

[OFFICIAL ENGLISH TRANSLATION]

2000-1264(IT)I

BETWEEN:

ABDO NAWAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Danny Tawil (2000-1055(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

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Simon Crépin
Nathalie Lessard

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 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 24th day of February 2004.

Sophie Debbané, Revisor

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Date: 20030113
Docket: 2000-1264(IT)I

BETWEEN:

ABDO NAWAR

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers, J.T.C.C.

[1] Abdo Nawar was disallowed credits for charitable donations by the Minister of National Revenue (the “Minister”) for the 1992, 1993 and 1994 taxation years. The amounts of the donations disallowed are \$1,500, \$4,000 and \$4,000 respectively for each of the years at issue and the donations were made to the Ordre Antonien libanais des Maronites (the “Order”). In addition, the Minister made his reassessment after the normal reassessment period for each of the 1992 and 1993 taxation years and assessed penalties for each of the years at issue. The Minister confirmed the assessment on December 7, 1999, for each of the years at issue.

[2] The facts on which the Minister relied in making his reassessment and which the appellant admitted or denied, as the case may be, are the following:

[TRANSLATION]

DONATIONS

- (a) in filing his Income Tax Return for the 1992 taxation year, the Appellant claimed a charitable donations tax credit in relation, among other things, to an amount of \$1,500 that he contends he donated to the "Ordre Antonien Libanais des Maronites" during the 1992 taxation year; (admitted)
- (b) the Appellant has not in any manner whatever made a donation in the amount of \$1,500 to the "Ordre Antonien Libanais des Maronites" during the 1992 taxation year; (denied)
- (c) the Appellant never provided the Minister with a valid receipt containing prescribed information in relation to the alleged donation of \$1,500 that the Appellant contends he made to the "Ordre Antonien Libanais des Maronites" since the amount of the donation that appears on the said receipt is false; (denied)
- (d) in filing his Income Tax Return for the 1993 taxation year, the Appellant claimed a charitable donations tax credit in relation, among other things, to an amount of \$4,000 that he contends he donated to the "Ordre Antonien Libanais des Maronites" during the 1993 taxation year; (admitted)
- (e) the Appellant has not in any manner whatever made a donation in the amount of \$4,000 to the "Ordre Antonien Libanais des Maronites" during the 1993 taxation year; (denied)
- (f) the Appellant never provided the Minister with a valid receipt containing prescribed information in relation to the alleged donation of \$4,000 that the Appellant contends he made to the "Ordre Antonien Libanais des Maronites" since the amount of the donation that appears on the said receipt is false; (denied)
- (g) in filing his Income Tax Return for the 1994 taxation year, the Appellant claimed a charitable donations tax credit in relation, among other things, to an amount of \$4,000 that

he contends he donated to the "Ordre Antonien Libanais des Maronites" during the 1994 taxation year; (admitted)

- (h) the Appellant has not in any manner whatever made a donation of \$4,000 to the "Ordre Antonien Libanais des Maronites" during the 1995 taxation year; (denied)
- (i) the Appellant never provided the Minister with a valid receipt containing prescribed information in relation to the alleged donation of \$4,000 that the Appellant contends he made to the "Ordre Antonien Libanais des Maronites" since the amount of the donation that appears on the said receipt is false; (denied)
- (j) the Appellant has not made the donations for which he claims charitable donations tax credits in his income tax returns and has instead participated in the following scheme:

in certain cases, the "Ordre Antonien Libanais des Maronites" issued a receipt to a taxpayer indicating a cash donation for an amount equal to the amount that the taxpayer had paid by cheque, while at the same time giving back the taxpayer an equal or approximately equal sum of money;

in other cases, the "Ordre Antonien Libanais des Maronites" issued a receipt to a taxpayer indicating a cash donation for a certain amount, whereas the taxpayer had made no donation or had paid a small cash amount as opposed to the amount indicated on the receipt; (denied)

- (k) (...)
- (l) in filing his income tax returns and in supplying any information under the *Act* for the 1992 and 1993 taxation years relating to tax credits for charitable donations that the Appellant claimed in relation to the amounts of \$1,500 and \$4,000 respectively, the Appellant has made a misrepresentation that is attributable to wilful default; (denied)

