

Docket: 2016-2337(IT)I

BETWEEN:

NIKKI CIOTOLA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 26, 2017, at Toronto, Ontario

Before: The Honourable Lucie Lamarre, Associate Chief Justice

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Hye-Won (Caroline) Ahn

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2002, 2003 and 2004 taxation years are dismissed.

Signed at Ottawa, Canada, this 2nd day of November 2017.

“Lucie Lamarre”

Lamarre A.C.J.

Citation: 2017 TCC 221

Date: 20171102
Docket: 2016-2337(IT)I

BETWEEN:

NIKKI CIOTOLA,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Lamarre A.C.J.

I dismissed the appeals orally from the bench on October 26, 2017 and advised the Appellant that I would send her short written reasons together with my judgment.

[1] These are appeals from reassessments made by the Minister of National Revenue (**Minister**) for the 2002, 2003 and 2004 taxation years.

[2] The years 2002 and 2003 are statute-barred and the Minister therefore had to show that the Appellant made a misrepresentation that was attributable to neglect, carelessness or wilful default.

[3] The Appellant acknowledges that she did not in fact give the amounts of money that were claimed in her tax returns as donations to charitable organizations.

[4] She also acknowledges that she did not incur the carrying charges that she claimed in her tax returns.

[5] She explained that, as proposed by the accounting firm Executive Accounting, which prepared her tax returns, in order to get a tax refund, she gave money to her accountant for charitable donations in the year in which her tax

returns were prepared. The donations were therefore not claimed for the year in which the money was apparently given.

[6] She was never made aware of the charities to which the money would have been given and was not provided with any receipts. She did not recall how much she gave to the accounting firm, but said that it was given in cash.

[7] The receipts filed with the tax returns are not representative of any amount that was given by the Appellant and do not contain all the information (i.e. date of issuance, place of issuance, the full name of the charitable organization, etc.) required by subsection 118.1(2) of the *Income Tax Act (Act)* and sections 3500 and 3501 of the *Income Tax Regulations*.

[8] The Appellant acknowledges that the amounts appearing on the receipts are inflated and she repeatedly said that she could not afford to give such amounts.

[9] There was clearly misrepresentation.

[10] The Appellant claims that she was a victim of fraud. The case law is clear in stating that subparagraph 152(4)(a)i) of the Act applies and that the Minister may reopen statute-barred years whether the misrepresentation is attributable to the taxpayer's own negligence or the negligence of the taxpayer's accountant (see *Vine v. Canada*, 2015 FCA 125, [2015] 4 F.C.R. 698 at par.#43; *College Park Motors Ltd. v. The Queen*, 2009 TCC 409 at par.#13; *Boucher v. The Queen*, 2004 FCA 46; *Nesbitt v. Canada*, [1996] F.C.J. No. 1470 (QL)).

[11] In my view, the Appellant bears some responsibility in this matter and was negligent in accepting the filing of her tax returns without having verified with the accounting firm why inflated amounts were claimed for donations to charities and why carrying charges were being claimed as a deduction. The taxpayer could have seen from the tax return summaries that were provided to her (Exhibit A-1) that there were amounts claimed for carrying charges and for donations that she did not pay.

[12] She did not provide any receipts showing that she herself gave money to Executive Accounting.

[13] I conclude that the Appellant made misrepresentations that were attributable to neglect, carelessness or wilful default. The evidence also clearly shows that no donations were made by the Appellant to charitable organizations and no carrying charges were incurred in the years for which they were claimed.

The appeals are dismissed.

Signed at Ottawa, Canada, this 2nd day of November 2017.

“Lucie Lamarre”

Lamarre A.C.J.

CITATION: 2017 TCC 221

COURT FILE NO.: 2016-2337(IT)I

STYLE OF CAUSE: NIKKI CIOTOLA v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 26, 2017

REASONS FOR JUDGMENT BY: The Hon. Associate Chief Justice Lucie Lamarre

DATE OF JUDGMENT: November 2nd, 2017

APPEARANCES:

For the Appellant: The Appellant herself

For the Respondent: Hye-Won (Caroline) Ahn

COUNSEL OF RECORD:

For the Appellant:

Name:

For the Respondent: Nathalie G. Drouin
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