

Docket: 2014-2961(IT)I

BETWEEN:

FAN HSUI TO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on May 11, 2016, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Samantha Hurst

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**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2006, 2007, 2008 and 2009 taxation years is allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis of the concessions made by the Minister of National Revenue at the hearing of this appeal as follows:

- a) The amount of \$18,615, \$30,869.90 and \$9,479.95 is deleted from the Appellant's income in 2006, 2007 and 2008 respectively;
- b) The amount of unreported income for 2009 is reduced to \$53,689;

c) Gross negligence penalties are deleted from the Appellant's income in 2006, 2007, 2008 and 2009.

Signed at Halifax, Nova Scotia, this 27<sup>th</sup> day of July 2016.

"V.A. Miller"

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V.A. Miller J.

Citation: 2016TCC176  
Date: 20160727  
Docket: 2014-2961(IT)I

BETWEEN:

FAN HSUI TO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

V.A. Miller J.

[1] On October 22, 2009, the Toronto Police Services executed a search warrant at the Appellant's residence. They seized drugs, weapons and cash from her sons' bedroom and \$63,990 and US\$4,004 in cash from the Appellant's bedroom. In an affidavit, the Appellant made oath and said that the money taken from her bedroom belonged to her and her spouse. The cash taken from her bedroom was returned to the Appellant. In Canadian dollars, the cash was \$69,273.19.

[2] The Minister of National Revenue (the "Minister") used a net worth analysis to reassess the Appellant's income tax liability for her 2006, 2007, 2008 and 2009 taxation years. The 2006 and 2007 taxation years were reassessed beyond the limitation period pursuant to subsection 152(4) of the *Income Tax Act* and gross negligence penalties were assessed in accordance with subsection 163(2) for each of the taxation years at issue. According to the net worth analysis, the Appellant failed to include the following amounts in her income:

Taxation Year	Reported Income	Unreported Income
2006	\$9,393.00	\$18,615.00
2007	9,843.00	30,869.90
2008	9,127.00	9,479.95
2009	10,318.00	72,663.24
Total	\$38,681.00	\$131,628.09

[3] The amount included in the Appellant's income as unreported income was calculated by deducting her total liabilities from her total assets and adding her

personal expenditures to the result. Adjustments were made for her income tax refund, GST/HST credit refund and the Child Tax Benefit.

[4] The Appellant's total assets included the results from a bank deposit analysis and the cash found in her home. She had no liabilities. The personal expenditures were calculated using Statistics Canada information.

[5] At the beginning of the hearing, counsel for the Respondent conceded that the amounts included in the Appellant's income for personal expenditures were too high. Counsel stated that the amounts estimated by the Appellant for personal expenditures were more accurate and counsel submitted a document with those amounts. The result of this concession is that there is no unreported income for 2006, 2007 and 2008 and the unreported income for 2009 is reduced to \$53,689. With the deletion of the unreported income for 2006, 2007 and 2008, the gross negligence penalties are also deleted for those years. The Respondent conceded that the gross negligence penalties for 2009 should also be deleted.

[6] The main component of the unreported income for 2009 is the amount of \$69,273.19 which was found during the search of the Appellant's home.

[7] The Appellant gave her evidence through a Cantonese Interpreter.

[8] The Appellant immigrated to Canada in 1985. She married in 1988 but she and her spouse are now separated. The Appellant stated that it was only a coincidence that her husband was in her home when the police executed its search warrant. In 2009, the Appellant was single with three dependent children.

[9] The Appellant stated that she worked from the time she immigrated to Canada; she lived frugally and she always saved her money. It was her evidence that the amount of \$69,273.19 was her savings. She testified that all of the money belonged to her. None of it belonged to her spouse. She further explained that the Canadian funds of \$63,990 were her savings from gifts given to her at her wedding; gifts given to her at her children's births; and, amounts she saved from her earnings. She was not sure how much she saved each year from her earnings. She stated that the US\$4,004 did not belong to her; it was her mother's money. She was holding it for her mother so that her mother could save the money.

[10] In cross-examination, the Appellant stated that she received approximately \$30,000 cash as gifts at her wedding. She also stated that she received \$30,000 from her mother-in-law. However, she was unable to give any details as to when

she received the money from her mother-in-law or whether it was given to her as one lump sum or several small amounts.

[11] In cross-examination, the Appellant admitted that she worked selling lottery tickets in 2009 and that she did not report these earnings. She hesitated to make this admission because, during the period, the Appellant and her family received social assistance benefits and subsidized housing. The Appellant was afraid that Social Services would learn that she had income which she did not report. According to the Appellant's evidence, she earned only \$3,744 in 2009.

### Analysis

[12] I found that the Appellant's evidence was implausible. She stated that she was "holding" US\$4,400 for her mother but she did not have her mother attend at the hearing to corroborate her testimony.

[13] The Appellant stated that \$30,000 of the money found in her bedroom were gifts which she received at her wedding in 1988. Besides the Appellant's self-serving testimony, there was no evidence to support her statement that she received \$30,000 as wedding gifts.

[14] There are several reasons why I have difficulty believing that the Appellant had \$30,000 for 21 years and she did not use it to help pay for the basic necessities of daily life. First, she reported that she had little employment income for several years and no employment income for other years. For the 18 year period from 1988 to 2005, the Appellant reported total net income of \$119,848. I note that in 1999 and 1998, the Appellant reported net income of \$1 each year. For the period 2006 to 2009, the Appellant did not report any employment or business income. Her only reported income consisted of social assistance payments, Child Tax Benefits and Universal Child Care Benefits. Second, the Appellant had three dependent children. Third, her spouse did not contribute towards her support or that of their children since at least 2002.

[15] It is also my view that it is unlikely that the Appellant earned only \$3,744 in 2009. Counsel for the Respondent suggested that it was reasonable to infer that the Appellant earned \$30,000 in 2009 and the unreported income for 2009 should be reduced to reflect this amount. However, the difficulty I have with this suggestion is that the Appellant gave no evidence which would allow me to reach this conclusion. Her evidence was that most of the \$69,273.19 cash consisted of gifts and I found that this explanation was not credible.

[16] The appeal is allowed only to the extent of the concessions made by the Respondent as follows:

- a) The amount of \$18,615, \$30,869.90 and \$9,479.95 is deleted from the Appellant's income in 2006, 2007 and 2008 respectively;
- b) The amount of unreported income for 2009 is reduced to \$53,689;
- c) Gross negligence penalties are deleted from the Appellant's income in 2006, 2007, 2008 and 2009.

Signed at Halifax, Nova Scotia, this 27<sup>th</sup> day of July 2016.

"V.A. Miller"

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V.A. Miller J.

CITATION: 2016TCC176  
COURT FILE NO.: 2014-2961(IT)I  
STYLE OF CAUSE: FAN HSUI TO AND HER MAJESTY THE QUEEN  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: May 11, 2016  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: July 27, 2016

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Samantha Hurst

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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Deputy Attorney General of Canada  
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