

BETWEEN:

KUZI MAPISH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 23, 2015, at Hamilton, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Dominique Gallant

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2007 and 2008 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 12th day of May 2015.

“Rommel G. Masse”

Masse D.J.

Translation certified true
on this 14th day of July 2015

Daniela Guglietta, Translator

Citation: 2015 TCC 122
Date: 20150512
Docket: 2013-3695(IT)I

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REASONS FOR JUDGMENT

Masse D.J.

[1] The issue for the Court to decide in this case is whether the appellant is entitled to the charitable donation tax credits claimed in his 2007 and 2008 taxation years for donations the appellant allegedly made to Revival Time Ministries International (hereinafter Revival). Although the Notice of Appeal refers to the 2007, 2008, 2010 and 2011 taxation years, this appeal only applies to the 2007 and 2008 taxation years.

[2] The appellant is appealing reassessments by which the Minister of National Revenue (hereinafter the Minister) dismissed the charitable donation tax credits claimed by the appellant, that is, \$9,600 in 2007 and \$11,600 in 2008.

[3] First, the Minister submits that the receipts presented by the appellant do not meet the requirements of the *Income Tax Act*, R.S.C. (1985), c. 1 (5th Supp.) (hereinafter the Act), and the *Income Tax Regulations*, C.R.C., c. 945 (hereinafter the Regulations). Alternatively, the Minister argues that, in any event, the appellant is unable to establish that he made the donations that are the subject of this dispute.

Factual Background

[4] The appellant is originally from former Zaire, in Africa. He testified that he is married with three children. His country of origin is [TRANSLATION] “poor” and

often at [TRANSLATION] “war.” Since coming to Canada, he has always been committed to helping his compatriots who remained in Africa. He stated that he has always made charitable donations intended to benefit people in Africa. He therefore began to make donations to Revival, which allegedly issued receipts to him for income tax purposes. He stated that Revival was his church and that he attended church services. He stated that he made cash donations and occasionally donated clothes and similar items.

[5] In filing his income tax return for 2007, the appellant reported employment income of \$40,458.02 (see Exhibit I-1). He also reported charitable donations of \$9,600 made to Revival and filed a receipt for this amount (see Exhibit A-1). This is a significant amount compared to his gross income, representing approximately 25%.

[6] In filing his income tax return for 2008, the appellant reported employment income of \$45,553.56 \$ (see Exhibit I-2). He also reported charitable donations of \$11,600 to Revival and filed a receipt for this amount (see Exhibit A-2). Again, this is a significant amount compared to his income for this taxation year, representing approximately 25%.

[7] The Minister assessed the appellant for the 2008 and 2009 taxation years on April 14, 2008, and April 9, 2009, respectively. The Minister allowed the charitable donations as reported. On January 25, 2010, the Minister reassessed him to disallow the \$9,600 charitable donation tax credit in 2007 and the \$11,600 charitable donation tax credit in 2008 claimed by the appellant.

[8] The appellant objected to the reassessments; the Minister confirmed them on August 29, 2013.

[9] The Minister reassessed the appellant on the basis that the appellant did not make any charitable donation to Revival in 2007 and in 2008. In the alternative, the Minister concluded that the receipts issued to the appellant by Revival did not contain all of the information that is required to be included in a charitable receipt pursuant to section 3501 of the Regulations.

[10] For the reasons that follow, I conclude that the receipts provided by Revival do not contain all of the information required by the Regulations and that on this basis alone, the appeals must be dismissed. I also conclude that even if the receipts had conformed to the Regulations, the appellant failed to prove, on a balance of probabilities, that he made the donations in issue.

Statutory provisions

[11] Subsection 118.1(3) of the Act allows a deduction from tax payable for gifts made to a registered charity. Paragraph 118.1(2)(a) provides that the making of the gift must be proved by filing a receipt containing prescribed information. Paragraph 118.1(2)(a) provides as follows:

118.1(2) Proof of gift — An eligible amount of a gift is not to be included in the total charitable gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(a) a receipt for the gift that contains prescribed information;

...

