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Docket: 2010-250(IT)I

BETWEEN:

MARTHA MANOTAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on August 18, 2011, at Toronto, Ontario

By: The Honourable Justice E.A. Bowie

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Erin Strashin

JUDGMENT

The appeals from redeterminations made under the *Income Tax Act* for the 2005, 2006 and 2007 base taxation years are dismissed.

Signed at Ottawa, Canada, this 29th day of August, 2011.

"E.A. Bowie"

Bowie J.

Citation: 2011 TCC 408
Date: 20110829
Docket: 2010-250(IT)I

BETWEEN:

MARTHA MANOTAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Bowie J.

[1] Ms. Manotas appeals from redeterminations made by the Minister of National Revenue in relation to her eligibility to receive the Canada Child Tax Benefit (CCTB) and the GST Credit (GSTC) under the provisions of the *Income Tax Act*[1] (*the Act*) for the base years 2005, 2006 and 2007. At the same time she was reassessed to delete from her declared income all her income earned outside Canada. The Minister's reason for making these redeterminations and reassessments is that he concluded that Ms. Manotas was not, in those years, a resident of Canada. In total the appellant was required by these redeterminations to repay CCTB of $13,711.68 and GSTC of $1,599.14 that had been paid to her between July 2006 and June 2009.

[2] The GSTC is made available to certain individuals by section 122.5 of the *Act*. The CCTB is made available to certain individuals by section 122.6. In both cases the recipient, "eligible individual" in the parlance of the *Act*, must be a resident of Canada in order to qualify for the benefit[2]. The only matter in dispute in this case is whether Ms. Manotas was a resident of Canada during the years in question. For the reasons that follow I am of the view that she was not. Her appeals therefore must fail.

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1 R.S. 1985 c.1 (5th supp.), as amended.

2 The *Act*, subsections 122.5(1) and (2) and 122.6.

[3] Ms. Manotas was born in Colombia. She came to Canada in **1985** with her family and became a Canadian citizen. She married a Canadian citizen of Italian origin and lived with him in Brampton, Ontario where they leased an apartment from 1993 to 2001. During that time they had one child. In September 2001 her husband took a research position at the University of Padova in Vicenza, Italy, and the appellant moved there with him and their son. In Vicenza they entered into an eight year lease on an apartment, and since that lease expired they have continued to live there on a monthly tenancy.

[4] Since moving to Vicenza the appellant and her husband have had two children, one born in 2003 and one in 2006. The appellant became an Italian citizen in 2007. Her husband has moved from his position as a researcher at the University to a teaching position there. The appellant has a part-time secretarial position, and the two older children are enrolled in school in Vicenza. The youngest child attends pre-school. The family attends a church in Vicenza.

[5] The appellant gave evidence of her remaining ties to Canada. She uses her parents address in Mississauga, Ontario as a Canadian mailing address, and she has some possessions that remain at her parents' apartment. They consist of a few clothes and a desk, a sofa a night table and a chest of drawers. She has outstanding student loans with the federal and provincial governments, a Canadian credit card, and an account at a Canadian bank with a balance of about $175. She also has a registered education plan with a Canadian bank for the benefit of her youngest child, and she and her husband have a registered education plan with the Children's Educational Foundation of Canada for the benefit of their son. The appellant also has a Canadian driver's licence and a Canadian passport. She does not have any other property in Canada, nor does she maintain membership in any social or religious organizations here.

[6] Upon leaving Canada the appellant expressed the intention of returning to Canada in 30 months. In January 2009 she completed a questionnaire in which she stated that she would like to return to Canada in about five years. She testified that her three sisters all have businesses, and that if she were to return to Canada she would have a job available with one of them. She also testified that she would not return to live in Canada until her youngest child is of school age as she could not afford daycare for her.

[7] In the questionnaire that she completed in 2009 Ms. Manotas stated that she travels to Canada once per year for family reasons, and for reasons connected to her

bank loans. During the trial she first stated that she travelled to Canada about once per year since 2001, but then modified that to say that she had visited four or five times since 2001. On these visits she brings her children, and she stays for three or four weeks at her parents' apartment in Mississauga.

[8] Conspicuously absent from the evidence was anything relating to the appellant's husband's wishes or intentions in relation to returning to live in Canada. It appears to be his career, or perhaps the fact that his family lives in Italy, that was a prime motivator for the family's move from Canada to Italy. He did not give evidence, nor did the appellant in her evidence make any reference to his future intentions.

[9] Clearly the appellant is a resident of Italy, and has been since 2001. That, however, does not settle the question before me. It is well settled that a taxpayer may be a resident of two different jurisdictions at the same time; that is not in dispute here. The question that I must answer is whether the appellant, when she moved to Italy and became resident there, maintained such close personal and economic ties to Canada that she may claim residence there as well. In my view she did not. There is no reason to believe that the few possessions that she has at her parents' apartment have any significant economic or emotional value. Her student loans are a liability that she could not move at will. Her bank account has a small balance and there is no evidence that it is actively used on any significant basis.

[10] I give little weight to the appellant's expressed intention to return some day to Canada. At best that expression of intention is both vague and self-serving. There is an obvious inconsistency between her statement on leaving Canada that she intended to return in 30 months, and the signing of an eight year lease upon arrival in Vicenza. Her evidence ignores the large question of her husband's intentions and his career prospects in Italy and in Canada. Her tendency to overstate the number of her visits to Canada, first once per year and later reduced to about half of that, tends to devalue her evidence on subjective matters.

[11] In any event, it is not the appellant's intention but the breadth and strength of her remaining ties with Canada that determine her claim to residence here, and those ties are neither numerous nor strong. Her most significant tie to Canada is the presence here of her parents and her sisters, but it requires much more than simply the presence of relatives to maintain a claim to residence.

[12] I have not overlooked that the appellant has chosen to file returns declaring her income in Canada each year, nor the fact that upon her departure the Minister

expressed the view that she was a "factual resident of Canada". It is not open to individuals to establish Canadian residence when that is economically beneficial to them by the simple expedient of filing a return of income under the *Act*. Nor is the Minister bound by his conclusion as to her residence formed a decade ago. Factual circumstances change, and conclusions change with them. But even where the circumstances remain unchanged, the Minister is free to form a different opinion as to the legal effect of the circumstances in a later time period. It is well settled that if the Minister arrives at an erroneous conclusion in assessing a taxpayer (or in determining the right to refundable credits), she is not bound to repeat that error in perpetuity: see *Nedelcu v. The Queen*[3].

[13] My conclusion is that when the appellant moved to Italy with her husband and son in 2001, that became the place in which their lives were centred, and the few ties that she has had to Canada since that time are insufficient to support a claim to continuing residence here. The appeals are therefore dismissed.

Signed at Ottawa, Canada, this **13th day of September, 2011.**

"E.A. Bowie"

Bowie J.

[3] 2008 TCC 417, aff'd 2010 FCA 156.

CITATION:	2011 TCC 408
COURT FILE NO.:	2010-250(IT)I
STYLE OF CAUSE:	MARTHA MANOTAS and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
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AMENDED **REASONS FOR JUDGMENT BY:**	The Honourable Justice E.A. Bowie
DATE OF JUDGMENT:	August 29, 2011

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Erin Strashin

COUNSEL OF RECORD:

For the Appellant:

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Firm:	N/A

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada