

[OFFICIAL ENGLISH TRANSLATION]

2000-1344(IT)I

BETWEEN:

ANTOINE CHAMOUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Danny Tawil (2000-1055(IT)I) and *Abdo Nawar (2000-1264(IT)I)*
on September 16 and 18, 2002, at Montréal, Quebec, by

the Honourable Judge François Angers

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Simon Crépin
Nathalie Lessard

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* in respect of the 1992 and 1993 taxation years are dismissed.

Signed at Ottawa, Canada, this 13th day of January 2003.

"François Angers"

J.T.C.C.

Translation certified true
on this 5th day of March 2004.

Sophie Debbané, Revisor

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Date: 20030113
Docket: 2000-1344(IT)I

BETWEEN:

ANTOINE CHAMOUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers, J.T.C.C.

[1] Antoine Chamoun was denied charitable donations tax credits by the Minister of National Revenue (the “Minister”) for the 1992 and 1993 taxation years. The donations disallowed were for \$1,500 and \$1,000 respectively and were made to the Ordre Antonien libanais des Maronites (hereinafter “**the Order**”). In addition, the Minister reassessed for the 1992 taxation year outside the normal reassessment period for that year and assessed penalties for each of the years at issue. The Minister confirmed his reassessments for each of the years on October 18, 1999. Subsequently, Mr. Chamoun filed notices of appeal in respect of each of the years at issue.

[2] The facts that were relied on by the Minister in making the reassessments and that were admitted or denied by the Appellant, as the case may be, are as follows:

[TRANSLATION]

Donations

- (a) in filing his income tax return for the 1992 taxation year, the Appellant claimed a charitable donations tax credit in relation, *inter alia*, to an amount of \$1,500 that he claimed to have donated to the Ordre Antonien libanais des Maronites during the 1992 taxation year; (admitted)
- (b) the appellant did not in any way whatsoever donate the sum of \$1,500 to the Ordre Antonien libanais des Maronites during the 1992 taxation year; (denied)
- (c) the appellant did not submit to the Minister a valid receipt containing the prescribed information for the alleged donation of \$1,500 that he claimed to have made to the Ordre Antonien libanais des Maronites since the amount of the donation that appears on the receipt is false; (denied)
- (d) in filing his tax return for the 1993 taxation year, the appellant claimed a charitable donations tax credit in relation, *inter alia*, to an amount of \$1,000 that he claimed to have donated to the Ordre Antonien libanais des Maronites during the 1993 taxation year; (admitted)
- (e) the appellant did not in any way whatsoever donate the sum of \$1,000 to the Ordre Antonien libanais des Maronites during the 1993 taxation year; (denied)
- (f) the appellant did not submit to the Minister a valid receipt containing the prescribed information for the alleged donation of \$1,000 that he claimed to have made to the Ordre Antonien libanais des Maronites since the amount of the donation that appears on the receipt is false; (denied)
- (g) the appellant did not make the donations for which he claimed credits in his tax returns but rather was involved in the following scheme: (denied)

in some cases, the Ordre Antonien libanais des Maronites issued a receipt to a taxpayer indicating a cash donation for an amount equal to the sum that the taxpayer had paid it by cheque and then returned to that taxpayer the same or nearly the same amount of money in cash;

in other cases, the Ordre Antonien libanais des Maronites issued a receipt to a taxpayer indicating a cash donation for a certain amount whereas the taxpayer had not paid any amount at all or had paid a small cash amount in comparison to the amount indicated on the receipt;

- (h) (...)
- (i) in filing his income tax return and in supplying information under the *Act* for the 1992 and 1993 taxation years in respect of charitable donations tax credits claimed by the appellant in relation to the amount of \$1,500, the appellant made a misrepresentation attributable to wilful default; (denied)