[12] The prescribed information to be included in the official receipt for the charitable gift is listed in subsection 3501(1) of the Regulations. This subsection provides as follows:

3501(1) Contents of receipts — Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

(a) the name and address in Canada of the organization as recorded with the Minister;

(b) the registration number assigned by the Minister to the organization;

(c) the serial number of the receipt;

(d) the place or locality where the receipt was issued;

(e) where the gift is a cash gift, the date on which or the year during which the gift was received;

(e.1) where the gift is of property other than cash

(i) the date on which the gift was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the date on which the receipt was issued;

(g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;

(h) the amount that is

(i) the amount of a cash gift, or

(ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;

(h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;

(h.2) the eligible amount of the gift;

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and

(j) the name and Internet website of the Canada Revenue Agency.

[Emphasis added.]

Analysis

[13] Read together, the provisions mentioned above require that the following elements must be satisfied:

(a) a gift;

(b) a receipt to prove that it was a charitable donation.

[14] The Minister submits that the appellant has not proven the existence of either or both of these elements.

Validity of receipts

[15] In *Afovia v. The Queen*, 2012 TCC 391 (CanLII), 2013 DTC 1016, [2012] TCJ No. 314 (QL), Justice Paris of this Court reviewed the issue of the existence of donations and the validity of a receipt. He stated as follows with respect to the receipt requirements:

[9] The question that must be decided by this Court is whether it is mandatory that a charitable donation receipt contain all of the information listed in subsection 3501(1) of the Regulations, including a serial number and the name and Internet website of the Canada Revenue Agency. On the basis of the clear wording of that provision, I find that all of the information listed there is mandatory. The material portion of the section states that “every official receipt issued by a registered

organization ... shall show clearly in such a manner that it cannot be readily altered ..." the information listed in paragraphs (a) to (j). (Emphasis added.)

...

[12] The appellants did not suggest and I am unable to conclude that giving the word "shall" in section 3501 of the Regulations an imperative meaning would lead to an unreasonable outcome. Parliament may have chosen to include the requirement for a serial number on charitable receipts to facilitate audits of charitable donations, in other words by ensuring that records of donations are kept in an orderly fashion; the inclusion of the CRA website address permits a donor to verify whether the charity is registered and whether the donation is eligible for the charitable donation tax credit. I also find that an imperative construction is consistent with the context. For example, the requirement for serial numbers on receipts is also referred to in subsections 3501(1.1), (3) and (4) and the requirement for the CRA website address is repeated in subsection 3501(1.1) of the Regulations. I therefore find that the information listed in subsection 3501(1) of the Regulations is mandatory for official charitable receipts.

[13] Since none of the receipts provided to the appellants by PDGL contain all of the prescribed information, they do not meet the requirements of subsection 118.1(2) of the Act and, for this reason, the appellants' claims for charitable gift credits cannot succeed.

[14] The fact that the appellants were unaware of what information was required on a charitable receipt cannot relieve them of the obligation to support their claim for the charitable donation tax credits with official receipts that contain the prescribed information. This Court is bound by subsection 118.1(2) of the Act.

[16] Justice Paris reiterated these same principles in *Ofori-Darko v. The Queen*, 2014 TCC 54 (CanLII), 2014 DTC 1074, at paragraph 14:

[14] Furthermore the receipts do not show when the gifts in kind were received by Redemption or what their fair market value was at that time. Finally the receipts fail to show the locality or place of issuance of the receipt. As I indicated in the case of *Afovia et al. v. The Queen*, the information listed in subsection 3501(1) of the *ITR*, the information listed in subsection 3501(1) of the *ITR* is mandatory for charitable donation receipts, and therefore the receipts in these appeals are insufficient to prove the making of a gift as provided for in paragraph 118.1(2)(a) of the *ITA*.

[Footnote omitted.]

