

Docket: 2015-2353(IT)I

BETWEEN:

FATNA NAZIH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent

[ENGLISH TRANSLATION]

Appeal heard on December 10, 2015, at Ottawa, Ontario.

Before: The Honourable Justice Guy R. Smith

Appearances:

For the appellant: The appellant herself
Counsel for the respondent: Mélanie Sauriol

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2013 taxation year is dismissed, without costs.

Signed at Ottawa, Canada, this 22nd day of March 2016.

“Guy Smith”

Smith J.

Citation: 2016 TCC 70
Date: 20160322
Docket: 2015-2353(IT)I

BETWEEN:

FATNA NAZIH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Smith J.

[1] Ms. Nazih is appealing the assessment made by the Minister of National Revenue (hereinafter the “**Minister**”) for the 2013 taxation year. The hearing was held following the informal procedure on December 10, 2015.

[2] Two issues are in dispute in this case. First, was the appellant permitted to deduct eligible net moving expenses of \$17,884 and, second, was she permitted to claim a tax credit for charitable donations of \$2,240.

Moving expenses

[3] When she resided in the City of Longueuil, Quebec, the appellant accepted an employment offer in the National Capital Region. In March 2013, she moved with her family to Gatineau, Quebec.

[4] It is understood that this is an “eligible relocation” within the meaning of subsection 248(1) of the *Income Tax Act* (hereinafter the “**Act**”) because the distance between the old residence and the new work location is clearly greater than 40 kilometres.

[5] Eligible moving expenses can be determined by reviewing pertinent legislation:

Moving expenses

62 (1) There may be deducted in computing a taxpayer's income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that

(a) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;

(b) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;

(c) the total of those amounts does not exceed

(i) in any case described in subparagraph (a)(i) of the definition *eligible relocation* in subsection 248(1), the total of all amounts, each of which is an amount included in computing the taxpayer's income for the taxation year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, or because of subparagraph 56(1)(r)(v) in respect of the taxpayer's employment at the new work location, and

(ii) in any case described in subparagraph (a)(ii) of the definition *eligible relocation* in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(n) and (o); and

(d) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.

Moving expenses of students

(2) . . .

(3) In subsection 62(1), *moving expenses* includes any expense incurred as or on account of

(a) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(b) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(c) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(d) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(e) the taxpayer's selling costs in respect of the sale of the old residence,

(f) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

(g) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of \$5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(h) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

but, for greater certainty, does not include costs (other than costs referred to in paragraph 62(3)(f)) incurred by the taxpayer in respect of the acquisition of the new residence.

[6] It is not disputed that the appellant was eligible for reimbursement of moving expenses by her new employer up to a maximum of \$5,000, and she did receive that amount. The appellant argued that she was not required to submit detailed receipts to obtain that amount, but the fact remains that this was a reimbursement of her moving expenses within the meaning of paragraph 62(1)(a) of the Act. It is therefore necessary to account for that amount when calculating the net deductible moving expenses.

[7] During the hearing, the appellant submitted a table containing the following amounts (the table has been reproduced excluding details):

	Claimed amounts	Description
Travel and lodging costs while house hunting	\$1,486.71	

Travel and lodging costs for moving – paragraphs 62(3)(a) and (c)	\$2,513.40	
Moving company costs - paragraph 62(3)(b)	\$1,587.00	
Sale of old residence - paragraph 62(3)(e)	\$804.77 \$748.00	Advertising Legal costs
Purchase of new residence - paragraph 62(3)(f)	\$526.00 \$1,472.00 \$2,595.00 \$450.00 \$7,423.00 \$3,278.00	Central vacuum Legal costs Transfer tax Inspection CMHC insurance Down payment
Subtotal	\$22,884.00	
Reimbursements - paragraph 62(1)(a)	(\$5,000.00)	
Total	\$17,884.00	

[8] The Minister disallowed expenses of \$9,916 and allowed deductible net moving expenses of \$7,968, as indicated in the notice of confirmation dated May 20, 2015.

[9] According to the jurisprudence, although the list of expenses detailed in subsection 62(3) is not exhaustive, expenses incurred as a result of an eligible relocation must be associated with a physical relocation and not incidental expenses; *Seguin v. Canada*, [1998] 2 C.T.C. 13 (FCA), (QL). Consequently, expenses associated with travel to find a new residence are not eligible; *Olney v. R.*, 2014 CarswellNat 3383 (TCC), at paragraph 29. I therefore find that the claim of \$1,486.71 is not eligible as a moving expense.

[10] Regarding travel costs, including reasonable expenses for meals and lodging, the appellant had the choice, according to the administrative position of the Canada Revenue Agency, to make calculations using the detailed or simplified method. Given that she did not have all the receipts required to support her claim, the Minister made the calculation using the simplified method for 8 days of travel for 4 people (maximum of \$51 per day per person), plus the cost of lodging (with supporting receipts) and travel costs. According to these calculations, I find that the total amount claimed should be reduced from \$2,513.40 to \$2,264.00 (an adjustment of \$249.40).

[11] As indicated above, the appellant was not entitled to incidental expenses. The amount claimed for a new central vacuum (\$526.00) should be rejected along with fees for the Canada Mortgage and Housing Corporation (\$7,423.00) incurred during the negotiation of a mortgage for the new residence (which the appellant acknowledged during the hearing). The same applies to fees for the inspection of the new residence (\$450.00) and the amount reflecting, according to the appellant, the difference between the 5% down payment and the amount paid as a penalty for redeeming the mortgage on the old residence (\$3,278). In my opinion, none of these amounts is eligible within the meaning of subsection 62(3). Therefore, I would have reduced the eligible travel costs to \$9,470.89 and, accounting for the \$5,000 reimbursement, would have reduced the deductible net moving expenses to \$4,470.89.

[12] Although I have reached this conclusion, the Minister has already allowed deductible net moving expenses of \$7,968, as stated in the notice of confirmation dated May 20, 2015, and our Court does not have jurisdiction to increase the tax payable. This principle was also acknowledged in the case of *Valdis v. The Queen*, [2001] 1 C.T.C. 2827, where Justice Hamlyn noted in paragraph 21:

21 In *Millette v. The Queen*,¹ Judge Lamarre Proulx reaffirmed that this Court cannot entertain an appeal that contemplates increasing an Appellant's tax liability. She stated at paragraph 72:

It is accepted in the case law that this Court cannot increase the amount of the Minister's assessment because that would be tantamount to the Minister appealing the assessment, which he cannot do. The Minister cannot appeal his own assessment: *Harris v. M.N.R.*, 64 D.T.C. 5332, at p. 5337; *Shiewitz v. M.N.R.*, 79 D.T.C. 340, at p. 342; and *Abed v. The Queen*, 82 D.T.C. 6099, at p. 6103.

¹ *Millette v. R.*, 99 D.T.C. 527 (Fr.) (C.T.C.)

[13] In light of the above, I find that the appellant is entitled to deductible net moving expenses of \$7,968 for the taxation year in question.

Charitable donations

[14] The appellant claimed a non-refundable tax credit for charitable donations in the amount of \$2,240.00, which is detailed as follows:

	Appellant	Minister
The Mosque of Aylmer	\$370	\$370
Arabic language school	\$930	\$0
Miscellaneous	\$940	\$0
Total	\$2,240	\$370

[15] Evidently, taxpayers can, at their discretion, make a donation to whomever, in any amount. There is no limit. Moreover, the appellant was of the opinion that she had paid the amounts claimed, had provided evidence and, for her, they constituted charitable donations. I reject that argument because she is seeking a tax credit. It must therefore be determined whether the donation complies with the Act.

[16] In order to claim a non-refundable tax credit for a taxation year, the donation must be made to a “registered charity” or other donee listed in subsection 118.1(1) of the Act.

[17] Supporting evidence is also required in accordance with the Act. Subsection 118.1(2) states:

Proof of gift

(2) An eligible amount of a gift is not to be included in the total charitable 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;

[18] The prescribed information appears in the *Income Tax Regulations* (the “**Regulations**”) part XXXV, 3500 and 3501. If there is no receipt, the donation does not meet the requirements of subsection 118.1(1), and if the receipt does not meet the form requirements listed in subsection 3501(1) of the Regulations, the application for a credit for a charitable donation is irremediably invalid: *Castro v. The Queen*, 2015 FCA 225.

[19] In this case, only the receipt for \$370 meets the requirements in subsections 118.1(1) of the Act and 3501 of the Regulations.

[20] I should add that the appellant produced five receipts totalling \$1,510 (there was no receipt for \$360) for the amounts donated to an association and a language school. Given that the names of her children appear on the receipts, I find that these entities provided services, namely language courses. Evidently, a simple receipt given in exchange for a sum of money to pay for a given product or service does not satisfy the definition of a donation. Considering that the appellant benefited from the sum paid, through her two children, it cannot be a charitable donation within the meaning of the Act.

[21] For these reasons, I am dismissing the appeal.

Signed at Ottawa, Canada, this 22nd day of March 2016.

“Guy Smith”

Smith J.

CITATION: 2016 TCC 70

COURT FILE NO.: 2015-2353(IT)I

STYLE OF CAUSE: FATNA NAZIH v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 10, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Guy R. Smith

DATE OF JUDGMENT: March 22, 2016

APPEARANCES:

For the appellant: The appellant herself
Counsel for the respondent: Mélanie Sauriol

COUNSEL OF RECORD:

For the appellant:

Name:

Law firm:

For the respondent: William F. Pentney
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