

[OFFICIAL ENGLISH TRANSLATION]

2000-1055(IT)I

BETWEEN:

DANNY TAWIL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Abdo Nawar (2000-1264(IT)I) and *Antoine Chamoun (2000-1344(IT)I)*
on September 16 and 18, 2002, at Montréal, Quebec, by

the Honourable Judge François Angers

Appearances

Agent for the Appellant: Abdo Nawar

Counsel for the Respondent: Simon Crépin
Nathalie Lessard

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1991, 1992, 1993 and 1994 taxation years are dismissed.

Signed at Ottawa, Canada, this 13th day of January 2003.

"François Angers"

J.T.C.C.

Translation certified true
on this 8th day of March 2004.

Sophie Debbané, Revisor

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Date: 20030113
Docket: 2000-1055(IT)I

BETWEEN:

DANNY TAWIL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers, J.T.C.C.

[1] The Minister of National Revenue ("the Minister") disallowed charitable donations credits claimed by Danny Tawil for the 1991, 1992, 1993 and 1994 taxation years. The disallowed donations amount to \$2,000, \$4,500, \$3,000 and \$5,000, respectively, for each of the years at issue and were made to the Ordre Antonien libanais des Maronites (hereinafter "the Order"). Moreover, the Minister made the reassessment after the normal reassessment period for 1991, 1992, 1993 and 1994 and assessed penalties for each of those years. The assessment was confirmed by the Minister on August 22, 1997, for each of the years at issue.

[2] The facts on which the Minister relied in making his reassessment, which the appellant has either admitted or denied, are as follows:

[TRANSLATION]

Donations

- (a) when he filed his tax return for the 1991 taxation year, the appellant claimed a charitable donations credit in respect, *inter alia*, of \$2,000 that he says he donated to the Ordre Antonien libanais des Maronites during that taxation year; (admitted)
- (b) the appellant did not in any way whatsoever donate an amount of \$2,000 to the Ordre Antonien libanais des Maronites in the 1991 taxation year; (denied)
- (c) the appellant did not submit to the Minister a valid receipt containing the prescribed information for the alleged \$2,000 donation he claims to have made to the Ordre Antonien libanais des Maronites since the donation amount shown on the receipt is false; (denied)
- (d) when he filed his tax return for the 1992 taxation year, the appellant claimed a charitable donations credit in respect, *inter alia*, of \$4,500 that he says he donated to the Ordre Antonien libanais des Maronites during that taxation year; (admitted)
- (e) the appellant did not in any way whatsoever donate an amount of \$4,500 to the Ordre Antonien libanais des Maronites in the 1992 taxation year; (denied)
- (f) the appellant did not submit to the Minister a valid receipt containing the prescribed information for the alleged \$4,500 donation he claims to have made to the Ordre Antonien libanais des Maronites since the donation amount shown on the receipt is false; (denied)
- (g) when he filed his tax return for the 1993 taxation year, the appellant claimed a charitable donations credit in respect, *inter alia*, of \$3,000 that he says he donated to the Ordre Antonien libanais des Maronites during that taxation year; (admitted)

- (h) the appellant did not in any way whatsoever donate an amount of \$3,000 to the Ordre Antonien libanais des Maronites in the 1993 taxation year; (denied)
- (i) the appellant did not submit to the Minister a valid receipt containing the prescribed information for the alleged \$3,000 donation he claims to have made to the Ordre Antonien libanais des Maronites since the donation amount shown on the receipt is false; (denied)
- (j) when he filed his tax return for the 1994 taxation year, the appellant claimed a charitable donations credit in respect, *inter alia*, of \$5,000 that he says he donated to the Ordre Antonien libanais des Maronites during that taxation year; (admitted)
- (k) the appellant did not in any way whatsoever donate an amount of \$5,000 to the Ordre Antonien libanais des Maronites in the 1994 taxation year; (denied)
- (l) the appellant did not submit to the Minister a valid receipt containing the prescribed information for the alleged \$5,000 donation he claims to have made to the Ordre Antonien libanais des Maronites since the donation amount shown on the receipt is false; (denied)
- (m) the appellant did not make the donations for which he is claiming credits in his tax returns; rather, he was involved in the following scheme: (denied)

in some cases, the Ordre Antonien libanais des Maronites issued a receipt to a taxpayer indicating a cash donation equal to the amount that the taxpayer paid it by cheque and then returned to that taxpayer the same or nearly the same amount of money in cash;

in other cases, the Ordre Antonien libanais des Maronites issued a receipt to a taxpayer showing a cash donation of a certain amount when the taxpayer had not paid anything at all or had paid a minimal cash amount in comparison with the amount indicated on the receipt;

- (n) . . .