Penalties

- (j) the appellant knowingly, or at least under circumstances amounting to gross negligence, made a false statement or omission by claiming charitable donations credits in relation to the amounts of \$1,500 and \$1,000 for the 1992 and 1993 taxation years, whereas he had not made any donation; (denied)
- (k) since the appellant knowingly or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of, a false statement or omission in the tax returns filed for the taxation years at issue, the tax that the appellant would have been required to pay on the basis of the information provided in the tax returns filed for those years was less than the amount of tax actually payable by \$356.85 and \$225.94 respectively for the taxation years at issue. (denied)

[3] The appellant is a native of Lebanon and came to Canada in April 1990, accompanied by his wife and their two children. Before coming to Canada, he

knew about the Order and that there was a monastery in Outremont, Quebec. He and his family accordingly attended religious services after they came to Canada. Their participation in the activities of the Order included the following: scouting on Friday, study of Arabic on Saturday and mass on Sunday.

[4] Shortly after coming to Canada, the appellant became a representative for the Standard Life insurance company. Among the instructions he received, it was suggested that he make some key contacts and obtain references in order to increase his sales. He apparently asked Father Hage, a priest in the Order, for his help by providing him with the names of potential customers so that he could sell them insurance. In return, the appellant promised to make unspecified amounts of donations to the Order.

[5] According to the appellant's testimony, he primarily dealt with Father Hage. He was the person in charge of the activities in which the appellant's family participated. Meetings were held after mass and it was there that the appellant made contacts and handed out his business card. In the fall of 1992, the appellant won the President's Award, which was given to the best salesman. This earned him a video camera and an appreciation plaque from his employer. He also received a bonus of approximately \$7,500, of which \$2,884.95 was given to him in November 1992, and the balance was paid out later over several months.

[6] The appellant explained that, on December 7, 1992, he had made a withdrawal of \$1,500 from his savings-checking account at the National Bank of Canada and had given this amount to Father Hage in an envelope on which he had written his name. The appellant was unable to explain why he had made his donation in cash rather than by cheque. Several days after remitting the money, that is, on December 21, 1992, the appellant obtained a receipt for that amount from the Order (Exhibit I-2, Tab 6).

[7] The appellant explained that the situation at work had changed in 1993 in that there were no more contests. Instead of making one big donation, he put the money in an envelope whenever he made a sale and gave the priest a donation to the Order. He acted in this manner a number of times during the year. In return, the appellant was given a receipt from the Order on November 22, 1993, in the amount of \$1,000. The appellant said he had stopped making donations to the Order at the end of 1993. The appellant's bank statements for the two years at issue (Exhibit A-2) were filed in evidence. The December 7, 1992, withdrawal appears on the statements and, for 1993, there are many withdrawals throughout the year for varying amounts. The appellant maintained that these were amounts he had given

to Father Hage and that his total donations exceeded the amount indicated on the receipt.

[8] According to the appellant, the Order needed donations to renovate the monastery. He recollected that there were renovations during the years at issue because his children took part in the work and apparently his son even became ill because of the dust. He did not know if the amounts from the donations were sent by the Order to Lebanon or if the Order used the donations to repay its mortgage. On cross-examination, he repeated that the Order had not asked him to make donations. He made some donations when he was given the names of potential customers. In 1997, the appellant learned from television of a tax scandal involving the Order. He said he then contacted the Order, which recommended a lawyer for him for a class action lawsuit.

[9] Again, on cross-examination, the appellant could not explain why his donations were made in cash rather than by cheque when the money came from his checking account. He explained that he had not asked for receipts but Father Hage had given him receipts. The appellant gave the donations himself to Father Hage who handed him directly the two receipts. The appellant claims that the December 1992 withdrawal indicated in Exhibit A-2 is correct because it shows a round figure of \$1,500. For 1993, there were gifts varying from \$20 to \$200. He did not know how Father Hage knew the total of his donations at the end of the year, but he insisted that he had donated at least \$1,000 in 1993 according to the receipt dated November 22. When asked why the Order had not waited until the end of the year to give him the receipt, the appellant explained by saying that he had had to tell Father Hage that, since he was no longer being given the names of potential customers, he would not make any further donations.