PENALTIES

- (m) the Appellant knowingly, or under circumstances amounting to gross negligence, made false statements or omissions in claiming tax credits for charitable donations in relation to the amounts of \$1,500, \$4,000 and \$4,000 respectively for the 1992, 1993, and 1994 taxation years, whereas he had not made any donation; (denied)
- (n) the Appellant knowingly, or under circumstances amounting to gross negligence, has made or participated in, assented to or acquiesced in the making of false statements or omissions in the income tax returns filed for the 1992, 1993 and 1994 taxation years, as a result of which the tax that would have been assessed on the basis of information provided in the Appellant's income tax returns filed for those years was less than the tax in fact payable by the amounts of \$384.14, \$987.53 and \$1,002.99, respectively, for the 1992, 1993 and 1994 taxation years. (denied)

[3] A native of Lebanon, the appellant came to Canada on April 13, 1990. He left his country, which at the time was in the middle of a war. He arrived in the company of his childhood friend, Danny Tawil. The two stayed with the appellant's cousin, Wadih Avinaked, and they later went to the church of the Order where they were welcomed by a priest who provided them with furniture and the basics they needed. The appellant subsequently managed to find a temporary job. Approximately two years later, he obtained a full-time job.

[4] The appellant said that the priest who received them asked them to make donations to help others in need. At the beginning, he gave when the collection plate was passed and, later, he was asked to give directly, with the result that after mass the appellant went to the priest's office to make his donation, and the priest entered the amount the appellant donated in a blue notebook each time. In January of the following year, he received a receipt dated the previous December that he used to obtain a tax credit for the years at issue.

[5] When he arrived in Canada, the appellant knew only his cousin Wadih, who in fact was his mother's cousin and another distant cousin, Raymond Nawar. His cousin Wadih told him about the Order. The appellant explained that the donations were made for the purpose of helping other Lebanese. He never heard anyone say that this money had to be sent to Lebanon or used for renovations or to pay the Order's mortgage.

[6] The appellant made his first donations in 1992 when his job became permanent. He stated on cross-examination that he did not encourage other people to make donations. He did not mingle with people after mass for fear of being identified with one camp or another because there was still tension, even here in Canada. Although the war in Lebanon ended in November 1990, the tensions and other fighting continued for several years, which, according to the appellant, explains why it was necessary to continue making donations.

[7] The appellant testified that he did not know the people who made donations but admitted to recognizing the people who had made donations after the scheme had been discovered. That is how he learned that his cousin Raymond had made donations. According to the appellant, he learned the news in 1995 when he read in the press that Revenue Canada had raided the Order and that all the Order's books had been seized. There was talk of a scheme whereby people obtained a receipt from the Order for more than the actual donation. He stated that he had contacted the Order at that time and someone had told him that it was necessary to wait. It was eventually recommended that he consult a lawyer.

[8] On cross-examination, the appellant explained that these donations generally varied between \$5 and \$20 but never exceeded \$100. He gave the money in cash and never wrote anything down. He relied on the priest for the accuracy of the amount shown on the receipts. According to the appellant, the Order had a ledger or some blue notebook that the priest kept in an office at the library. He was accompanied by his friend Danny Tawil when he made his donations directly to Father Khamar. He could not explain why the total of his donations came out to a round figure since the amount of his donations varied. He stated that the total of his donations may have been rounded off and that it is possible that he gave less than what was indicated on the receipts.

[9] The 1992 receipt is dated August 20, 1992. The appellant could not explain why the receipt bore that date and maintained that he received his receipt in December 1992 or in January 1993. He could also not explain why, in 1993, he received two receipts. The first was given to him on December 20, 1993, and it reports a payment of \$2,500, and the second, issued eleven days later, reports a payment of \$1,500. He admitted that this made no sense because he did not donate an amount of that size. He also acknowledged that he had never asked himself any questions about the receipts. The appellant could not provide any explanations about his addresses shown on the receipts prepared on different dates. The appellant acknowledged that his father sent him money in the first few years when he made donations and said that his father knew that the appellant was making

donations and had not said anything. The appellant was convinced that the money given in Canada to charities was monitored.