- (o) in filing his tax returns and in supplying information under the *Act* for the 1991, 1992 and 1993 taxation years, the appellant made a misrepresentation attributable to wilful default concerning credits claimed by him in respect of charitable donations of \$2,000, \$4,500 and \$3,000, respectively; (denied)

Penalties

- (p) the appellant knowingly, or at least under circumstances amounting to gross negligence, made a false statement or omission by claiming credits for charitable donations of \$2,000, \$4,500, \$3,000 and \$5,000, respectively, for the 1991, 1992, 1993 and 1994 taxation years when he had not made any donation at all; (denied)
- (q) since the appellant knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of, a false statement or omission in the tax returns filed for the taxation years at issue, the tax that the appellant would have been required to pay on the basis of the information provided in the tax returns filed for those years was lower than the amount of tax actually payable by \$484.68, \$1,122.83, \$754.94 and \$1,234.25, respectively, for the taxation years at issue. (denied)

[3] The appellant did not testify at the trial. However, his agent, Abdo Nawar, testified for him. Mr. Nawar stated that he and the appellant were always together and that they would often go to the Order. According to Mr. Nawar, the appellant quickly found a job in the accounting field when he arrived in Canada and earned twice his income. He recognized the receipts used by the appellant in his tax returns for the years at issue and stated that Mr. Tawil's donations were made to help other people who, like him, turned to the Order when they arrived in Canada.

[4] The appellant's donations were made in cash and given to Father Khamar. His agent could not explain why the total amount shown on the receipts was a round figure. He said that the donations were recorded in a notebook. The appellant's income for the four years at issue was \$17,062, \$26,270, \$27,899 and \$29,612, respectively. Finally, Mr. Nawar said that the appellant stopped making donations when he heard about the scheme and that he returned to Lebanon in 1994 at Christmas.

[5] The respondent adduced extensive evidence. This had to be the case to show the various schemes devised by the Order to reward some of the donors and provide them with tax receipts. In 1990, the Order was audited by the Department of Revenue and was given instructions as a result. The investigation that was eventually conducted and the final audit show that the Order did not comply with the instructions it received.

[6] The Department of Revenue began the principal investigation after being informed of various schemes used by the Order to obtain donations and reward donors. Without giving all the details of the investigation, it is clear from the evidence adduced that that exercise led to tax evasion convictions for a number of people and to the reassessment of those who benefited from the scheme, that is, nearly 1,200 people. Most of the taxpayers did not challenge the reassessments. Some of them appealed.

[7] The investigator, Gaétan Ouellette, testified about the role he played in reviewing the Order's records. On November 8, 1995, the investigators, armed with a warrant, seized all of the Order's documentation to examine it. They seized the bank records, the deposit slips, the cheques the Order had issued, the books showing the receipts given for the donations and the diskettes containing accounting information. They also met with the Order's accountants.

[8] Moreover, nearly a hundred people told them about the existence of a scheme whereby the donor made a substantial donation in return for a receipt and the Order then returned 80 percent of the donation to the donor in cash. The other scheme used involved making a cash donation in return for a receipt for an amount four to five times greater than the amount of the donation.

