 1997 Act and the requirements of the Act are clear. No reason other than a determination not to comply with the relevant section had been offered. An affidavit had been submitted late in the day, but it did not appear to contain anything to which violent objection could be taken.

13. The Commissioner clarified that it was his understanding that the appellants were not making any admission in relation to alleged outstanding liabilities. He questioned whether he was obliged to take evidence in relation to the factual basis for an assertion by the Bureau to the effect that *'These are not valid appeals because these two statutory pre-conditions are not met'*. Counsel for CAB answered *'If you wish'* but he thought that this would tend to turn matters around and he did not want to *'set a hare running in terms of examining and cross-examining'*. He was anxious to preserve *'the mechanism of the forum and the mechanism of the legislation'*.

14. The Commissioner then asked to be addressed on the argument that the appellants are not chargeable persons and that, therefore, s. 957(2) and/or s. 959AH simply do not apply. Counsel for CAB stated that there was no basis being laid for the proposition that the appellants are not chargeable persons. He pointed to factors, including, the presence of economic activity, the appellants' presence in the State for 'a period of time' and the possession of substantial assets there – as matters of fact and matters of evidence in the hearing. He also pointed to the fact that for a number of years the appellants did file returns of the type they now seek to step away from. He then cited the provisions of s. 957 of the 1997 Act. He said a chargeable person means no more than is evident from the definition section as a person who is capable of being charged.

15. The Commissioner than asked to be addressed on the arguments in relation to s. 1034 to the effect that their non-residence meant that it was their agent and not the appellants, personally, against whom an assessment ought to have been raised. Counsel for CAB presumed that this would be an argument to be raised in relation to the appeals that are pending. Claiming *'You have got the wrong person. You should have raised it in the name of somebody else'* was an argument that can be made. He had yet to hear what *'the pattern of business'* and *'the factual position'* was in relation to the appellants. The appellants' position was based on suppositions for which the ground work had not been laid. Counsel pointed to the case of *DPP v. Thomas Murphy* [2017] IECA 6 in which the respondent argued, unsuccessfully, for the same distinctions between 'a charge to tax' and whether 'a person was a chargeable person'. Counsel hoped he was not treating the

issue of the agent too lightly. He then moved to the question of s. 824. He found it difficult to see how that sat with the overarching argument being made by the appellants. He found it difficult to see how the arguments 'found purchase' when the legislation is clear about what should happen and clear about the consequences of not doing it.

16. Counsel for the appellants, in reply, queried how assessments could have been raised by the respondent if it did not know 'the factual position' of the appellants. He rejected the contention that he was ignoring the legislation. On the contrary and for the avoidance of doubt, he had sought precisely the opposite, namely, to rely upon the legislation. He asked that CAB would do the same as legislation cuts both ways. Everything revolves around whether the appellants are chargeable persons or not. The impugned provisions, relied upon by the respondent, have no relevance if the appellants are non-resident and not chargeable persons. He traced, once again, the statutory provisions from s. 950 to s. 1034. It was clear that non-resident taxpayers are not taxable persons on their own account. Rather, the person who is chargeable to tax is the agent. To say that they should file returns is completely wrong. If CAB wanted returns it should have requested them from the agent.

17. Counsel for the appellants submitted that CAB was fully aware that residence was an issue. This was clear from the papers and, if necessary, an issue could have been raised and further details sought in relation to movements etc. Submissions on residence could have been made and a decision thereon taken which would then have been subject to an appeal. The relevant procedures in this regard are set out in s. 824 of the Act and these should have been followed if residence were an issue. This had not happened. All witnesses were present. The law applies to CAB as well as to the appellants.

18. The Commissioner asked to be addressed on a point made by counsel for the Bureau, namely, that to accept the appellants' arguments in relation to the non-applicability of the impugned provisions would be tantamount to a finding on 'a substantive issue in the appeals', namely, that the appellants are not chargeable persons. He questioned whether he could only accept that argument if he found as a matter of fact on the question of residence. Counsel for the appellants replied that the hearing was 'a preliminary issue' and that the Commissioner was entitled to make a 'without prejudice' finding and there was nothing to prevent him reversing that when the substantive argument was made. Further, there was nothing to stop the Inspector of Taxes from making a decision under s. 824 (on the issue of residence) and that would become an appeal in itself. Section 824 constitutes a separate appeal and is not a preliminary issue. Section 824 confers a right on any person aggrieved by a decision of an officer as to residency to make an application, within a specified time, to have the question heard and determined. The taxpayer can claim to be resident or non-resident, but then it falls to an authorised officer of the respondent to make a decision in that regard. Non-residence was asserted, and no issue was made on that point. Instead, CAB sought to rely on Part 41 (dealing with self-assessment). However, if non-residents are not chargeable persons then Part 41 fails; it falls out.

