

Docket: 2014-1838(IT)I

BETWEEN:

SIDRA IQBAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 16, 2015, at Toronto (Ontario).

Before: The Honourable Justice Réal Favreau

Appearances:

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

JUDGMENT

The appeal from the reassessment dated October 13, 2009 made by the Minister of National Revenue under the *Income Tax Act* for the 2008 taxation year is dismissed in accordance with the attached reasons for judgment.

Signed at Montréal, Canada, this 15th day of December 2015.

« Réal Favreau »

Juge Favreau

Citation: 2015 TCC 324

Date: 20151215

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BETWEEN:

SIDRA IQBAL

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal under the informal procedure from a reassessment made by the Minister of National Revenue (the “Minister”) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) as amended (the “Act”) dated October 13, 2009 concerning the 2008 taxation year of the appellant.

[2] The issue is whether the appellant is entitled to tax credits in respect of charitable donations in the amounts of \$3,500 and \$4,000 purportedly made during the 2008 taxation year.

[3] In determining the appellant’s tax liability for the 2008 taxation year, the Minister relied on the following assumptions of fact:

- a) the Appellant claimed charitable donations of \$3,500 for alleged donations to Africanadian Mediation Community Services (“AMCS”) and \$4,000 for alleged donations to Operation Save Canada Teenagers (“Operation”) for the 2008 taxation year;
- b) the Appellant reported net income of \$49,762 for the 2008 taxation year;
- c) the amount of the alleged 2008 donations constituted 15% of the Appellant’s reported net income for the 2008 taxation year;

- d) the Appellant failed to provide receipts to the Minister for the charitable donation tax credits claimed for the 2008 taxation year that contained the information prescribed by section 3501 of the *Income Tax Regulations*;

Africanadian Mediation Community Services

- e) prior to December 11, 2010, AMCS was a registered charity;
- f) AMCS failed to maintain adequate books and records;
- g) AMCS did not devote all of its resources to charitable purposes and activities;
- h) AMCS did not issue receipts in accordance with the *Income Tax Act* ;
- i) AMCS' registration as a charity was revoked for cause by the Minister effective December 11, 2010;
- j) the Appellant's alleged donations to AMCS in the 2008 taxation year, consisted of \$1,500 cash and \$2,000 in-kind donations;
- k) the receipt from AMCS issued to the Appellant did not state the dates on which the in-kind gifts were purportedly donated;
- l) the value of the in-kind gifts donated did not reflect the description of the goods purportedly donated;
- m) the receipt did not include the name and internet address of the CRA and did not state that it was an official receipt for income tax purposes;
- n) the receipt did not contain a signature of the person who issued the receipt;
- o) AMCS did not receive donations from the Appellant;
- p) the Appellant did not transfer any property (cash or non-cash) to AMCS in the 2008 taxation year or in any of the five immediately preceding taxation years;
- q) if the Appellant did transfer non-cash properties to AMCS in the 2008 taxation year, the fair market value of the alleged non-cash properties was nominal;

Operation Save Canada Teenagers

- r) Operation was a registered charity effective July 6, 2006;
- s) Operation failed to maintain adequate books and records;

- t) Operation did not devote all of its resources to charitable purposes and activities;
- u) Operation did not issue receipts in accordance with the *Income Tax Act*;
- v) Operation's registration as a charity was revoked for cause by the Minister effective January 8, 2011;
- w) the Appellant's alleged donations to Operation in the 2008 taxation year, consisted of \$1,200 cash and \$2,800 in-kind donations;
- x) the receipt from Operation issued to the Appellant did not state the dates on which the in-kind gifts were purportedly donated;
- y) the value of the in-kind gifts donated did not reflect the description of the goods purportedly donated;
- z) Operation did not receive donations from the Appellant;
- aa) the Appellant did not transfer any property (cash or non-cash) to Operation in the 2008 taxation year or in any of the five immediately preceding taxation years;
- bb) if the Appellant did transfer non-cash properties to Operation in the 2008 taxation year, the fair market value of the alleged non-cash properties was nominal; and

...

[4] As set out in paragraph 7 of the Reply to the Notice of Appeal, the Minister also relied on the following additional material facts:

- a) Operation Save Canada's Teens ("Teens") was not a registered charity in 2008; and
- b) the Appellant did not transfer any property (cash or non-cash) to Teens in the 2008 taxation year or in any of the five immediately preceding taxation years.