[9] For the most part, the donations were solicited by people who themselves kept five percent of the donations as commission. Some accountants proposed this scheme to their clients so that they could benefit from it. Several admissions were filed in evidence confirming the existence of the schemes used (Exhibit I-12, Tabs 10 and 11). At Tab 3 of Exhibit I-12, the witness Ouellette reproduced the information obtained at the time of the search from a diskette called "le bibliorec". For a given numerical sequence of receipts, it provides details on the receipt and distribution of the donation by indicating the donor's identity, the amount of the donation, the amount given back to the donor, the amount kept by the Order and, finally, the amount handed over by the canvasser. There is no need to say more about this other than that the information obtained from the diskette and reproduced in Exhibit I-12 corresponds to other seized documents, such as the

cheques and deposit slips, that actually confirm the scheme whereby the Order kept only 20 percent of the donations and gave the donor a receipt for the full amount and the difference in cash.

[10] To return 80 percent to the donor, the Order wrote cheques on its account that were payable to "cash". This was done immediately after the deposit or in the days that followed. Tab 7 of Exhibit I-12 contains several examples, and some of the withdrawals identified the donor to whom the money was to be returned.

[11] The facts showed that, even after the searches, the Order still provided receipts and offered receipts to certain people.

[12] The respondent also called as a witness Colette Langelier, who was actively involved in the investigation. She began taking part in the investigation after information was received from the spouse of one of the participants in the scheme. She filed the correspondence sent to the Order and the instructions given to it so that it would comply with Revenue Canada's requirements. She also reviewed all of the Order's tax returns (Exhibit I-10), which contained a list of the donors. She then met with the priests to examine the accounting records, and she realized that the Order did not have any. She looked at some expense vouchers, the bank statements and the deposit slips so that she could prepare a bank reconciliation (Exhibit I-13), which she filed. She recorded everything from 1989 to 1995. Her goal was to identify the amounts deposited in comparison with the total amounts shown on the receipts given.

[13] She was able to conclude from the result of this exercise that three different schemes existed:

[TRANSLATION]

- (1) Professionals, predominantly doctors of Lebanese origin and/or their spouses, as well as businesspeople, whose "amounts donated" represented about 80 percent of the total amounts shown on the receipts issued. In other words, they provided a cheque equal to 100 percent of the official receipt issued by the Order, and the Order then gave them back 80 percent of the donation in cash;
- (2) Partial gifts: in this scheme, the donor's cheque represented 10 to 20 percent of the amount on the official receipt. Those who participated in this scheme were employees or retired persons, and the cheque was generally deposited between January and May of

the year following the date on the receipt; therefore the receipts were backdated; and

- (3) Donations that cannot be traced or of which there is no material evidence other than the official receipt. They were cash donations. It can be seen from the number on the receipt that several of these donations were made the following year. To reach this conclusion, one has only to compare the donations made by cheque, the date on which they were deposited and the corresponding receipt number.

[14] She could not obtain any information that would have enabled her to track the money collected, and she was unable to confirm the explanations given by the priests. She could not find any evidence to conclude that the donations obtained had, as the priests explained, been sent to Lebanon. The Order had not changed its approach at all, even after agreeing to comply with the requirements of the Department of Revenue. Table I-18 shows that, to comply with the 90 percent quota, the Order stated that the money was sent to Lebanon.

[15] A dental technician named Bachar Hajjar testified that he knew the Order and had attended musical evenings during religious holidays. It was during one of those evenings that he was told about the possibility of obtaining receipts to claim tax credits. In 1993, he made a cash donation to a person from the monastery located on Avenue Richard in the Outremont neighbourhood. He does not know the person's name, but he said that the person gave him a receipt for \$1,200 in return for a \$240 donation.

[16] Jean-Claude Perreault, a retired teacher, gave similar testimony. He heard about the Order by chance while in a health care professional's waiting room. People were talking about the possibility of making a donation and obtaining in return a receipt for an amount up to four times the amount donated. He therefore contacted a representative of the Order and, in 1993, obtained an official tax receipt for \$11,500 in return for a donation of \$2,500 to the Order. In 1994, he donated \$2,500 to the Order and obtained an official tax receipt for \$10,000.

Analysis

[17] In argument, counsel for the respondent filed with the Court a book of authorities setting out the legal principles applicable to the burden of proof and the rules on the assessment of circumstantial evidence. On this last point, the following

passage is found in author Jean-Claude Royer's book *La preuve civile*, 2nd edition (Éditions Yvon Blais), at paragraph 175, page 100:

[TRANSLATION]

175 — *Direct evidence is preferred to indirect evidence* — Direct evidence is evidence that has a direct bearing on the fact at issue. Indirect evidence, circumstantial evidence, or presumptive evidence concerns material facts that make it possible to infer the existence of the fact at issue. . . .

Direct testimonial evidence is superior to presumptive evidence. However, this rule is not absolute. In certain circumstances, a court may prefer circumstantial evidence to direct evidence.

[18] It must also be recalled that the courts are not required to believe witnesses, even when they are not contradicted by other witnesses, if their version seems implausible based on the circumstances revealed by the evidence or based on simple common sense (see *Legaré v. The Shawinigan Water and Power Co. Ltd.*, [1972] C.A. 372).

[19] In this case, the evidence adduced by the respondent leaves no doubt as to the existence of a well-structured scheme established by the Order. Under that scheme, the Order could collect large sums of money while rewarding donors through receipts for amounts greater than the actual donations. As explained above, there were three possible methods of obtaining false receipts. The issue here is whether the appellant participated in the scheme in order to derive a benefit therefrom.

[20] The appellant's agent stated that the donors must not all be lumped together. He explained that the appellant refused to be assisted by counsel because he realized that most donors had participated in the scheme. He also argued that the appellant had always dealt with Father Khamar, despite Ms. Langelier's testimony that Father Khamar had left Canada around the end of 1992. The appellant was single and could afford to be generous.

[21] Counsel for the respondent maintained that the appellant's case is no different from that of the other donors. Counsel argued that, according to Abdo Nawar's testimony, the appellant dealt with Father Khamar during the years at issue. However, the signatures on the T3010 forms filled out by the Order and also on the cheques support the position that Father Khamar left Canada around the

end of 1992. The respondent further argued that Abdo Nawar's assertion that all of the donations made during the year by the appellant were recorded in a blue notebook is also wrong because no such document was found at the time of the search. Nor was any cash found in the safe, and the audits did not make it possible to establish that money had been sent to Lebanon.

[22] Table I-26 submitted by Ms. Langelier allows us to establish a connection between the date on which the receipts were given and the receipt numbers. By comparing the date of the appellant's deposits with the date of other deposits, it can be concluded that most of the receipts given to the appellant were backdated. As regards all of the donations for the four taxation years, no record or book showing the appellant's contributions was found by the auditors at the time of the search, with the result that the exact amounts of his donations during those years cannot be verified. We must also recall the testimony of Ms. Langelier, who said that no cash donation had actually been made or that, if amounts were paid, they did not correspond to the total shown on the receipts since no money was found in the Order's safe at the time of the search, and there was no evidence that money had been sent to Lebanon or that the Order had received the money corresponding to the receipts issued according to the Order's financial statements.

[23] Based on the table showing the appellant's income in Exhibit I-27, it may be implausible for a taxpayer to be so generous if his income and needs do not enable him to make such donations.

[24] I am aware that a taxpayer has a duty to be generous and that, if the donations comply with the provisions of the *Act*, they cannot be contested. However, in this case, I can conclude from the weight of the evidence adduced by the respondent that the appellant participated in the scheme established by the Order for the two taxation years and that all the explanations are implausible.

[25] Having concluded that the appellant did not make real donations, does subsection 163(2) of the *Act* apply in this case? Did the appellant knowingly, or under circumstances amounting to gross negligence, make a false statement or omission in filing his tax returns during the years at issue? Having found that the appellant participated in the scheme and was aware of the content of his tax returns and the fact that the tax credits were based on false receipts he had obtained, I find on a balance of probabilities that he made a false statement in his tax returns and that the penalties are warranted.

[26] I also conclude that the respondent has shown on a balance of probabilities that the appellant made misrepresentations attributable to neglect, carelessness or wilful default and that the respondent may therefore make reassessments after the normal reassessment period.

[27] Accordingly, the appeals are dismissed.

Signed at Ottawa, Canada, this 13th day of January 2003.

"François Angers"

J.T.C.C.

Translation certified true
on this 8th day of March 2004.

Sophie Debbané, Revisor