

Docket: 2017-4984(IT)I

BETWEEN:

MARY SIVEKUMAR,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on April 5, 2019 and October 3, 2022, at Toronto, Ontario
and written submissions received on February 27, 2025

Before: The Honourable Justice David E. Graham

Appearances:

Agent for the Appellant: Jessica Sivekumar

Counsel for the Respondent: Christopher Ware

JUDGMENT

The appeal of the reassessment dated February 26, 2018, pursuant to section 160 of the *Income Tax Act* is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the shortfall in consideration was \$10,650, not \$14,500.

Costs of \$625 are awarded to the Respondent.

Signed at Toronto, Ontario, this 4th day of March 2025.

“David E. Graham”

Graham J.

Citation: 2025 TCC 32
Date: 20250313
Docket: 2017-4984(IT)I

BETWEEN:

MARY SIVEKUMAR,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR JUDGMENT

Graham J.

[1] Mary Sivekumar was assessed under section 160(1) of the *Income Tax Act*. Sinna Sivekumar is Ms. Sivekumar's husband. The Minister of National Revenue reassessed Ms. Sivekumar on the basis that she received property valued at \$14,150 from Mr. Sivekumar at a time that Mr. Sivekumar owed in excess of that amount to the Minister.

[2] At start of the hearing, the Respondent made two concessions. First, the Respondent conceded that, when issuing the reassessment, the Minister accidentally reassessed Ms. Sivekumar for \$14,500 instead of \$14,150. Second, the Respondent conceded that a \$3,500 cheque should not have formed part of the reassessment. As a result of these concessions, the Respondent concedes that, regardless of the outcome in the appeal, the reassessment should be reduced to \$10,650.¹

Section 160

[3] There are four key tests that must be met in order for section 160 to apply:

(a) there must be a transfer of property;

(b) the transfer must have been made to a non-arm's length person;

¹ \$14,150 - \$3,500 = \$10,650

(c) the transfer must have been made for less than fair market value consideration; and

(d) the transfer must have been made by a person who owes an amount under the Act.

[4] If these tests are met, then the transferee is liable to pay an amount equal to the lesser of the amount owing to the Minister by the transferor and the shortfall in the consideration.

Transfer of Property

[5] There is no dispute that Mr. Sivekumar made four different transfers of property to Ms. Sivekumar totalling \$10,650 between April 2012 and June 2013. These transfers were made by cheques from Mr. Sivekumar's personal bank account to Ms. Sivekumar's personal bank account.

Non-Arm's Length Person

[6] Mr. and Ms. Sivekumar are married. There is no dispute that section 160(1) specifically applies to all transfers to spouses.

Consideration

[7] The Respondent takes the position that Ms. Sivekumar did not provide any consideration to Mr. Sivekumar for the transfer of the property.

[8] Ms. Sivekumar takes the position that she provided full consideration for the transfer of the property. She submits that she had previously lent her husband various amounts of money and that the cheques in question were repayments of those loans.

[9] Ms. Sivekumar's self-serving assertion that the transfers were loan repayments needed to be supported by testimony from Mr. Sivekumar and, more importantly, by documentary evidence. The only documentary evidence to support her assertion is the fact that the memo lines on the cheques contain the words "payback" or "loan payback".

[10] There was no documentary evidence to support the position that Ms. Sivekumar had lent money to her husband. There were no promissory notes or

loan agreements. There was no system for recording the outstanding balance of these purported loans at any given time.

[11] I understand that financial arrangements between spouses are generally looser than financial arrangements between third parties. For that reason, I would not have expected to see extensive documentation. However, at the same time, loans between spouses are the exception, not the rule. When they occur, they are something that I would expect to see recorded or documented in some manner beyond a memo line on a cheque. At a minimum, I would have wanted to see evidence of cheques with similar memo lines going from Ms. Sivekumar to Mr. Sivekumar.

[12] Based on all of the foregoing, I find that the transfers were made for no consideration.

Outstanding Tax Debt

[13] The Respondent has satisfied me that Mr. Sivekumar owed the Minister well in excess of \$10,650 when the transfers were made.

[14] This appeal first came on for hearing in 2019. After the Respondent had closed his case, Ms. Sivekumar challenged, for the first time, the accuracy of Mr. Sivekumar's underlying assessments. Ms. Sivekumar did not know the details of those assessments. She explained that she had not called Mr. Sivekumar as a witness because he was out of the country. Ms. Sivekumar's daughter, Jessica Sivekumar, contacted her father by phone and reported that he had documentary evidence at home that would show that his debts were less than \$10,650.

[15] In the circumstances, I agreed to adjourn the hearing of the appeal and allow Ms. Sivekumar to re-open her evidence in order to call Mr. Sivekumar as a witness. Since Ms. Sivekumar had not raised this issue in her Notice of Appeal, I also gave the Respondent a chance to file an Amended Reply addressing the issue.

[16] Almost six years has passed since then. During that time, Ms. Sivekumar has made no effort to move her appeal forward. Following delays due to COVID, the Court scheduled the continuation of the appeal for hearing in October 2022. After the Registry closed on the last business day before the hearing, Ms. Sivekumar requested an adjournment for medical reasons. When Ms. Sivekumar failed to appear at the hearing, I adjourned the hearing.