[10] The appellant admitted that he did not put his address on the envelopes containing his donations. He was unable to explain how Father Hage knew that he was the source of the donations given that there was another individual with the same name as the appellant. The appellant also stated that Father Hage knew him well because he saw him three times a week and was recorded in the Order's register. The appellant admitted that his income was \$25,000 in 1992 and approximately \$20,000 in 1993. He made no further donations to the Order after 1993. He did not make any other charitable donations afterwards, with the exception of a donation of \$50 in 1996 to the Orthodox Church to which his wife belonged. The appellant said that he did not know the people involved in the scheme and that the whole matter had been very damaging to the Lebanese community.

[11] The respondent's evidence was voluminous. It had to be so in order to show the various schemes devised by the Order to reward some of the donors and provide them with receipts for tax purposes. In 1990, the Order had been audited by the Department of National Revenue and had been given directives as a result of the audit. The investigation and the final audit showed that the Order had not complied with the directives it had been given.

[12] The Department of National Revenue launched the main investigation after being informed of the various schemes used by the Order to collect donations and reward its donors. Without going into all the details of the investigation, it is clear, from the evidence adduced, that the exercise led to tax evasion convictions for a number of people and reassessments for those who profited from the scheme, i.e., almost 1,200 people. The majority of the taxpayers did not contest the reassessments. Some filed appeals.

[13] Investigator Gaétan Ouellette testified about his role in examining the Order's records. On November 8, 1995, the investigators, armed with a warrant, seized all of the Order's documents for examination. They seized bank records, deposit slips, the cheques issued by the Order, books of receipts given for donation purposes and diskettes containing accounting data. They also met with the Order's accountants.

[14] In addition, nearly one hundred people told them about a scheme in which the donor would make a substantial donation for which he received a receipt, and later the Order would return 80 percent of the donation in cash to the donor. The other scheme that was used involved making a cash donation in return for which the donor received a receipt that was four to five times greater than the amount of the donation.

[15] For the most part, the donations were solicited by people who in turn kept five percent of the donations as their commission. Some accountants proposed the scheme to their clients so they would receive a benefit. A number of admissions were entered in evidence confirming the existence of the schemes that were used (Exhibit I-12, Tabs 10 and 11). In Tab 3 of Exhibit I-12, the witness Mr. Ouellette reproduced the information gathered during the search from a diskette entitled "Bibliorec" that, in a numerical sequence of the receipts issued, indicates the receipt of the donation and its distribution, the donor's identity, the amount of the donation, the amount remitted to the donor, the amount retained by the Order and, finally, the amount remitted by the solicitor. There is no need to say more about

this except that the information collected from the diskette and reproduced is consistent with other documents that were seized, such as the cheques and deposit slips, that in fact confirm the scheme whereby the Order kept only 20 percent of the donations and gave the donor a receipt for the full amount plus the difference in cash.

[16] To return the 80 percent to the donor, the Order issued cheques drawn on its account payable to cash. This was done immediately after the deposit or in the days thereafter. Tab 7 of Exhibit I-12 contains a number of examples and some of those withdrawals identified the donor to whom the money was to be remitted.

[17] The facts showed that, even after the searches, the Order was still giving out receipts and some people were still being offered receipts by the Order.

[18] The respondent also called Colette Langelier who had taken an active part in the investigation. Her involvement in the investigation began after information had been received from the wife of one of the participants in the scheme. She produced in evidence the correspondence and the directives intended for the Order to ensure its compliance with Revenue Canada's requirements. She also reviewed all of the Order's tax returns (Exhibit I-10), which contained the list of donors. Subsequently, she met with the priests to examine the accounting records and realized that the Order did not have any. She examined some of the supporting documentation for the expenses, bank statements and deposit slips in order to prepare a bank reconciliation statement (Exhibit I-13), which she filed in evidence. She looked at everything from 1989 to 1995. Her goal was to identify the amounts deposited in relation to the total receipts issued.