[17] In *Sowah v. The Queen*, 2013 TCC 297 (CanLII), 2013 DTC 1234, Justice Miller also made similar findings, stating that

[16] . . . Case law is clear that these requirements [set out in subsection 3501(1) of the Regulations] are mandatory and are to be strictly adhered to (see for example the cases of *Afovia v The Queen*, *Sklowdowski v The Queen*, *Plante v Canada*).

[17] Does the receipt provided by the Appellant meet all the requirements? It does not. It fails on three counts. First, the receipt does not contain the statement that it is an official receipt for income tax purposes. In the case of *Ehiozomwangie v R*, Justice Campbell made it clear that the requirement that the receipt indicate that it is an official receipt for income tax purposes is one of the mandatory requirements. I agree. There can be no clearer reassurance to a taxpayer on the face of a receipt than an indication that it is an official receipt for tax purposes. Failure to meet this simple qualification casts real suspicion on the credibility of the receipt. It is a mandatory condition that has not been met in this case.

[18] Second, another simple requirement is the date on which the receipt was issued. On Ms. Sowah's receipt no date is given, only the year (January to December 2006). Again, this is a mandatory condition that simply has not been met.

[19] Third, the receipt must show the locality or place where the receipt was issued. This is a separate requirement from the address of the organization as recorded with the Minister. Here, while we might presume the address of the organization is the same place as where the receipt was issued, this should not be left to presumption. Maybe there are several Jesus Healing Centers throughout Toronto. It should be clear on the receipt from which place the receipt is issued. It is not. Again, a requirement has not been met.

[20] The Appellant has therefore not provided a receipt with the prescribed information and has therefore not met the second condition necessary to obtain credit for a charitable donation. The Appeal can be dismissed on that basis.

[Footnotes omitted]

[18] In the case at bar, there are a number of inadequacies regarding the receipts for the taxation years in question:

- (a) the name of the organization as recorded with the Minister is not the same as that shown on the receipt. The name recorded is "Revival Time Ministries International," whereas the name shown on the receipt is "Revival Time Ministries;"

- (b) the receipt for 2008 has an address stamped at the bottom of the receipt showing the recipient's address as being 415 **Aokdale**, whereas the address appearing on the receipt header is 415 **Oakdale**. Thus, one must wonder what the recipient's true address is;
- (c) the receipt does not show the locality or place where the receipt was issued. As indicated in *Sowah, supra*, this requirement is a separate requirement from the address of the organization as recorded with the Minister. While we might presume that the address of the organization is the locality or place where the receipt was issued, this should not be left to presumption. It should be clear on the receipt from which place the receipt is issued, because the address of the organization may be different from the place where the receipt was issued. The organization in this case has Web sites in the United States and, therefore, it is likely that Revival has multiple branches across Canada and around the world;
- (d) there are no dates on the receipts, only the year (2007 on Exhibit A-1, and 2008 on Exhibit A-2). The appellant submits that he made donations each month during the period in question and that the amounts varied from one month to the other. It seems strange to me that the appellant did not ask for a receipt each time he made a donation, given that those donations were for either \$500, \$800 or \$900 each time. These alleged donations were significant compared to the appellant's income. It is therefore surprising that the appellant neither asked for nor obtained a receipt each time he made a donation;

[19] These are requirements that were not met. All these requirements are mandatory. It is not a matter of fault, liability, good faith or bad faith, or even negligence. These are mandatory requirements of the Act and Regulations. Owing to these palpable and obvious inadequacies in the mandatory requirements, this appeal must be dismissed. The appellant is therefore not entitled to a charitable donation tax credit under subsection 118.1(2) of the Act.

Proof of donations

[20] The onus is on the appellant to provide proof of the donations he claims to have made to Revival. The applicable standard of proof is the balance of probabilities. This means that he must demonstrate that it is more likely than not that he made the donations in question. The only support for his position is his own

testimony and the receipts issued by Revival. This is not sufficient in the circumstances.

[21] The respondent submits that the appellant did not make any donation to Revival. Gary Huenemoeder is the Audit Team Leader at the Charities Directorate of the Canada Revenue Agency (hereinafter the Agency). Revival obtained its registration number on July 1, 2006. The Agency audited Revival for 2006, 2007 and 2008. Mr. Huenemoeder found that Revival had reported income in excess of \$830,000 for its first year of operation, which seemed to be very high for a first year. Mr. Huenemoeder asked for the organization's bank account statements and determined that, based on the account statements, the organization had deposited 1.8 million dollars in the bank. Mr. Huenemoeder suspected that something was wrong. The Agency therefore required the production of documents from banks that conducted business with Revival. Upon reviewing those documents, the Agency discovered that only \$3,000 had been deposited in the banks. Thus, all of the documents that were provided to the Agency by the organization were false. The Agency contacted 920 donors, requiring proof of payment of the donations, and they all indicated that they had paid cash and not by cheque or by bank draft. Revival's pastor, Daniel Mokwe, provided the Agency's auditors with a box full of envelopes which he claimed were used by parishioners or donors. There were 1,000 envelopes for donations totalling approximately \$4,000,000. All these envelopes were numbered sequentially and handwritten. However, the handwriting on each envelope was the same. Not one of these envelopes had been sealed. All of this constituted a basis for suspecting fraud. Mr. Huenemoeder found no evidence of charitable activities organized by Revival. Its registration as a charitable organization was therefore revoked on January 8, 2011. Daniel Mokwe has since fled Canada. If Mr. Mokwe ever returns to Canada, he will have to face tax evasion or fraud charges.

[22] Mr. Huenemoeder read the appellant's file. He verified Revival's records and documents and was unable to establish that the appellant had paid the alleged amounts. The Agency received the appellant's bank account statements, but these statements did not prove that the amounts claimed had been paid or transferred to Revival.

[23] For his part, it is obvious that the appellant did not keep records of the donations he made in 2007 and 2008, even though the donations he claims to have made were significant amounts compared to the appellant's income (approximately 25%). He stated that he donated money each week, sometimes \$800 and sometimes \$900. He put money in an envelope which he gave to Revival. He

received a receipt at the end of the year and he relied on the receipt to establish the exact amount he donated. As the appellant stated [TRANSLATION]: “[T]hey are the ones who calculated the amounts I had donated because I know what I donated; sometimes \$800, \$500 here, \$500 there, and so on. And sometimes \$1, and that’s it. . . .” The appellant was unable to confirm the exact amounts he donated to the organization without relying on the receipts. The appellant provided the Agency with his bank account statements, but at the trial he stated that all these documents had been destroyed by a water leak at his residence. However, he could have obtained copies from the bank, which he did not do. Since the appellant reported having donated substantial cash amounts to Revival, I expected him to submit to the Court documents demonstrating the source of these funds. He stated that he withdrew money from his bank account to make donations to Revival. It seems likely to me that those bank records would have contained information either confirming or contradicting their testimony. The appellant failed to provide any cheque, any ATM withdrawal slip, any record of donations, or any donation envelope related to the alleged donations. He may have donated a certain amount, but the Court cannot determine exactly how much.

[24] The receipts in issue are the only evidence of donations made and said receipts were issued by an organization that was audited, after which it was determined that the organization’s records and accounting books were false. Aside from the receipts, no document or account statement was adduced to support the appellant’s claims. Since the appellant failed to provide any objective evidence to rebut the Minister’s assumptions that he did not make the cash donations, the appellant failed to meet his burden of proof of presenting evidence on a balance of probabilities. While it is possible that any cash amounts may have been donated, the evidence with respect to the donations and the exact amount of the donations is insufficient.

Conclusion

[25] For these reasons, the appeal is dismissed.

Signed at Kingston, Ontario, this 12th day of May 2015.

“Rommel G. Masse”

Masse D.J.

Translation certified true
on this 14th day of July 2015

Daniela Guglietta, Translator

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APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Dominique Gallant

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada