

Docket: 2018-321(IT)I

BETWEEN:

JAGWINDER SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 23, 2019, at Hamilton, Ontario

Before: The Honourable Justice B. Russell

Appearances:

Agent for the Appellant: Varinder Mehan

Counsel for the Respondent: Sophie DeViller

JUDGMENT

The appeal of the two federal *Income Tax Act* reassessments of the Appellant's **2009** and **2010** taxation years respectively, each raised January 5, 2016, is denied, without costs.

This Amended Judgment is issued in substitution of the Judgment dated December 17, 2019 to amend the referenced taxation years.

Signed at Ottawa, Canada, this 27th day of January 2020.

“B.Russell”

Russell J.

Citation: 2019TCC283

Date: 20191217

Docket: 2018-321(IT)I

BETWEEN:

JAGWINDER SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

I. Introduction:

[1] The Appellant, Mr. Jagwinder Singh (JS), appeals two federal *Income Tax Act* (ITA) reassessments, each raised January 5, 2016 by the Minister of National Revenue (Minister) for JS's **2009** and **2010** taxation years respectively. Raised following upon a net worth audit, the reassessments reflect that JS received unreported income of \$99,166 in 2009 and \$88,473 in 2010. Also each reassessment includes a "gross negligence" penalty per subsection 163(2) of the ITA. Finally, both reassessments were raised beyond their respective three year normal reassessments periods, rendering each reassessment bad for being "statute-barred".

II. Issues and Evidence:

[2] In *LaCroix v. R.*, 2008 FCA 241, the Federal Court of Appeal (FCA) discussed how to address an appeal of a net worth assessment of statute-barred years, and where subsection 163(2) gross negligence penalties also have been assessed. The Respondent Crown bears the onus of proof for both the issues of statute-barred years and gross negligence penalties.

[3] In *LaCroix*, the FCA wrote (paragraphs 30 and 32):

[30] The facts in evidence in this case are such that the taxpayer's tax return made a misrepresentation of facts [regarding unreported income], and the only explanation offered by the taxpayer was found not to be credible. Clearly, there must be some other explanation for this income. It must therefore be concluded that the taxpayer had an unreported source of income, was aware of this source and refused to disclose it, since the explanations he gave were found not to be credible. In my view, given such circumstances, one must come to the inevitable conclusion that the false tax return was filed knowingly, or under circumstances amounting to gross negligence. This justifies not only a penalty [per subsection 163(2)], but also [per subparagraph 152(4)(a)(i)] a reassessment beyond the statutory period.

[32] What, then, of the burden of proof on the Minister [per subparagraph 152(4)(a)(i) and subsection 163(2)]? How does he discharge this burden? There may be circumstances where the Minister would be able to show direct evidence of the taxpayer's state of mind at the time the tax return was filed. However, in the vast majority of cases, the Minister will be limited to undermining the taxpayer's credibility by either adducing evidence or through cross-examining the taxpayer. Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of 152(4)(a)(i) and subsection 162(3).

[4] This *LaCroix* language conveys that in determining whether there is unreported income as ascertained by a net worth reassessment for a presumptively statute-barred taxation year, and whether an accompanying gross negligence penalty has been rightly imposed:

i. the first step is to consider, on the basis of direct evidence adduced by the Respondent Crown and or cross-examination of the Appellant taxpayer (and or of any other taxpayer witnesses), whether on a balance of probabilities there was unreported income.;

ii. assuming there is a finding of unreported income and in the absence of a credible explanation for same, the Respondent has met its onus of proof for purposes of both the subparagraph 152(4)(a)(i) statute-barred issue and the subsection 163(2) penalty issue.

[5] Accordingly I now address whether on a balance of probabilities JS did receive unreported income during the 2009 and 2010 years or either of them, and if so whether there was a credible explanation for same.

[6] In his Notice of Appeal, JS pleaded that in 2009 and 2010 he received repayments of a shareholder loan he had previously made to 2158357 Ontario Inc. (215 Ont.), of which he was a shareholder; pleading as well that the received loan repayments were not taxable. In the Reply the Respondent pleads that the unreported income came from proceeds generated by a banquet hall business run by another corporation in which JS held a 50% ownership interest - 1494453 Ont. Inc. (143 Ont.).

[7] At the hearing JS testified. His evidence was that he held a 50% interest in 149 Ont., which owned and operated a banquet hall. JS took bookings for the banquet hall and set up the hall for booked events. He said he received no payments from 149 Ont. other than his T4'd salary remuneration. He also held a 50% ownership interest in 215 Ont. which owned and operated a motel known as the Fairway Motor Inn. He had no working role at the motel. His testimony was that he had received payments from 215 Ont. that were shareholder loan repayments, and as such they did not constitute taxable income. Apart from all that he also sold jewellery on at least two occasions, with received cash payments of \$12,950 (January 13, 2009) and \$12,000 (July 6, 2009). He acknowledged not reporting income from either of those transactions.

[8] JS entered in evidence as Ex. A-1 a November 16, 2015 letter from Canada Revenue Agency (CRA) enclosing certain of CRA's net worth audit schedules for JS (working paper #8802) covering the years in issue. It showed as assets of JS a shareholder loan account outstanding for each of 149 Ont. and 215 Ont. It showed that the 149 Ont. shareholder loan balance remained unchanged during the two taxation years in issue. It showed also that the 149 Ont. shareholder loan account had been supported by financial statements. But it did not show that the 215 Ont. shareholder loan account had been supported by financial statements. Instead, that was shown as supported by a fax from the representative of JS dated March 27, 2014. With respect to the 215 Ont. shareholder loan, being the one not supported by financial statements, the balance owed JS was shown as having increased by approximately \$98,000 between December 31, 2008 and December 31, 2009, and then having decreased by \$16,000 between December 31, 2009 and December 31, 2010.

[9] JS also tendered in evidence Ex. A-2, prepared by his partner in 419 Ont., who was an accountant - Mr. P. Dhillon. The first two pages of Ex. A-2 were in the form of a basic computer-generated table, described as, "analysis of personal deposits - source and deposits" of JS. This was put forward as being a listing of deposits of payments to JS from 215 Ont., supposedly evidenced by a collection of printed Fairway Motor Inn receipts, used as receipts of JS. These also formed part of Ex. A-2. Each such receipt indicates a payment made to JS, between mid-2008 and mid-2010, and annotated as an "owner drawing" or "owner advance". They indicated payments of varying cash amounts such as \$3,000, \$5,000, \$6,500, \$7,500, \$8,000 and *etc.*

[10] The submission of JS was that this documentation evidenced shareholder loan repayments to JS from 215 Ont. JS was asked if he had any bank or other documentation to corroborate this relatively unofficial looking documentation - he did not. These documents infer conflict with the net worth analysis itself which as noted above shows that in 2009 the 215 Ont. shareholder loan balance owed JS increased by \$98,000 in 2009 before reducing by \$16,000 in 2010.

[11] JS holds a masters degree in physical education. The accountant for 149 Ont. prepared his 2009 and 2010 returns. He was asked to sign the prepared returns and he did so. He does not remember checking income reported in the returns. His explanation for unreported income was repayments of the 215 Ont. shareholder loan and sales of jewellery. He could not say why 215 Ont., operating a motel, would have had large amounts of cash or how that corporation kept track of its cash. As well, he had no documentation to show that any figures on the personal expenditures worksheet of the net worth assessment (Ex. A-1) were incorrect, although suggesting that a few of those expenditures were duplicates. He presented no corroborative documentation or other evidence in support of these suggested matters.

[12] Also tendered in evidence (Ex. A-2, pp. 27 & 28) were two 2009 invoices issued by Lakshmi Jewellers to JS for \$12,950 and \$11,995 respectively for purchases of jewellery. Both indicate he was paid in cash. He did not report this income and does not remember if he deposited these amounts into a bank account.

[13] The testimony of the other witness, CRA auditor AB, was that he reviewed the CRA audit file on this matter and thus is familiar with it. He did this as the actual auditor on this matter had since retired. He said it was customary to do a net worth analysis if the bank records and taxpayer information differed and if the taxpayer's books and records were not well kept. He noted that the repayment to a

shareholder of a shareholder loan made to a corporation would not be taxable. Here there was no indication of the source of money for the loan itself. Also, repayment is usually done through banking channels. Here the net worth audit was justified by unreliable books and records and a bank deposit analysis.

[14] In argument the representative for JS asserted that JS had little knowledge of accounting, taxation and banking. He asserted there was duplication in the personal expenses and value of assets was inflated. The extra amounts were repayment by 215 Ont. of a shareholder loan.

[15] Respondent's counsel submitted that the amounts in issue were substantially more than the income amounts reported, indicating the materiality of amount as a factor supporting that JS made a misrepresentation for each of the years as to amount of income he reported. The Minister considered the unreported amounts as being shareholder benefits. All we have are a series of handwritten receipts with varying amounts not appearing to correspond to any shareholder loan. And, how does a corporation operating a motel have such cash? There was no general ledger to help answer this question.

III. Legal Analysis:

[16] The first issue to be addressed is whether JS did understate his income in the said amounts for his 2009 and 2010 taxation years. The evidence shows on a balance of probabilities that he did under-report his income in the amounts as reassessed. There was little cogent evidence indicating otherwise. A copy of a series of hand-written receipts was presented, many barely legible, supposedly being shareholder loan repayments. However, many of these purported repayments were being made in 2009 when the balance of the 215 Ont. shareholder loan, according to the net worth audit, overall did not decrease, but rather increased by almost \$100,000, before decreasing in 2010 by \$16,000. Per Ex. A-2 the questionable 2009 Fairway Motor Inn purported confirmations of 28 payments (January to December, 2009) to JS totalling almost \$108,000. For 2010 they purported to confirm 13 payments (January to June, 2010) totalling almost \$59,000.

[17] This is documentation of a profoundly unprofessional nature. Why is there a complete dearth of business-comparable documentation to confirm transactions supposedly involving in total almost \$170,000? Why are they called owner advances and owner drawings and not repayments? Why is there no banking documentation whatsoever from the corporate payer, or even more surprisingly, no

corporate financial statements, evidencing these transactions? How does a motel generate cash of such amounts? Why were the amounts all said to have been paid in cash and not by cheque? Why have we no banking records on the part of JS pertaining to these substantial payments? Why have we no financial statements of 215 Ont. confirming the purported shareholder loan itself? How are we to know that such payments came from 215 Ont., with which JS testified he had no day to day business involvement, and not from 149 Ont., which owned and operated the banquets hall business, with which JS was wholly engaged as a salaried employee in addition to being a 50% shareholder. In this regard it is noted that it is not incumbent upon the Minister, in concluding there was unreported income, to also determine or speculate as to the source of such income (*LaCroix*, paragraph 18).

[18] One may query why JS would not have had these payments clearly, properly and professionally evidenced by appropriate and usual banking, financial and corporate documentation, as being shareholder loan repayments if that is what they were? If such documentation did exist, and had been entered in evidence, this appeal would most likely have resolved much more favourably for JS.

IV. Conclusion:

[19] However, in the absence of such documentation and given the highly questionable nature of the "receipts" provided, I have little recourse but to find that there was unreported income as assessed (I have no reason to prefer any amounts than those reassessed), and I consider the explanation of the assessed unreported income (basically, 215 Ont. shareholder loan repayments) to be not credible.

[20] Having so found, then again per *LaCroix*, as noted above, I further conclude that the Respondent's onus of proof per subparagraph 152(4)(a)(i) has been met, and thus the appealed reassessments of the 2009 and 2010 taxation years, nominally statute-barred, are not in actuality statute-barred. That is, for each of the two taxation years in issue JS made a misstatement (as to quantum of reported income) attributable to negligence, carelessness or wilful default. I have been given no reason to question the quantum of unreported income as determined by the Minister.

[21] Likewise, and again per *LaCroix*, noted above, I find in these circumstances each of the two subsection 163(2) penalties also at issue herein to have been appropriately assessed.

[22] Accordingly this informal procedure appeal is denied, albeit without costs.

This Amended Reasons for Judgment is issued in substitution of the Reasons for Judgment dated December 17, 2019 to amend the taxation years referenced in paragraph 1 herein.

Signed at Ottawa, Canada, this 27th day of January 2020.

“B.Russell”

Russell J.

CITATION: 2019 TCC 283

COURT FILE NO.: 2018-321(IT)I

STYLE OF CAUSE: JAGWINDER SINGH AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: September 23, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell

DATE OF JUDGMENT: December 17th, 2019

**DATE OF AMENDED
JUDGMENT: January 27, 2020**

**DATE OF AMENDED
REASONS FOR JUDGMENT: January 27, 2020**

APPEARANCES:

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