[19] The results of this exercise enabled her to conclude that there were three different schemes:

[TRANSLATION]

- (1) Professionals, mostly physicians of Lebanese origin, and/or their spouses, as well as business persons, whose "amounts donated" accounted for approximately 80 percent of the total of the receipts issued. In other words, these persons issued cheques equivalent to 100 percent of the amounts of the official receipts issued by the Order, and the Order subsequently paid them back 80 per cent of the donations in cash;

- (2) Partial donations: under this scheme there were cheques from donors representing 10 percent to 20 percent of the amounts of the official receipts. The persons participating in this scheme were employees or retired persons; the cheques were usually deposited from January to May following the year indicated on the receipts, which were backdated; and
- (3) Donations that could not be traced or for which no material evidence except the official receipts was found. These donations were made by the donors in cash. It can be seen from the numbers on the receipts that several of those donations were made during the following year. This conclusion was reached by simply comparing the donations made by cheque, the dates they were deposited and the numbers of the corresponding receipts.

[20] Colette Langelier was unable to obtain any information on which she could follow up concerning the amounts of cash collected and she found it impossible to confirm the explanations provided by the priests. She could find no evidence from which she could conclude that the donations collected had, according to her explanations, been forwarded to Lebanon. In fact, even after promising to comply with the requirements of the Department of National Revenue, the Order had not changed its way of doing things at all. Table I-18 shows that, to meet the 90 percent disbursement quota, the Order indicated that the money was sent to Lebanon.

[21] A dental technician by the name of Bachar Hajjar testified that he knew the Order and had attended musical evenings during religious festivals. It was during one of these evenings that he was made aware that he could obtain receipts for tax credit purposes. In 1993, he made a cash donation to a person from the monastery situated on Richard Avenue in the Outrement district. He did not know the person's name but said that he was given a receipt in the amount of \$1,200 for a \$240 donation.

[22] Jean-Claude Perreault, a retired teacher, testified along the same lines. He had heard about the Order by chance when he was in the waiting room of a health professional. The people were discussing the possibility of making a donation and in return obtaining a receipt for an amount greater than the amount donated, as much as four times the amount of the donation. Accordingly, he contacted a representative of the Order and, in 1993, in return for a donation of \$2,500 to the Order, he obtained an official tax receipt for \$11,500 and, in 1994, for a donation of \$2,500 to the Order, he obtained an official tax receipt for \$10,000.

Analysis

[23] In argument, counsel for the appellant filed with the Court a book of authorities setting out the legal principles relating to the burden of proof and the rules for assessing circumstantial evidence. On this last point, there is a passage from the author Jean-Claude Royer in *La preuve civile*, 2nd edition, Les Éditions Yvon Blais, at paragraph 175 on page 100:

[TRANSLATION]

175 — *Direct evidence is preferred to indirect evidence* — Direct evidence is evidence that has a direct bearing on the fact at issue. Indirect evidence, circumstantial evidence, or presumptive evidence concerns material facts that make it possible to infer the existence of the fact at issue. . . .

Direct testimonial evidence is superior to presumptive evidence. However, this rule is not absolute. In certain circumstances, a court may prefer circumstantial evidence to direct evidence.

[24] It must also be remembered that, even if they are not contradicted by other witnesses, the courts are not required to believe witnesses if their version seems implausible on the basis of the circumstances revealed by the evidence or on the basis of plain common sense (see *Legaré v. The Shawinigan Water and Power Co. Ltd.*, [1972] C.A. 372).

[25] In the case at bar, the evidence adduced by the respondent leaves no doubt that there was a well-structured scheme put in place by the Order. Under the scheme, the Order could collect substantial amounts of money while rewarding the donors with receipts showing amounts greater than the actual donations. As explained earlier, there were three possible methods of obtaining false receipts. The issue in the case at bar is to determine whether the appellant participated in this scheme in order to draw a benefit from it.

[26] The appellant stated that he knew nothing about the scheme before learning about it in March 1997 on television. He stated he had donated the money to the Order and was given receipts matching his donation. He did this in exchange for the names of potential clients given to him by the Order and at all times acted in good faith. He criticized the respondent's auditor for treating all donors as guilty without exception.

[27] The respondent maintained that the appellant's case was no different from that of the others. In his direct testimony, the appellant stated that he had obtained the names of potential customers from Father Hage in 1992 and 1993. After establishing that Father Hage had come to Canada at the end of 1992, the appellant changed his mind and altered his version of the facts. He named Father Khamer as the one who provided him with the names of potential customers. However, he added that, in 1992, it was the same Father Hage who took care of the scouts on Friday, taught Arabic on Saturday and celebrated Sunday mass. In my opinion, such weekly activities were spread out over a number of months and it seems to me that it would be easy to identify the right person.

[28] Counsel for the respondent raised the question of why the appellant had made such a large donation—\$1,500 in cash. The appellant was unable to explain this fact and also could not explain why he had been given a receipt dated December 21 inasmuch as he had made the withdrawal from his account on December 7. Counsel also raised the question of why the appellant did not want receipts for his donations at the time whereas today he is a party to a dispute where he wants to put them to use. The evidence of Ms. Langelier in Table I-21 relating to her analysis of the dates of deposit, the numbers on the receipts and the appellant's receipt of December 21, 1992, show unequivocally that the appellant's receipt for 1992 was backdated. His name appears in the "Bibliorec" in 1993, even though the receipt had been cancelled.

[29] As for the 1993 donation, no record or book of account indicating the appellant's contributions was found by the auditors during their search with the result that it is impossible to verify the exact amount of the donations made by the appellant in that year. It is also strange that the date on his receipt for 1993 bears the month of November instead of December. The explanation he gave on that point is that he told the Order in November that he would not make any more donations because he was getting fewer names of potential customers and it was then that he obtained his receipt. Ms. Langelier's testimony should also be recalled. She affirmed that no cash donation had actually been made and that if any amounts had been donated, they did not match the total shown on the receipts since no sum of money was found in the Order's safe during the search and there was no evidence that sums of money had been sent to Lebanon or that the Order had received the money corresponding to the receipts issued, according to the Order's financial statements.

[30] According to the Table showing the income of the appellant and his wife from 1990 to 1998 and to Exhibit I-23, it is perhaps implausible that a taxpayer can

be so generous to the Order if his income and family obligations do not enable him to make such donations.

[31] I am aware that a taxpayer is entitled to be generous and that, if the donations comply with the provisions of the *Act*, they cannot be challenged. However, in the case at bar, the preponderance of the evidence adduced by the respondent allows me to conclude that the appellant benefited for both taxation years from the scheme set up by the Order and that his explanations are all unlikely.

[32] Having concluded that he did not make genuine donations, does subsection 163(2) of the *Act* apply in the case at bar? Did the appellant, knowingly, or under circumstances amounting to gross negligence, make or participate in, assent to or acquiesce in the making of, a false statement or omission in his tax returns filed for the taxation years at issue? Having concluded that the appellant took part in the scheme, that he was aware of the content of his tax returns and the tax credits based on the false receipts that he obtained, I conclude on a balance of probabilities that he made a false statement in his tax returns and that the penalties are warranted.

[33] For the same reasons, I also conclude that the respondent showed on a balance of probabilities that the appellant made a misrepresentation that was attributable to neglect, carelessness or wilful default. Consequently, the Minister may reassess outside the normal reassessment period.

[34] The appeals are accordingly dismissed.

Signed at Ottawa, Canada, this 13th day of January 2003.

"François Angers"

J.T.C.C.

Translation certified true
on this 5th day of March 2004.

Sophie Debbané, Revisor

