

Appeal No. VA16/1/032

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

Jesuit Missions Trust

APPELLANT

and

Commissioner of Valuation

RESPONDENT

In Relation to the Issue of Quantum of Valuation in Respect of:

Property No. 766004, Office at 20 Gardiner Street Upper, County Borough of Dublin.

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 21ST DAY OF AUGUST, 2017

B E F O R E:

Niall O’Hanlon – BL

Deputy Chairperson

Patrick Riney – FSCSI, FRICS, ACI Arb, FIABCI, PC

Member

Claire Hogan – BL

Member

1. A Notice of Appeal in respect of Property No. 766004 (hereafter “the Subject Property”) was received by the Tribunal on the 4th of February, 2015. The grounds upon which the Appellant considered the valuation of the Subject Property to be incorrect were specified in the Notice of Appeal to be:

“The valuation should be excluded from the list. The MCC is that the property is occupied by a charitable organisation as outlined in Schedule 4 of the Valuation Act 2001.”

2. A hearing in respect of the appeal took place in the offices of the Valuation Tribunal at Holbrook House, Holles Street, Dublin 2, on the 12th day of December, 2016. Mr. Paul Gallagher S.C. and

Mr. Jonathan Miller B.L., instructed by O'Connor, Solicitors, appeared on behalf of the Appellant; Mr. Robert O'Neill B.L., instructed by the Chief State Solicitor, appeared on behalf of the Respondent. Mr. John Algar gave evidence on behalf of the Appellant whilst Mr. John O'Brien gave evidence on behalf of the Respondent.

The Substantive Issue Arising on this Appeal

3. The Appellant is appealing against the Respondent's decision that the Subject Property (the Appellant's premises) is not entitled to an exemption from rates.
4. The issue that the Appellant seeks to raise in this Appeal is succinctly stated at paragraph two of its written submissions, namely: Since the Tribunal's decision in *World Missions Ireland v. Commissioner of Valuation VA12/1/008* wherein it was held that the advancement of religion does not constitute a charitable purpose within the meaning of Schedule 4 of the Valuation Act, 2001, (hereafter "the Principal Act") save for the specific circumstances referred to in paragraph 7 therein, the definition of "*charitable purpose*" has been placed on a statutory footing. The definition of "*charitable organisation*" contained in section 3 of the Principal Act has been amended by section 2 of the Valuation (Amendment) Act, 2015, (hereafter "the 2015 Act"). Accordingly, by reason of this amendment, the Subject Property (the Appellant's premises) is exempt from rates pursuant to paragraph 16 (a) of Schedule 4 of the Principal Act.
5. The Appeal is concerned with the net legal issue set out in the immediately preceding paragraph. Mr. Gallagher helpfully indicated that the Appellant was not seeking to maintain a claim under the Principal Act otherwise than as set out above. Further, the Tribunal was informed by the parties to the appeal that there were no factual disputes arising between them.

The Relevant Statutory Provisions

6. Section 2 of the 2015 Act amends section 3 of the Principal Act in a variety of ways, including:
 - “(a) by substituting for the definition of “charitable organisation” the following:
 - “ ‘charitable organisation’ means a charitable organisation within the meaning of section 2 of the Charities Act 2009 that is entered in the register of charitable organisations pursuant to Part 3 of that Act;”, ”
7. In turn section 2 of the Charities Act, 2009, provides that, inter alia, that:

“(1) In this Act—

...

“charitable organisation” means—

- (a) *the trustees of a charitable trust, or*
- (b) *a body corporate or an unincorporated body of persons—*
- (i) *that promotes a charitable purpose only,*
 - (ii) *that, under its constitution, is required to apply all of its property (both real and personal) in furtherance of that purpose, except for monies expended—*
 - (I) *in the operation and maintenance of the body, including monies paid in remuneration and superannuation of members of the staff of the body, and*
 - (II) *in the case of a religious organisation or community, on accommodation and care of members of the organisation or community,*
- and*
- (iii) *none of the property of which is payable to the members of the body other than in accordance with section 89,*
- but shall not include an excluded body:”*

The Appellant’s Submissions

8. The Appellant argues that since the implementation of the Charities Act 2009 and the subsequent enactment of the 2015 Act, a body registered with the Charities Regulator, being Part 3 compliant, must now be recognised as a “*charitable organisation*” for the purposes of exemption from rates.
9. The Appellant’s argument is that since section 2 of the 2015 Act amends section 3 of the Principal Act, by substituting for the definition of “*charitable organisation*” previously contained in the Principal Act, the definition contained in section 2 of the Charities Act 2009 and since the definition contained in the 2009 Act makes reference to “*charitable purposes*” which term is defined in section 3 of the 2009 Act to include the advancement of religion, that the section 3 definition also applies to the Principal Act. The Appellant goes on to argue that, since the section 3 definition includes the advancement of religion as a charitable purpose, the restrictive interpretation adopted by the Tribunal in *World Missions Ireland v. Commissioner of Valuation VA12/1/008* has no application.

The Respondent’s Submissions

10. The Respondent’s submission on the net issue before the Tribunal was that, whilst the law has been changed as regards what is a charitable organisation by the 2015 Act, the definition of a charitable purpose has not been changed.

The Decision of the Tribunal

11. To hold in favour of the Respondent it would be necessary for the Tribunal to be satisfied that the Oireachtas, in enacting the 2015 Act, had taken the definition of *charitable organisation* from the 2009 Act and inserted it into the Principal Act. The fact that the Oireachtas had not similarly taken the definition of *charitable purpose* (which is also defined in the 2009 Act) and inserted it into the Principal Act would strongly suggest that it was not the intention of the Oireachtas to amend the definition of *charitable purpose* which prevailed prior to the enactment of the 2015 Act. However, there are two problems with such an analysis.
12. *Firstly*, it is apparent, from an examination of the terms of the definition of charitable organisation contained in the 2009 Act, and reproduced at paragraph 7 above, that the definition is not capable of being read independently of the 2009 Act. That this is the case is made *explicitly* clear by paragraph (b) (iii) of the definition, which refers to section 89 of the 2009 Act. That this is the case is made *implicitly* clear by the reference, in the last line of the definition, to “*excluded body*”; an “*excluded body*” is defined elsewhere in section 2 of the 2009 Act. It is not clear to this Tribunal upon what principle of statutory interpretation it would be permissible to have recourse to the definition of *excluded body* in the 2009 Act but not to have recourse to the definition of *charitable purpose*, contained in that Act, (and which term is also included in the definition of what constitutes a *charitable organisation*) in interpreting the term *charitable organisation* for the purposes of the Principal Act.
13. *Secondly*, and more fundamentally, it is simply not the case that the terms of the definition of charitable organisation contained in the 2009 Act were inserted *simpliciter* into the Principal Act. Instead, the Oireachtas substituted, for the previous definition of charitable organisation in the Principal Act, the following:
- “ ‘*charitable organisation*’ means a *charitable organisation* within the meaning of section 2 of the Charities Act 2009 that is entered in the register of charitable organisations pursuant to Part 3 of that Act; ”
14. Whilst this is manifestly not a reproduction of the wording of the definition of the term *charitable organisation* contained in the 2009 Act, it is, in the view of this Tribunal, a clear expression of the intention of the Oireachtas that, for the purposes of the Principal Act, the term *charitable organisation* in that Act is to have the same meaning as in the 2009 Act. Further, it is apparent that the definition of *charitable purpose* contained in the 2009 Act is an intrinsic part of the definition of *charitable organisation* contained in that Act.
15. Accordingly, the Tribunal finds in favour of the Appellant.