

Docket: 2012-2295(IT)G

BETWEEN:

KULWANT SINGH NARULA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 12, 2014, at Vancouver, British Columbia.

Before: The Honourable Justice David E. Graham

Appearances:

For the Appellant: The Appellant Himself

Counsel for the Respondent: Zachary Froese

JUDGMENT

The Appeal of the reassessments of the Appellant's 2006 and 2007 taxation years is dismissed with costs payable to the Respondent forthwith.

Signed at Ottawa, Canada, this 19th day of December 2014.

“David E. Graham”

Graham J.

Citation: 2014 TCC 371
Date: 20141219
Docket: 2012-2295(IT)G

BETWEEN:

KULWANT SINGH NARULA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] Kulwant Singh Narula operated a pizza restaurant as a sole proprietorship from 2002 to 2007. Mr. Narula and his wife were the only people who worked in the business. The Minister of National Revenue reassessed Mr. Narula's 2006 and 2007 taxation years using a bank deposit analysis and applied gross negligence penalties. Mr. Narula has appealed that reassessment.

[2] The parties agree that, unless the Minister can demonstrate that Mr. Narula made a misrepresentation in his 2006 tax return, his 2006 taxation year is statute-barred.

Bank Deposit Analysis

[3] The Respondent called the auditor, Larry Buddingh, as a witness. I found Mr. Buddingh to be credible. He explained that Mr. Narula did not have sufficient business records to conduct a normal audit and thus it was necessary to perform a bank deposit analysis. He explained how he had conducted the bank deposit analysis, the various adjustments that he had made to ensure that non-taxable deposits, GST and transfers had been excluded from his calculations and the various adjustments that he had made to account for deposits for which Mr. Narula provided credible explanations. I found Mr. Buddingh's methodology to be sound and accept his conclusion that Mr. Narula had \$43,151 and \$51,839 in unexplained

deposits to his business and personal accounts in his 2006 and 2007 taxation years respectively.

[4] Mr. Narula offered very little in the way of explanation for these deposits. His sole explanations involved loans from his parents and a friend.

[5] Mr. Narula testified that his parents, who live in India, lent him \$14,000 in 2006 and \$15,000 in 2007 but he did not show how or when those funds were deposited to his bank accounts, explain the reason for the loans, demonstrate any repayment of the funds or offer an explanation of how the funds arrived from India. Based on the foregoing, I do not accept that Mr. Narula borrowed any funds from his parents in the years in question. Even if I had accepted that he did so, absent any evidence that those funds were actually deposited to his bank accounts, I would not have made any adjustments in any event.

[6] Mr. Narula also testified that he borrowed \$11,000 from a friend named Mr. Mangat. Mr. Narula explained that he and Mr. Mangat were planning on buying a business, that he asked Mr. Mangat to lend him money for that purpose, that the business purchase had not gone through and that he kept the money. This explanation is very odd. Mr. Narula did not explain why Mr. Mangat would have permitted him to keep the borrowed funds when the business purchase for which the funds had been lent did not go through. Mr. Narula testified the funds, which were supposedly lent in September 2006, were deposited into his bank account in various round figures between October and December. He indicated that he had deposited funds when he needed to cover a cheque but he did not explain why he would not have simply deposited all of the money in the first place. Counsel for the Respondent pointed out that similar deposits in similar round figures were made throughout the year and submitted that it was far more likely that the deposits that Mr. Narula was referring me to were regular deposits of cash from the business than loan proceeds from an unnecessary loan. I agree. Mr. Narula did not call Mr. Mangat as a witness. I draw an adverse inference from that fact. Based on all of the foregoing, I do not accept that Mr. Narula borrowed any funds from Mr. Mangat in the years in question.

[7] Since I have found the auditor's methodology to be sound and have not accepted Mr. Narula's limited explanations for the unexplained deposits, I am left to conclude that Mr. Narula did not report all of his income from the pizza business. For the reasons set out below concerning the gross negligence penalties, I find that Mr. Narula's failure to report this income in 2006 was due to carelessness, neglect or wilful default.

Gross Negligence Penalties:

[8] I find that Mr. Narula was grossly negligent in failing to report these amounts. Mr. Narula used a cash register which he testified would either produce a receipt for a customer or produce a record for the business in the form of Z-tapes but not both. I have difficulty believing this explanation as I cannot imagine why a cash register company would put such a feature in their machines. Even if a company were trying to create a cash register that could be used for tax evasion, I would expect that the user of such a machine would want to be able to produce Z-tapes for sales where the customer had asked for a receipt as those are exactly the types of sales that are more likely to cause problems in an audit since the receipt creates evidence of the sale in the hands of a third party. Mr. Narula gave conflicting testimony as to how often the cash register produced Z-tapes and conflicting testimony as to whether those tapes were destroyed or not. He also gave conflicting testimony as to whether he recorded sales separately in what he described as an “order book” or simply totalled his deposits to his bank account and, in any event, did not enter such a book into evidence. Based on all of the foregoing, I find that Mr. Narula made no attempt to maintain an accurate bookkeeping system, has attempted throughout the litigation to obfuscate what records were actually kept and, in fact, appears to have taken active steps to destroy what few records were produced.

[9] Mr. Narula had an external accountant in the years in question. While there was some passing suggestion that any failure to report income may have been the accountant’s fault, there was no evidence of this fact and no consistent explanation of what information was and was not provided to the accountant. Furthermore, Mr. Narula did not ask his accountant any questions on this point when the accountant was testifying.

[10] Mr. Narula has been in the pizza business since 2002. He clearly understands his obligations under the *Income Tax Act* to report all of his income yet he has not done so. The amount of unreported income is significant. It represents approximately 80% of Mr. Narula’s reported income in 2006 and 100% of his reported income in 2007. It also represents approximately 30% of his reported sales in both years.

[11] Based on all of the foregoing, I find that Mr. Narula was grossly negligent in failing to report all of his income from the pizza business.

Conclusion:

[12] Based on all of the foregoing, the appeal is dismissed with costs payable to the Respondent forthwith.

Signed at Ottawa, Canada, this 19th day of December 2014.

“David E. Graham”

Graham J.

CITATION: 2014 TCC 371
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APPEARANCES:

For the Appellant: The Appellant Himself
Counsel for the Respondent: Zachary Froese

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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