

BETWEEN:

JENNY MAZZAFERO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 4, 2019 and decision rendered from the Bench  
on June 7, 2019, at Montreal, Quebec

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant: Bruce Taub

Counsel for the Respondent: Claude Lamoureux  
Annie Laflamme

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**JUDGMENT**

For the reasons given from the bench, the appeal from the assessment made under the *Income Tax Act* for the 2009, 2010, 2011 and 2012 taxation year is allowed, in part, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons.

Signed at Ottawa, Ontario, this 8th day of July 2019.

“Patrick Boyle”

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Boyle J.

Docket: 2018-2619(IT)I

BETWEEN:

JENNY MAZZAFERO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**EDITED VERSION OF TRANSCRIPT  
OF ORAL REASONS FOR JUDGMENT**

Let the attached edited transcript of the reasons for judgment rendered orally at the hearing on June 7, 2019 at Montreal, Quebec be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Ontario, this 8th day of July 2019.

“Patrick Boyle”

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Boyle J.

Citation: 2019 TCC 147  
Date: 20190708  
Docket: 2018-2619(IT)I

BETWEEN:

JENNY MAZZAFERRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR JUDGMENT**

(Appeal heard on June 4 and decision rendered orally at the hearing on  
June 7, 2019, at Montreal, Quebec)

**Boyle J.**

[1] I am here for the delivery of my decision and reasons in this appeal. I am allowing it in part. There are three issues to be decided in this informal appeal.

[2] The first is whether the years under appeal are statute barred. I am satisfied that the Crown has met its burden of proof with respect to keeping the years open beyond the normal reassessment period. The misrepresentation in Ms. Mazzaferro's tax returns was that the loans to the Appellant from Mazzaruss Inc., a company controlled by her brother and his wife, were not included in her income.

[3] There was no explanation for these loans not being included other than that she intended to repay them and did in fact repay them several years later. She did not seek any advice from anyone, including the company's accountant, about the tax consequences of these loans even though she clearly knew she was borrowing \$45,000 during these years from a company controlled by her family members. That is neglect or carelessness sufficient to permit reassessments outside the normal reassessment periods.

[4] The second question relates to the loans that I have just mentioned. That is whether these loans were properly included in her income by the Canada Revenue Agency in the reassessments?

[5] The loans were acknowledged by the Appellant to have been made to her by Mazzarus. They were repaid, but not within their first year. For that reason, the Appellant's appeal is dismissed with respect to the loans to her from Mazzarus in 2009 through 2012 totalling \$45,000.

[6] As I mentioned the other day, the Act does have specific rules permitting a deduction for the repayment of the loans included in income, but only in the year of actual repayment. To the extent the Mazzarus loans were repaid by the Appellant in a later year, which can include payment to or for the benefit of another person at the direction of the lender Mazzarus, a deduction may be available to the Appellant in that later year. However, that later year is not before the Court in this appeal.

[7] That leaves us with the third issue which is the BMW automobile benefits that were included in income. I am allowing the Appellant's appeal with respect to the automobile benefit included in her income.

[8] The BMW in question was acquired through a lease by Da Vinci Food Products Ltd. The taxpayer's uncontradicted and unchallenged evidence is that she only rarely used the company's car for the company's business and that she never used it for personal purposes. She did not sign the lease nor take possession of the car from the dealer as assumed by the Respondent. Her work for Da Vinci involved about one day a month, not the five days a week assumed by the auditor in her testimony.

[9] The Appellant had her own Lexus which she used in her real estate brokerage activities and for her personal use. In addition, she and her husband owned a sports car that they used in the summer months. She drove her Lexus to Da Vinci and at times used the BMW at Da Vinci to drive to Da Vinci business functions.

[10] The fact that, at the end of the Da Vinci lease of the BMW, the Appellant's spouse exercised the purchase option and acquired the car does not support any inference whatsoever that the car had been used by the Appellant personally in prior years.

[11] Finally, the fact that the BMW dealer who leased Da Vinci the car and serviced it throughout had a copy of the Appellant's drivers licence cannot support any inference that the Appellant chose, test drove or took delivery of the BMW for Da Vinci in March 2009, nor that she ever used it for personal purposes. This is especially so as it appears that the licence in question was issued later than the acquisition at the start of the lease. It is at least equally consistent with the possibility she picked up the Da Vinci car from the dealer after one of its service appointments. I am sure other reasons could be developed.

[12] The Appellant's appeals are allowed with respect to the automobile benefits and are dismissed with respect to the loans from Mazzarus.

Signed at Ottawa, Ontario, this 8th day of July 2019.

“Patrick Boyle”

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Boyle J.

CITATION: 2019 TCC 147  
COURT FILE NO.: 2018-2619(IT)I  
STYLE OF CAUSE: JENNY MAZZAFERRO v. THE QUEEN  
PLACE OF HEARING: Montreal, Quebec  
DATE OF HEARING: June 4, 2019  
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle  
DATE OF JUDGMENT: July 8, 2019

APPEARANCES:

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Counsel for the Respondent: Claude Lamoureux  
Annie Laflamme

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