19. Insofar as counsel for CAB indicated that the appellants would have to be questioned on the number of visits carried out in the State and so forth, they had no issue with that. It could either be done at the substantive hearing or become the subject of an appeal on the issue of residence. When asked by the Commissioner if their interpretation of the impugned provisions would result in those sections being made nugatory, counsel replied that Part 41 was the starting point. Whether or not one is a 'chargeable person' will determine whether one falls within or beyond Part 41 of the Act. The provisions in relation to a person who is non-resident are certain. Once a person is non-resident he or she is not a chargeable person. Non-residents do not file returns. Non-residents are not chargeable or assessable to tax. Their agents may be but they themselves are not. So, when the Revenue is raising an assessment on non-residents they raise it on the accountant or agent. The sections referred to by the Commissioner (the impugned provisions) *'had chargeable persons all over them'*. One needed to start with the definition of a *'chargeable person'* and then establish whether a taxpayer comes within the scope of that definition or not. He had attempted to navigate the Commissioner through the legislation, taking him from s. 118 to s. 1034 to s. 950.

20. The Commissioner stated that it was for him to interpret the legislation in accordance with the established principles. Counsel for the appellants replied that tax legislation required a strict interpretation and that where a doubt exists, it is the taxpayer who is accorded the benefit. As the hearing came to an end, the Commissioner acknowledged that the appellants had travelled for the hearing. He was also mindful that their counsel did not wish to tender them to give evidence at this stage unless he, the Commissioner, was satisfied that such evidence was necessary then rather than at a substantive hearing. He was not satisfied that the taking of evidence was necessary at this juncture. He indicated that notwithstanding the nature of the hearing, he intended to give a written decision on the preliminary issue adding that such was warranted.

21. Some ten months later the decision of the Commissioner issued. It was communicated to the appellants by letter dated 26 April 2018. It stated that the Commissioner:

> *". . having carefully considered the arguments advanced on behalf of the appellants and on behalf of the respondent . . .* ***has decided that the provisions of Section 957(2) . . . and Section 959AH (1)*** *. . . of the Taxes Consolidation Act 1997, as amended,* ***are applicable to the appellants*** *and the obligations to submit returns and to pay tax as a pre-condition to the bringing of an appeal must be satisfied by the appellants before their appeals can be accepted by the Tax Appeals Commission. . . . Accordingly, where your clients have failed to deliver a return or failed to pay their self-assessed tax liabilities in respect of a particular year, the Tax Appeals Commission has decided not to accept the appeal for that year."* (Emphasis added.)

The High Court

22. The appellants sought judicial review of the Commissioner's decision, or series of decisions in respect of specific years, primarily, on the basis that they were not provided

with adequate reasons. On 23 July 2018 an order was made, ex parte, granting leave to apply for judicial review seeking, *inter alia*:

(i) an order of *certiorari* quashing the series of decisions of the Commissioner;

(ii) an order pursuant to Order 84, rule (20)(8) of the Rules of the Superior Courts staying the further pursuit of the appellants in respect of the sums allegedly due to the revenue commissioners on foot of the assessments which are the subject matter of the appeals refused by the Commissioner in his decision.

23. In the High Court judgment, the trial judge set out several provisions of the 1997 Act and noted that pursuant to s. 959AH—*prima facie*—before a person's appeal will be heard, the 'chargeable person' must have filed a return in respect of the relevant period and paid the sum due on foot of that return. He quoted s. 58(1) which provides, inter alia, that profits are taxable even if Revenue does not know of their source. He noted that pursuant to ss. 18(1)(a)(iii) and (iv) of the Act a person can be a 'chargeable person' even where that person is not resident in the State.' He did not, however, allude to the fact that those provisions refer to tax in respect of trade, profession or employment *'exercised in the State'*. He then set out to consider whether the decision of the Commissioner should be invalidated because of the failure of the Appeal Commissioner to give reasons for that decision.

24. In considering the decision of 26 April 2018, the trial judge's decision emphasised that no oral or documentary evidence had been provided before the Commissioner to show that the appellants were not tax resident in Ireland. The appellants' claims as to their tax residency merely rested upon *'bare assertions'*. He also noted that there was some documentary evidence of tax residency in Ireland in respect of the years for which tax returns had been filed. A number of authorities were considered, including, *Connelly v An Bord Pleanála* [2018] IESC 31, *Flannery v Halifax Estate Agencies Limited* [2001] 1 WLR 377 and *Bank of Ireland Mortgage Bank v Heron* [2015] IECA 66 as support for the proposition that there existed a duty to give reasons. The trial judge cited Hardiman J.'s approval in *Oates v Browne* [2016] 1 I.R. 481 of the judgment of Murphy J. in *O'Donoghue v An Bord Pleanála* [1991] ILRM 750 whereby it was held that the reasons stated by the decision maker must *'satisfy the persons having recourse to the tribunal, that it has directed its mind adequately to the issue before it.'*

The trial judge also cited the judgment of Peart J. in the case of *Criminal Assets Bureau v. McCarthy* [2019] IECA 140 recalling that although it may be possible to:

> *"discover some paragraph that might have been better phrased, or where some particular piece of evidence has not been analysed in detail and a conclusion reached upon it. But that is not a ground upon which to set aside the judgment unless the perceived defect represents a fundamental flaw in the judgment such that it is fatally undermined."*

25. On this basis it was held that given the lack of evidence to prove the appellants' non-residency in the State, they could not but have known why the Commissioner found against them. The application for an order of certiorari in respect of the Commissioner's decisions was therefore refused on the basis that reasonable information was provided to the appellants as to why the Commissioner had refused to admit their appeals.

Grounds of Appeal

26. By notice of motion dated 27 July 2018, the appellants sought to set aside the High Court order made on 12 April 2019. The principal grounds relate to the absence of reasons accompanying the Commissioner's series of decisions refusing to allow their appeals. More specifically, the appellants claim that the High Court judge erred in fact and/or in law in:

    1. holding that the respondent had given adequate reasons sufficient to enable the court to review his decision;

    2. holding that the respondent had given adequate reasons sufficient to satisfy the person having recourse to the Tax Appeals Commissioner that it had directed its mind adequately to the issue before it;

    3. deciding and making a determination on an issue of fact in a Judicial Review application that the appellants were chargeable persons in the jurisdiction in the relevant period;

    4. holding that the lack of oral or documentary evidence provided by the appellants to support their claim of non-residency in Ireland was the most important factor, disregarding that the Appeals Commissioner stated that he did not wish or need or require oral evidence from the appellants at the hearing;

    5. holding that the Commissioner might have said more clearly that he rejected the argument that the appellants were not resident in Ireland because there was no evidence to support that proposition because this would have rendered the hearing procedurally unfair;

    6. failing to consider the submission to the Commissioner that the fifth applicant was a minor and on that basis alone failed to consider the submission that the appeal bar set out in s. 957 of the Taxes Consolidation Act 1997 did not apply for the income tax years 2005 and 2006;

    7. holding that *'there could be no question that justice has not been seen to be done, by the relative brevity of the Appeal Commissioner's decision, since any observer of the proceedings would have seen that no evidence was provided to support a finding of residence somewhere other than Ireland'* in circumstances where it was argued before the Appeals Commissioner that there was no need for residence anywhere and it was sufficient that the appellants were not resident in Ireland;

8. holding that *'this was not a case of intellectual exchange, with reasons and analysis advanced on either side, where the decision maker must enter into the issues canvassed before him and explain why he prefers one case over the other'* in circumstances where the Appeals Commissioner had stated that there was no need for the appellants to give oral evidence and the entire hearing consisted of an intellectual exchange; and

9. failing to have regard to the fact that in submissions to the Appeals Commissioner the issue of non-residency was assumed by the appellants not to be in issue.

The appellants submitted that, in all circumstances, the Commissioner's decision was wrong in principle and in law.

The Parties' Submissions

27. The appellants submitted that the Commissioner should have provided adequate reasons as to why their appeals were rejected. Where a tax residency dispute arises, the default rights set out in s. 933 and s. 949 of the Act apply. The appellants should have a right of appeal on this issue without any such obligations as filing an income tax return and/or payment of income tax due on foot of this return. Not to do so would be prejudicial to the application of s. 1034 of the Act. Relying upon *Doyle v Banville* [2018] IESC 25, they claimed a necessity for decision makers to provide reasons for their decisions. The trial judge misapplied *Criminal Assets Bureau v. McCarthy* [2019] IECA 140 in his finding that sufficient information was given to them. *Mallak v Minister for Justice, Equality and Law Reform* [2012] 3. I.R. 297 should be applied. The Commissioner had failed to engage with their central argument that an individual not tax resident in the State cannot be a chargeable person and that obligations to be fulfilled prior to an appeal, to include the filing of an annual return and the payment of tax, fall upon their agent. As no determination was made by the Commissioner on the issue of non-residency, the High Court was incorrect in refusing the relief sought by finding the Commissioner's decision was supported by adequate reasons.

28. CAB acknowledged that the essential facts of the case were not in dispute; rather, it was the interpretation of the legislative provisions of the Act and the interpretation of the established legal principles that were contested. The Commissioner's statement during the hearing that he did not require the appellants to give evidence was acknowledged. Had oral and documentary evidence been provided by the appellants, it may have required more involved reasoning by the Commissioner in his determination. The appellants could still have been called by their own counsel to give evidence. The High Court found that a person can fall within the definition of 'chargeable person' even while not being resident. No appeal lies against an assessment unless s. 959AH of the Act has been complied with. Section 959AH does not disapply the provisions of the Act which require returns to be filed and tax paid, providing, in subs. (3):

> *"Where the provisions of the Acts relevant to the appeal concerned require conditions specified in those provisions to be satisfied before an appeal may be made, a notice of appeal shall state whether those conditions have been satisfied."*

References to s. 1034 of the Act were not relevant to the matter at issue. The High Court was correct, and the jurisprudence had been applied correctly. The trial judge was correct in his finding that while more involved reasoning may have been required had additional evidence been before the Commissioner, the appellants were in no doubt as to the reasons for his decision, and accordingly, this appeal should be dismissed.