[17] The Court has since made numerous unsuccessful attempts to reschedule the continuation of the appeal. Neither Ms. Sivekumar nor her agent has made any attempt to work with the Court to find a way for the hearing to proceed.

[18] I understand that, in the intervening years, Ms. Sivekumar has unfortunately become very ill. However, at all times, Ms. Sivekumar was represented by Jessica Sivekumar. Jessica Sivekumar was Ms. Sivekumar's primary witness at trial. Ms. Sivekumar's testimony consisted of little more than adopting her daughter's testimony. Ms. Sivekumar did not have to be physically present in court for Mr. Sivekumar to testify.

[19] In December 2024, after more than two years of trying to move this matter forward, I gave Ms. Sivekumar three options:

- (a) the trial could continue in March 2025, and she could call Mr. Sivekumar as a witness;
- (b) the trial could continue in March 2025, without Mr. Sivekumar being called as a witness; or
- (c) the parties could file written closing arguments on or before February 28, 2025, and I could decide the appeal based on those submissions.

[20] I set a deadline for Ms. Sivekumar to tell the Court which option she chose. I made it clear to her that, if she failed to choose, I would treat her as having selected the third option and would decide the appeal based on whatever written submissions the Court received by the deadline.

[21] When Ms. Sivekumar failed to respond by the deadline, the Court left her a voicemail message detailing the options that she had been given and telling her that, since she had not selected an option, she had until February 28, 2025, to file written submissions. Ms. Sivekumar did not file any written submissions. As a result, I have decided her appeal based on the evidence presented at trial and the written submissions received from the Respondent.

[22] I draw an adverse inference from Ms. Sivekumar's failure to produce Mr. Sivekumar as a witness and conclude that she has not done so because he does not have the evidence to support her assertion that there was no merit to the underlying assessments. Since Ms. Sivekumar has not otherwise provided any to

support her assertion that there was no underlying tax debt, I find that Mr. Sivekumar had an underlying tax debt of at least \$10,650.

Conclusion

[23] Based on all of the foregoing, the appeal is allowed and referred back to the Minister for reassessment to give effect to the Respondent's concessions.

Costs

[24] The Respondent submits that Ms. Sivekumar has unduly delayed the prompt and effective resolution of her appeal. As a result, the Respondent seeks costs pursuant to sections 10 and 11 of the *Tax Court of Canada Rules (Informal Procedure)* in the amount of \$1,685.

[25] My understanding is that the Respondent calculates this figure as follows:

- \$250 for preparing for the initial hearing (s. 11(b))
- \$750 for the conduct of the initial hearing (\$375 per half day (s. 11(c))
- \$250 for preparing for the continuation of the hearing in October 2022 (s. 11(b))
- \$375 for the conduct of the continuation of the hearing in October 2022 (s. 11(b))
- \$60 for taxation of costs (s. 11(d))

[26] Had Ms. Sivekumar's appeal been resolved on the initial day of trial, I would not have awarded any costs against her as she had done nothing to delay the prompt and effective resolution of her appeal and had, in fact, benefited from concessions made by the Respondent. As a result, I see no reason why I would now award the Respondent costs for preparing for or conducting that day of hearing.

[27] When Ms. Sivekumar failed to appear at the scheduled continuation of her hearing in October 2022, I awarded the Respondent \$250 in costs under section 11(b) for the Respondent's time wasted preparing for that hearing. I did so because Ms. Sivekumar's medical issues would have been known to her when she

received the notice of hearing and she waited until the last minute to request an adjournment. On review, I see that I did not include that cost award in my order adjourning the hearing. Therefore, it is appropriate that I include it now.

[28] I am satisfied that Ms. Sivekumar has, through her inaction, unduly delayed the prompt and effective resolution of her appeal since October 2022. This delay forced the Respondent to have to prepared written submissions instead of the oral submissions that counsel would otherwise have made at the initial hearing. While section 11 of the Rules does not contemplate an award of costs for preparing written submissions, in the circumstances, I find that an award of \$375 (being the s. 11(c) award a half day of hearing) would be an appropriate equivalent.

[29] Since the Respondent's cost submissions were part of its written submissions, I will not award additional costs for those submissions.

[30] In summary, I will award a total of \$625 in costs to the Respondent.

These Amended Reasons for Judgment are issued in substitution of the Reasons for Judgment dated March 4, 2025, in order to correct the figures underscored in the back page hereof.

Signed at Toronto, Ontario, this 13th day of March 2025.

“David E. Graham”

Graham J.

CITATION: 2025 TCC 32

COURT FILE NO.: 2017-4984(IT)I

STYLE OF CAUSE: MARY SIVEKUMAR v. HIS MAJESTY
THE KING

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 3, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Graham

DATE OF AMENDED
JUDGMENT: March 13, 2025

APPEARANCES:

Agent for the Appellant: Jessica Sivekumar

Counsel for the Respondent: Christopher Ware

COUNSEL OF RECORD:

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