[10] The appellant received help from his friend Danny Tawil in preparing his income tax returns for the years at issue, with the exception of the last one. He acknowledged that his donations entitled him to tax credits. The appellant's income during the years at issue amounted on average to \$25,000 a year. In 1995, he made a few donations to the Order but could not obtain a receipt because of Revenue Canada's intervention. From 1995 to 1998, he contributed \$2,000 to \$2,500 each year to his RRSP.

[11] The evidence adduced by the respondent was voluminous. It had to be so in order to show the various schemes devised by the Order to reward some of the donors and provide them with receipts for tax purposes. In 1990, the Order had been the subject of an audit by the Minister of Revenue and had been given directives as a result of the audit. The investigation and the final audit showed that the Order did not act on the directives given.

[12] The Minister of Revenue undertook the main investigation after being informed of the various schemes used by the Order to collect donations and reward the donors. Without going into all of the details of this investigation, it is obvious from the evidence tendered that this exercise resulted in convictions for tax evasion for a number of people and reassessments for those who participated in the scheme, that is, nearly 1,200 people. The majority of the taxpayers did not challenge the reassessments. Some appealed.

[13] The investigator, Gaétan Ouellette, testified on the role he played in examining the Order's records. On November 8, 1995, the investigators, armed with a warrant, seized all of the Order's documents in order to examine them. They seized the banking records, the deposit slips, the cheques the Order issued, the books of receipts given for donation purposes and the diskettes containing accounting information. They also met with the Order's accountants.

[14] In addition, close to one hundred people told them that there was a scheme whereby the donor made a substantial donation for which he received a receipt and, afterwards, the Order gave back the donor 80 per cent of his donation in cash. The other scheme used consisted of making a cash donation in return for which the donor obtained a receipt for an amount four to five times greater than the amount of the donation.

[15] The donations were, for the most part, solicited by people who in turn kept 5 per cent of the donations as a commission. Some accountants proposed this scheme to their clients so they would draw a benefit from it. A number of admissions filed in evidence confirm the existence of the schemes used (Exhibit I-12, Tabs 10 and 11). Mr. Ouellette reproduced in Tab 3 of Exhibit I-12 the information compiled on a diskette called the "*bibliorec*" that was found during the search. The diskette contains information, in a numerical sequence of the receipts issued, with respect to the receipt of the donation and its distribution, that is, the donor's name, the amount of the donation, the amount returned to the donor, the amount kept by the Order and, finally, the amount remitted by the solicitor. There is no need to say more about this except that the information compiled on the diskette and reproduced is consistent with other documents seized, such as cheques and deposit slips, that confirm the scheme whereby the Order retained merely 20 per cent of the donations, issued a receipt for the full amount and gave the donor the difference in cash.

[16] To return the 80 per cent to the donor, the Order issued cheques drawn on its account and made payable to cash. This was done immediately following the deposit or in the days thereafter. Tab 7 of Exhibit I-12 contains a number of examples of such cheques, and some of those withdrawals identified the donor to whom the money was to be returned.

[17] The facts showed that, even after the searches, the Order was still issuing receipts and some people were still being offered receipts by the Order.

[18] The respondent also called Colette Langelier who took an active part in that investigation. She began to participate in that investigation after information was received from the wife of one of the participants in the scheme. She produced in evidence the correspondence and directives intended for the Order so that it would comply with Revenue Canada's requirements. She also examined all of the Order's tax returns (Exhibit I-10), which contained the list of donors. She subsequently met with the priests in order to examine the accounting books and realized that the Order did not have any. She examined some documents relating to the expenses, bank account statements and deposit slips in order to make a bank reconciliation (Exhibit I-13), which she produced in evidence. She looked at everything from 1989 to 1995. Her objective was to identify the amounts deposited and compare them with the total of the receipts given.