[5] The appellant testified at the hearing. She explained that it was the first year in which she gave money to charitable organizations. In 2008, she worked as quality supervisor for Maple Leafs Foods and she reported a net income of \$49,762 in her tax return. The total amount of the tax deducted as per her T-4 was \$9,599.57 and she made contributions to the Canada Pension Plan in the amount of \$2,289.98 and paid premiums to the Employment Insurance program in the amount

of \$859.65. Her net after-tax disposable income during that year was approximately \$37,000 and \$3,000 per month.

[6] The appellant left her parents' house when she got married. She then moved into a one-bedroom apartment. At the end of 2008, she moved into a two-bedroom apartment with her husband. The monthly rent for the apartment was between \$1,100 and \$1,200 and was paid by the appellant and by her husband on a 50/50 basis. She estimated that their cost of living was approximately \$300 per week. They owned a car and lived about 5 or 6 kilometers away from her workplace. She had to reimburse a debt from school costing her \$60 per month. Her husband had no debt from school. She did not provide any additional financial information concerning her husband.

[7] The appellant confirmed that she claimed in her 2008 tax return, donations amounting to \$7,500 to two charitable organizations, Africanadian Mediation Community Services ("AMCS") and Operation Save Canada Teenagers ("Operation"). The donation to AMCS totalled \$3,500 which consisted of \$1,500 in cash and \$2,000 in in-kind. The donation to Operation totalled \$4,000 which consisted of \$1,200 in cash and \$2,800 in in-kind.

[8] The appellant explained that she heard about AMCS through a friend from Ghana who prepared her tax returns. All that she knew about AMCS was that the organization was helping people in Africa. She did not know the location from where the organization operated.

[9] The appellant explained that her cash contribution was calculated by her husband, based on a percentage of her assets. She was withdrawing \$300 per month from her bank account and put that money aside for donation purposes. The in-kind donation to AMCS consisted of household items, used clothing, shoes, laptop computer, books and magazines.

[10] According to the appellant, the cash donation to AMCS was a one-time donation given to the person who came to pick up the in-kind donation in June 2008. She said that she received a receipt from the organization at the end of the year. She did not know by whom her goods were appraised.

[11] The appellant explained that a friend recommended that she supports Operation. She used the monthly withdrawals from her bank account to make her cash donations. The money from her monthly withdrawals was kept by a pool coordinator at home to help members of the pool when they are in need. The

appellant maintained that she could use the money to do whatever she wanted. She made her cash donation to Operation on only one occasion but she did not specify the date on which the cash donation was made, where and to whom it was made. She alleged to have made many in-kind donations to the Operation; she simply had to call the Operation and they would send someone to pick-up the goods. The appellant did not prepare an itemized list of goods she gave. The appraisal of the goods given by the appellant was conducted by the organization for the preparation of the tax receipt.

[12] The appellant alleged that the original receipts that were issued by the charitable organizations were provided to the Canada Revenue Agency (“CRA”) when she filed her tax return for 2008. She could not file as evidence a copy of the receipt from AMCS. Paragraphs 6(k) to 6(n) of the Reply to the Notice of Appeal clearly show that the CRA had possession of the receipt from AMCS at one point. As far as the receipt from Operation is concerned, the appellant filed a copy of it with her notice of objection.

[13] Mr. Salman Jafri, a litigation officer of CRA, testified at the hearing and filed extracts from Canada Gazette Part I showing that the charity registration of Africanadain Mediation and Community Services has been revoked effective December 11, 2010 and that the charity registration of Operation Save Canada’s Teenagers has been revoked effective January 15, 2011.

Analysis

[14] Section 118.1 of the *Act* allows an individual to claim a tax credit for charitable gifts made to a registered charity. Paragraph 118.1(2)(a) provides that the making of the gift must be proven by filing a receipt containing prescribed information. The provision reads:

(2) A gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(a) a receipt for the gift that contains prescribed information;

...

[15] The prescribed information required to be included in an official receipt is listed in subsection 3501(1) of the *Income Tax Regulations* (the “Regulations”) which states in the version applicable to the 2008 taxation year:

Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

- (a) the name and address in Canada of the organization as recorded with the Minister;
- (b) the registration number assigned by the Minister to the organization;
- (c) the serial number of the receipt;
- (d) the place or locality where the receipt was issued;
- (e) where the donation is a cash donation, the day on which or the year during which the gift was received;
- (e.1) where the donation is a gift of property other than cash;
 - (i) the day on which the donation was received;
 - (ii) a brief description of the property, and
 - (iii) the name and address of the appraiser of the property if an appraisal is done;
- (f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);
- (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
- (h) the amount that is
 - (i) the amount of a cash donation, or
 - (ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;
- (h.1) the amount of the advantage, if any, in respect of the gift;
- (h.2) the eligible amount of the gift;
- (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations; and
- (j) the name and Internet website of the Canada Revenue Agency.

[16] For the following reasons, I have concluded that the receipts provided by the appellant do not contain all of the information required by the *Regulations* and, for this reason alone, the appeal must be dismissed. I have also concluded that, even if the receipts had conformed to the *Regulations*, the appellant failed to prove, on a balance of probabilities, that she made the donations at issue.

[17] The appellant filed a receipt from AMCS with her 2008 tax return. No copy of the receipt was filed as evidence in Court but the CRA had possession of it and observed that the receipt (a) did not state the dates on which the in-kind gifts were purportedly donated (b) the value of the in-kind gifts donated did not reflect the description of the goods purportedly donated (c) did not include the name and internet address of the CRA and did not state that it was an official receipt for income tax purposes and (d) did not contain a signature of the person who issued the receipt as required by paragraphs 3501(1)(e.1), (i) and (j) of the *Regulations*.

[18] The receipt from Operation did not state the dates on which the in-kind gifts were purportedly donated and their monetary value did not reflect the description of the goods purportedly donated, as required by paragraph 3501(1)(e.1) of the Regulations.

[19] Since none of the receipts provided to the appellant by AMCS and Operation contain all of the prescribed information, they do not meet the requirements of subsection 118.1(2) of the *Act*, and for this reason, the appellant's claims for charitable gift credits cannot be allowed.

[20] The onus is on the appellant to prove that she made the alleged donations to AMCS and Operation in 2008. The standard of proof to be applied is on a balance of probabilities. This means that she must show that it is more probable than not that she made the donations at issue. In my view, the appellant did not meet her standard of proof.

[21] The only proof submitted by the appellant that she had made the donations at issue was her testimony and the incomplete receipts issued by AMCS and Operation.

[22] The evidence presented by the appellant fell short of showing that she made the donations to AMCS and Operation. Her testimony was vague and unreliable. She had no connection with the charitable organizations. She did not know from where the organizations operated nor what they were really doing with the donations except in general terms. She simply stated that she was introduced to AMCS by a friend who prepared her tax returns and who had since returned to Ghana. She was similarly introduced to Operation by another friend. She did not provide any information concerning this latter friend. None of these friends were called as a witness to corroborate her evidence.

[23] The appellant said that she withdrew the cash from her bank account to make the donations but no bank statement showing the monthly cash withdrawals was filed as evidence in Court. The amount of the cash donations were based on a formula calculated by the appellant's husband. I draw a negative inference from the failure of the appellant to call her husband to confirm how the cash donations were determined and when they were made.

[24] The appellant's testimony was also vague concerning the place where the cash was kept. It is not entirely clear if all the money from her monthly

withdrawals was kept by a pool coordinator or if a part of it was kept by her at home.

[25] The appellant's testimony was particularly deficient because she could not remember the exact dates on which she made the cash or in-kind donations. She mentioned that they were made in the month of June 2008 but this was not corroborated by any verbal or documentary evidence. She was not able to give the name of the persons to whom she supposedly remitted the cash and in-kind donations and she did not call any witnesses from the charitable organizations to testify as to the contributions made nor did she submit any other evidence concerning the appraisal of the goods that she donated.

[26] The appellant did not prepare, at the time the donations were made, an itemized list of the goods donated with a short description of the goods and their estimated value. She relied entirely on the charitable organizations to estimate the value of the goods donated. I find it hard to believe that she did not want to keep goods having a total value of \$4,800.

[27] In analyzing the appellant's ability to make the alleged cash contributions, I am led to believe that the amounts are substantial compared to her net after-tax disposable income for the 2008 taxation year. The cash donations of \$2,700 represented 7.3% of her net after-tax disposable income for that year.

[28] Considering the amounts of the alleged donations made by Mrs. Iqbal, I would have expected her to pay more attention to recording these donations on an ongoing basis, to make more comprehensive inquiries on the people administering these organizations and on how the donations were being used to carry out their charitable activities.

[29] For all the above reasons, taken collectively, I found that the appellant has failed to prove, on a balance of probabilities, that she made the donations at issue.

[30] The appeal is dismissed.

Signed at Montreal, Canada this 15th day of December 2015.

“Réal Favreau”

Favreau J.

CITATION: 2015 TCC 324
COURT FILE NOs.: 2014-1838(IT)I
STYLE OF CAUSE: Sidra Iqbal and Her Majesty the Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: July 16, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau
DATE OF JUDGMENT: December 15, 2015

APPEARANCES:

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

COUNSEL OF RECORD:

For the Appellant:

Name:

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