Legal Principles

29. When reviewing a discretionary decision of the High Court on appeal, the approach to be taken by this Court has been summarised by Irvine J. in *Collins v. Minister for Justice* [2015] IECA 27. At para. 79, Irvine J. stated that the true position is as set out by MacMenamin J. in *Lismore Homes*, namely:-

> *". . . that while the Court of Appeal (or, as the case may be, the Supreme Court) will pay great weight to the views of the trial judge, the ultimate decision is one for the appellate court, untrammelled by any a priori rule that would restrict the scope of that appeal by permitting that court to interfere with the decision of the High Court only in those cases where an error of principle was disclosed."*

30. The requirement of a strict construction to taxation statutes has been confirmed in a number of decisions of the Irish courts. In *Inspector of Taxes v Kiernan* [1981] IR 117 where the assessment of income tax pursuant to s. 78 of the Income Tax Act 1967 was in issue, the Supreme Court (Henchy J.) held at p. 122 that:

> *"when a word or expression is used in a statute creating a penal or taxation liability, then if there is looseness or ambiguity attaching to it, it should be construed strictly so as to prevent the fresh imposition of liability from being created unfairly by the use of oblique or slack language."*

In the case of *Harris v Quigley* [2006] 1 I.R. 165, Geoghegan J. confirmed at p. 183 that *'there is a countervailing principle that where there is an ambiguity a taxing statute will be interpreted in favour of the taxpayer.'*

31. It is also a well settled principle of Irish law that a public law decision maker is obliged to give reasons for decisions made. The obligation was stated in the following terms by Murray C.J. in *Meadows v. Minister for Justice* [2010] 2 I.R. 701:-

> *"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context. Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective."*

32. The Irish courts have long recognised that the absence of reasons can lead to a decision being quashed for unreasonableness (*State (Daly) v. Minister for Agriculture* [1987] I.R. 165); that reasons are necessary where a right of appeal is allowed (*Pok Sun Shum v. Ireland* [1986] ILRM 593); and, that reasons must be given to an applicant who has a right to re-apply for a licence (*International Fishing Vessels v. Minister for the Marine* [1991] 2 I.R. 93). These cases embrace a broad range of circumstances. The Supreme Court in *Mallak v Minister for Justice, Equality and Law Reform* [2012] 3. I.R. 297 rejected the contention that where a decision maker is exercising an 'absolute discretion' he is discharged from the obligation to provide reasons. Fennelly J., giving the judgment of the Court, noted that *'the rule of law requires all decision-makers to act fairly and rationally'*. He recalled the overarching principle that:

> *"persons affected by administrative decisions should have access to justice, that they should have the right to seek the protection of the courts in order to see that the rule of law has been observed, that fair procedures have been applied and that their rights are not unfairly infringed."*

The furnishing of reasons, according to Fennelly J, is an intrinsic aspect of the fairness of proceedings. He stated at para. 68: -

> *"In the present state of evolution of our law, it is not easy to conceive of a decision maker being dispensed from giving an explanation either of the decision or of the decision making process at some stage. The most obvious means of achieving fairness is for reasons to accompany the decision. However, it is not a matter of complying with a formal rule: the underlying objective is the attainment of fairness in the process. If the process is fair, open and transparent and the affected person has been enabled to respond to the concerns of the decision maker, there may be situations where the reasons for the decision are obvious and that effective judicial review is not precluded."*

33. In the unanimous Supreme Court judgment in *Connelly v An Bord Pleanála* [2018] IESC 31, the Chief Justice reiterated the two principal bases for the obligation to provide reasons. Firstly, a person is entitled to have enough information to consider whether they can or should seek to avail of any appeal or bring judicial review of a decision. Secondly, the reasons provided must be such as to allow a court hearing an appeal from or reviewing a decision to engage properly in such an appeal. Of course, there may be debate about the extent to which decisions require to be reasoned and about the level of detail required. On that point, Clarke C.J. in *A.P. v Minister for Justice and Equality* [2019] IESC 47, confirmed that notwithstanding such debate, the party affected must always be enabled to identify the reasons for the decision and must be able to challenge this decision by way of judicial review if necessary.

34. In *Nano Nagle Schools v Daly* [2019] IESC 63, MacMenamin J. observed (at paras. 74 and 75) that:

"A tribunal, or other decision-maker which is under a duty to give reasons for its decision, should, as part of this process, give some outline of the relevant facts and evidence upon which the reasoning is based. This does not in any sense, mean that a determination must set out all of the evidence; but it should set out such evidential material which is fundamentally relevant to its decision or determination; still more if such relevant evidence is not disputed.

…

There is already a rich and evolved jurisprudence on the duty of deciding bodies to give reasons … Parties to a decision are entitled to know why they have won or lost, as a matter of fair procedure, and in order to decide whether to appeal. But parties are also entitled to be assured that, in making a decision, an administrative or curial tribunal has had regard to very relevant evidence which arguably had the potential to be potentially determinative of an issue, if not the claim, before it."

In *Nano Nagle v Daly*, whilst the Supreme Court found that a thorough investigation had been carried out by the Labour Court, it nevertheless held that significant and relevant material had not been recorded or properly evaluated and, on this basis, it quashed the decision of the Labour Court.

Discussion

35. The extent to which, if at all, significant and relevant material which had been opened to the Commissioner was, in fact, evaluated by him falls to be considered in this appeal. Whilst it is recognised that not every situation of every administrative tribunal requires to be subjected to 'minute analysis', a review of the jurisprudence demonstrates, unequivocally, that parties to litigation have a right to be apprised of the basic reasons why decisions that concern them have been made. It is, therefore, necessary to assess, on the facts of this case, whether the appellants were furnished with reasons as to why their application to admit appeals—which they claimed did not fall within the impugned provisions—was nevertheless refused admission by the Tax Appeal Commissioner.

36. The first matter to be observed is that the hearing before the Commissioner on 21 June 2017 was a hearing held pursuant to s. 949E(2) of the 1997 Act. It was arranged, specifically, for the purpose of deciding whether or not the appeals sought by the appellants should be admitted in the context of CAB having objected to their admission because, in its view, the preconditions necessary for an appeal as laid down in ss. 957(2) and 959AH had not been met. The appellants' starting point was that those very preconditions laid down in the impugned provisions did not apply to their application. They applied only to a 'chargeable person' and as the appellants were not 'chargeable persons' under the Act, they could not and did not apply to them. Through their counsel, they had submitted a careful, detailed and structured analysis of a number of statutory provisions which, they claimed, led to the conclusion that they were not 'chargeable persons'. On that basis, the preconditions which applied to chargeable persons before their appeal could be heard, did not apply to them. Their appeals, it was argued, did not fall to be determined under those impugned provisions but rather fell to be determined by

way of a general appeal whether under s. 933 or under s. 824. In these circumstances, whether they had fulfilled the preconditions of the impugned sections was irrelevant.

37. It is clear from the foregoing that the legal question to be decided by the Commissioner was whether the preconditions contained in the impugned sections apply to a non-resident having regard to the Act's definition of what constitutes a 'chargeable person'. The *factual* question as to whether the appellants were *de facto* non-resident would only need to be addressed if their argument on the legal one succeeded.

38. A review of the transcript demonstrates that, at various stages throughout the hearing, the Commissioner made interventions which indicated that he understood and engaged in exchanges on the issue at the heart of the appellants' submission. For example, the Commissioner queried whether he needed to take evidence in relation to the factual basis for CAB's assertion that *'These are not valid appeals because these two statutory pre-conditions are not met'* (at p. 42). Counsel for CAB suggested that the taking of evidence would tend to turn matters around, to 'set a hare running in terms of examining and cross-examining'. He was anxious to preserve *'the mechanism of the forum and the mechanism of the legislation'*. In so replying, it appears that counsel for CAB may not have appreciated that it was the application of that very legislative mechanism to the appellants' request for the admission of their appeals that was being challenged in the preliminary hearing. The Commissioner did not pursue the question.

39. Another example of the Commissioner's manifest understanding of and engagement in the appellants' position was when he asked to be addressed on the argument that they were not chargeable persons and that, therefore, the impugned provisions did not apply to them (at p. 45 of the transcript). Counsel for CAB replied that *'There was no basis being laid'* for the proposition that the appellants are not chargeable persons. It must be said that even a cursory reading of the transcript discloses that, in fact, a detailed legal basis had been laid for the proposition espoused by the appellants. Their counsel had presented a study of statutory provisions on the meaning of a 'chargeable person' in the context of non-residence, the interpretation of which provisions, in his view, led to no other conclusion but that the appellants were not chargeable persons and that, consequently, the impugned provisions which applied to chargeable persons did not apply to them. Without addressing the legal issue at the heart of the Commissioner's request, counsel for CAB replied only in terms of the factual situation of the appellants.

40. The Commissioner's engagement during the hearing with the appellants' core argument may be seen, once again, when he asked to be addressed on the submission that s. 1034 meant that because of their non-residence it was the appellants' agent and not they themselves against whom an assessment ought to have been raised (see p. 49 of the transcript). Counsel for CAB replied in terms of wanting to hear *'the pattern of business'* and *'the factual position'* in relation to the appellants. He said he *'hoped he was not treating the issue of the agent too lightly'*. It appears, perhaps, that he was, because he did not address the Commissioner on the question of agency. He pointed out that the legislation was *'clear about what should happen and clear about the consequences of not*

doing it' without, apparently, appreciating that it was the application of that very legislation to the appellants' situation that was the subject of the challenge in the preliminary hearing.

41. The above interventions demonstrate that the Commissioner had understood the essence of the appellants' submissions at the preliminary hearing. Indeed, at the end of the hearing, he stated that it was for him to interpret the legislation in accordance with the established principles. Having regard to the interventions made by the Commissioner and to the analysis of provisions of the Act which had been opened to him in support of the argument that the impugned provisions did *not* apply to the appellants, one cannot but be struck by the brevity of the Commissioner's reply. Essentially, his response was - 'They do!' The letter of 26 April 2018 states that having considered the arguments advanced by both parties, the Commissioner decided the impugned provisions are applicable to the appellants. Since the appellants had failed to comply with the required preconditions in those provisions, their appeals were not accepted.

42. The letter acknowledges that the Commissioner had 'carefully considered' the arguments. However, it does not articulate, even summarily, why he had rejected them. At the very least, as a matter of fair procedure, the appellants were entitled to know why their arguments had failed or, in other words, why they had lost (see *Nano Nagle v Daly*). The decision that issued does not provide any reason as to why, nor any explanation as to how, the Commissioner arrived at the conclusion that the impugned provisions apply to the appellants. At no stage does he address, let alone weigh, the principal arguments raised by the appellants to the effect that the pre-conditions contained in the impugned provisions refer to a 'chargeable person' and, since they are not 'chargeable persons' because of their non-residence, the provisions do not apply to them. Although he had stated that it was for him to interpret the legislation in accordance with the established principles, no such interpretation was offered by way of an alternative to the one carefully set out by the appellants.

43. Furthermore, there is no evidence in the letter of 26 April 2018 which demonstrates that the Commissioner had addressed his mind to any of the arguments raised by the appellants. For example, at no stage is it explained why he considers the appellants to be chargeable persons. At no stage does he address the question of their agent (as distinct from the appellants) being the appropriate 'chargeable person' under the Act. At no stage does he consider, let alone determine, the issue of the residence or non-residence of the appellants. Nor does he address whether a determination under s. 824 of the Act (a determination on residence) ought to have been made. At no stage is it explained why the general provisions of s. 933 relating to appeals should not apply to the appellants. It had been pointed out to him that under s. 933 'any person aggrieved by an assessment was entitled to an appeal' without the preconditions contained in the impugned provisions. Without identifying even one of arguments raised by the appellants, the Commissioner simply proceeded to find only that the impugned provisions were applicable to them. That being so and those preconditions not having been met, he then refused to

admit the appeals. Such a failure to engage in any way with any of the points raised by the appellants is problematic, to say the least.

44. In the High Court, the trial judge noted, by reference to ss. 18(1)(a)(iii) and (iv) of the 1997 Act, that a person can still fall within the definition of 'chargeable person' even where that person is not resident in the State. However, those provisions insofar as they concern profits or gains accruing to any non-resident person, refer, expressly, to profits or gains arising from the sale of goods or wares manufactured 'in the State' or from any trade, profession or employment '*exercised in the State'*. The appellants' case was that as non-resident tarmacking contractors, they carried on their business *outside* the State at various locations in other EU countries. A substantial part of the trial judge's reasoning centred on the question of residence. He held against the appellants, noting that no documentary evidence had been provided by them to support their contention that they were not tax resident in Ireland nor was any documentation tendered to suggest they were tax resident in any other jurisdiction. He considered that the case before the Commissioner was based solely on the submissions of counsel rather than evidence. On this last points, two comments are apposite—the first on the question of submissions and the second on the issue of residence.

45. Firstly, it is true that the case before the Appeal Commissioner was based, substantially, on the legal submissions of counsel (although the appellants had, in fact, travelled to be available, if required, to give evidence at the hearing). Their counsel had, in the first instance, raised an issue concerning the correct legal interpretation of the term 'chargeable person'. He provided a detailed analysis of specific legal provisions which, to his mind, led to two conclusions:

    (i) that the term 'chargeable person' did not include a non-resident person; and

    (ii) that as the appellants were non-resident they were not chargeable.

    The first conclusion was a legal one—purely a matter of statutory interpretation—and, thus, a question for submission; the second was a factual one—to be determined on the basis of evidence.

46. To my mind, the Commissioner was obliged, at the very least, to consider and determine whether the appellants' submission on (i) above was correct (Step 1). He was obliged to address his mind to the interpretation of the provisions that had been offered by the appellants. If that interpretation was not correct, then he was obliged to explain, even briefly, why. Had he so found, then, to my mind, he would have been discharged from proceeding to consider (ii) above, since chargeability and residence were unquestionably intertwined in the submission offered by the appellants. At that point, having explained why he rejected the submission that the appellants were not chargeable persons, the Commissioner would have been entitled to find that the impugned provisions applied and that in default of compliance with the necessary pre-conditions, the appeals would not be admitted. Had he so done, the appellants would have known why the interpretation of the

provisions upon which they relied was incorrect and why they did, in fact, come within the terms of the impugned provisions.

47. If, on the other hand, at the end of Step 1, the Commissioner had concluded that the interpretation offered by the appellants was correct in law and that the term 'chargeable person' did not include a non-resident person, then he would have been obliged to move to Step 2 and to consider whether the appellants' submission to the effect that they were non-resident (and, therefore, not chargeable) was correct. It is only at this stage of the process of consideration that the taking of evidence would have been necessary in order to make a such a determination. If he had found—based on evidence that was called and tested—that the appellants were non-resident (for some or all of the years in question) then they would have succeeded in establishing that the admission of their appeals (in respect of the relevant years of non-residence) was not to be determined in accordance with the impugned provisions which contained the aforesaid preconditions. If, alternatively, the Commissioner had found—based on evidence that was called and tested—that the appellants *were* resident in Ireland for tax purposes, then he would have been entitled to find that the appellants, being resident, *were* chargeable, that, consequently, they came within the terms of the impugned provisions, that they had not met the pre-conditions and that their appeals ought not be admitted. What he was not entitled to do was to bypass Step 1 by ignoring the submissions made as to the meaning of 'chargeable person' under the 1997 Act and proceed to determine Step 2, in the absence of any evidence and without having offered any reasons as to why he had proceeded so to do.

48. The second comment to be made in relation to the trial judge's reasoning concerns the considerable reliance he placed upon the fact that the appellants had not offered any evidence (documentary or otherwise) of their alleged non-residence for tax purposes. It must be said that the question of residence and the taking of evidence in connection therewith had been raised on several occasions during the preliminary hearing before the Commissioner. Counsel for the appellants had stated that it was clear from the papers that the appellants were claiming non-residence. He addressed the Commissioner on what ought to have happened if their non-residence was in issue. The question of residence and the right to have that issue heard and determined came within the provisions of s. 824 of the Act. That section contained specific procedures that ought to have been followed in the event that the tax authorities took issue with a claim of non-residence. Had those procedures been followed then further details of his clients' movements could have been sought and submissions on residence could have been made. Thereafter, a decision could have been taken which would then, in itself, have become the subject of an appeal. The relevant procedures are set out in s. 824 of the Act and these procedures should have been followed by CAB if residence was in issue. CAB was obliged to comply with the law and this had not happened.

49. Counsel for the appellants had pointed out that his clients had travelled from abroad for the hearing and that if the Commissioner considered it necessary to hear their evidence they were available for that purpose. He had 'no issue' with them being questioned about

the number of visits they made to the State (at p. 61 of the transcript). The transcript, to my mind, does not support a view that counsel for the appellants had failed or neglected to put his clients into evidence. It appears to me that he was concerned, primarily, with the logical sequence of proceedings. He was asserting the need to determine, firstly, the correct legal interpretation of certain statutory provisions before, secondly, deciding the *factual* question of residence.

50. It should also be recalled that notwithstanding their presence at the preliminary hearing it was the Commissioner who decided that he did not wish to hear evidence on the issue of residence (at p. 64 of the transcript). On any reading of the letter of 26 April 2018, it seems clear that the decision which ultimately issued was based on the Commissioner's presumption that the appellants were resident and were, thus, chargeable persons. In my view, such a presumption could not have been reached, appropriately, by the decision maker without his having heard evidence in circumstances where the *factual* question of residence was at the heart of the matter in issue once the *legal* issue as to the meaning of 'chargeable person' under the 1997 Act had been determined.

51. The trial judge regarded the central question in the judicial review proceedings as being whether the wording of the decision of the Commissioner was fatally undermined for want of reasons. He cited a number of extracts from the relevant jurisprudence and confirmed that a decision maker must give reasons to ensure that individuals are in no doubt as to why they have won or lost and so that a court reviewing the decision is satisfied that the decision maker directed his/her mind to the issue at hand. He also noted that the nature of the requirement to give reasons would depend on the nature and extent of the conflicting evidence before the decision maker. In his view, however, 'the most important factor' in considering the appellants' complaints regarding the Commissioner's decision was the fact that they did not provide documentary or oral evidence to support their claim of non-residence. He took the position that all the Commissioner had to decide was whether the 'bare assertions' made in respect of non-residence should be accepted or not. With respect to the trial judge, I disagree. My reasons for so doing are set out in paras. 46 and 47 of this judgment.

52. The trial judge, it appears, was inclined to the view that the appellants 'well knew' of the reasons for the refusal to admit their appeals, namely, their failure to produce evidence of non-residence. This was to overlook the very nature of the application before the Commissioner which was to hear and rule on a legal submission as to the meaning of a statutory provision and, thereafter, to apply that ruling to the factual situation of the appellants. The trial judge, in my view, had insufficient regard to the fact that this was a preliminary hearing on a legal issue as to whether certain appeals were admissible. Clearly, their counsel's reluctance to put them into evidence on the factual issue was based on the reality that the legal issue had not, as yet, been determined or, as it was put, that the proceedings had not moved 'to the substantive issue' (p. 32 of the transcript). The preliminary hearing was not an appeal but a request for the admission of an appeal based on an argument as to the correct construction of certain statutory provisions.

53. I have come to the view that the trial judge's criticism of the appellants' failure to provide evidence is misplaced in circumstances where (i) the issue to be decided in the first instance was a legal one, the outcome of which would then determine whether evidence on residence was required; (ii) the appellants had travelled for the purpose of being present at what was a *preliminary* hearing and where they were available to give oral evidence as to fact, if required so to do by the decision maker; and (iii) it was, ultimately, the Commissioner who had decided that he did not wish to hear their evidence *at that stage* of the proceedings. To counsel for the appellants he had stated (at p. 64 of the transcript):

> *"[Y]ou indicated that you were not proffering your clients to give evidence unless I was satisfied that it was necessary for me to do so today rather than at a substantive hearing**. And what I'm saying is I'm not satisfied at this juncture that it's necessary for them to do so**, but I do want to acknowledge the fact that they travelled for the hearing today . . ."* (emphasis added).

Having taken this position, the Commissioner, to my mind, was not entitled to proceed to determine (or at least to presume) that the appellants were, in fact, resident having declined to take evidence on point and the trial judge's criticism of the appellants' failure to provide evidence was inapposite in all the circumstances.

54. The trial judge was of the view that this *'was not a case of an intellectual exchange, with reasons and analysis advanced on each side, where the decision maker must enter into the issues canvassed before him and explain why he prefers one case over the other'*. With great respect to the learned judge, I disagree. This was, precisely, a case where an intellectual exchange had occurred as to the correct statutory construction of the term 'chargeable person' under the 1997 Act. A forensic analysis of several statutory provisions had been presented which, in the appellants' view, led to one conclusion only as to the meaning of the term 'chargeable person'. That was the legal issue. If they succeeded on that point, then the factual question of residence fell to be determined. On various occasions throughout the hearing the Commissioner had engaged in that intellectual exchange and had requested to be addressed on the implications of submissions made (see paras. 38-40 above). Once that interpretive exercise had been resolved, one way or another, by the Commissioner, then the question of its practical implications, if any, for the appellants' situation required to be addressed.

55. This did not, in fact, occur. On the contrary, both the Commissioner and the trial judge focused only on the conclusion as to fact (reached in the absence of evidence) that the appellants were chargeable persons without having addressed the detailed legal arguments as to why they were not. The decision of 26 April 2018 demonstrates a failure on the part of the Commissioner to address his mind, adequately, to the issues that had been raised before him (see Murphy J. in *O'Donoghue v An Bord Pleanála*). This was not a case in which *'some paragraph of the decision'* might have been better phrased (see *Criminal Assets Bureau v McCarthy*). This was a case in which no reason at all had been offered as to why the Commissioner concluded that the appellants' submission as to the

correct meaning of the term 'chargeable person' was incorrect as a matter of law and, why it should, therefore, be rejected. Far from being *'left in no doubt as they why they lost'* (see Henry L.J. in Flannery v *Halifax Estate Agencies Limited*) the appellants are left in a position that, as the losing party, they do not know why the Commissioner has decided that they are, in fact, chargeable persons and that they thus come within the terms of the impugned provisions.

56. It is not uncommon for courts to be called upon to rule on a legal submission as to the meaning of a statutory provision and only, thereafter, to hear evidence in a given case. This was a case calling for (i) a legal interpretation of the term 'chargeable person' and (ii) the application of that legal interpretation to the factual situation of the appellants. Having regard to the substantial arguments raised as to the correct interpretation of the relevant statutory provisions and to the principle that requires a strict interpretation of a taxing statute (see *Harris v Quigley*) it was not open to the Commissioner, or to the trial judge, to fail to consider those arguments.

57. The Commissioner in his decision bypassed the submissions made on the correct interpretation of certain statutory provisions and proceeded to make a decision founded upon what can only have been a presumption of residence, the evidential basis of which had not been established. The result has been that the appellants are left in a situation in which it appears to them that they have not been 'heard'. Their detailed legal submissions were rejected, and they have not been told why. An intrinsic aspect of fairness has thus been breached.

58. The brevity of the Commissioner's decision and its silence regarding the submissions made is all the more remarkable in circumstances where he had, expressly, taken the view that the arguments raised by the appellants were such that they warranted a written decision, notwithstanding the preliminary nature of the hearing. Despite his statement to this effect, a decision issued some ten months after the hearing which failed to address any of the arguments raised by the appellants. It stated that the impugned provisions did apply and that in default of the preconditions therein being met, the appellants' request for the admission of appeals was refused.

59. The terms of the letter cannot but lead to the conclusion that the Commissioner failed to engage with any of the substantive arguments, or indeed, with any of the arguments, put forward by the appellants. As noted by Clarke C.J. in *A.P. v Minister for Justice and Equality* the reasons required to be set out by decision makers need not be overly extensive or detailed. There is no requirement to give a discursive determination such as might be found in a superior court's judgment. However, *'it is equally true that the reasoning cannot be so anodyne that it is impossible to determine why the decision went one way or the other'* (see Clarke C.J. in *Connelly*). This is a case in which it is impossible to know why the Commissioner rejected the appellants' core legal argument that a 'chargeable person' does not include a non-resident person and to know why he had come to that view.

60. For the reasons set out in this judgment I would allow the appeal.