[19] The result of this exercise enabled her to conclude that there were three different schemes:

[TRANSLATION]

- (1) Professionals, mostly physicians of Lebanese origin, and/or their spouses, as well as business persons, whose "amounts donated" accounted for approximately 80 per cent of the total of the receipts issued. In other words, these persons issued cheques equivalent to 100 per cent of the amounts of the official receipts issued by the Order, and the Order subsequently paid them back 80 per cent of the donations in cash;
- (2) Partial donations: under this scheme there were cheques from donors representing 10 per cent to 20 per cent of the amounts of the official receipts. The persons participating in this scheme were employees or retired persons; the cheques were usually deposited from January to May following the year indicated on the receipts; therefore they were backdated receipts; and
- (3) Donations that could not be traced or for which no material evidence except the official receipts was found. These donations were made by the donors in cash. It can be seen from the numbers on the receipts that several of those donations were made during the following year. This conclusion was reached by simply comparing the donations made by cheque, the dates they were deposited and the numbers of the corresponding receipts.

[20] She was unable to obtain any information that would enable her to make a follow-up with regard to the amounts of money collected and it was impossible for her to confirm the explanations provided by the priests. She was unable to find any evidence from which she could conclude that the donations collected had, according to these explanations, been sent to Lebanon. In fact, even after promising to comply with the requirements of the Department of Revenue, the Order had made no changes in the way it did things. Table I-18 shows that, to comply with the 90 per cent disbursement quota, the Order indicated that the money was sent to Lebanon.

[21] A dental technician by the name of Bachar Hajjar testified that he was familiar with the Order and had attended musical evenings during religious festivals. It is at one of those evenings that he was made aware that he could obtain receipts for tax credit purposes. In 1993, he made a cash donation to someone from the monastery located on Richard Avenue in the Outrement district. He did not know the person's name but said that she gave him a receipt in the amount of \$1,200 for a donation of \$240.

[22] Jean-Claude Perreault, a retired teacher, testified along the same lines. He had heard about the Order by chance when he was in the waiting room of a health professional. The people were talking about the possibility of making a donation and in return obtaining a receipt for more than the amount given, up to four times the amount of the donation. He therefore contacted a representative of the Order and, in 1993, for a \$2,500 donation made to the Order, he received an official receipt for income tax purposes for \$11,500. In 1994, for a \$2,500 donation made to the Order, he received an official receipt for income tax purposes for \$10,000.

Analysis

[23] In argument, counsel for the appellant filed with the Court a book of authorities setting out the legal principles relating to the burden of proof and the rules for assessing circumstantial evidence. On this last point, there is a passage from the author Jean-Claude Royer in *La preuve civile*, 2nd edition, Les Éditions Yvon Blais, at paragraph 175 on 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.

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

[25] In the case at bar, the evidence adduced by the respondent leaves no doubt that there was a well-structured scheme put in place by the Order. Under the scheme, the Order could collect substantial amounts of money while rewarding the donors with receipts showing larger amounts than the actual donations. As explained earlier, there were three possible methods of obtaining false receipts.

The issue in the case at bar is to determine whether the appellant participated in this scheme in order to draw a benefit from it.

[26] The appellant said that all donors should not be placed in the same basket. He refused the help of a lawyer who represented the whole group because he realized that most of the donors had participated in the scheme. The appellant maintains that he always did business with Father Khamar, even after the date on which, according to Ms. Langelier, Father Khamar left Canada. The appellant stated that he had the means to be generous to the Order because he was single, shared rent and had no personal debts. He was, he said, less generous after 1994 because he started his graphic design business. He closed his argument by stating that he had filed his tax returns late because he was too busy and that it was impossible for him to produce witnesses because they could not be found.

[27] Counsel for the respondent maintain that the appellant's case is no different from that of the other donors. They emphasized that the appellant's testimony was erroneous. According to them, the appellant's statement that he did business with Father Khamar during the three taxation years at issue is false because the evidence adduced—the signatures appearing on the T-3010 forms completed by the Order and the cheques—supports the respondent's contention that Father Khamar left Canada towards the end of 1992. Counsel for the respondent also maintain that the appellant's statement that all of the donations made during the year were recorded in a blue notebook is false as well because no document of that nature was found during the search. There was also no amount of cash in the safe and it cannot be established from the audits conducted that the money would have been sent to Lebanon. They even found different signatures of Father Khamar on the receipts appearing in Exhibits I-3 and I-4. The appellant could not explain why, in 1992, he had received two receipts. The respondent submits that the appellant received two receipts to reach the allowable limit of 20 per cent. Furthermore, table I-25 shows the same scenario for the donation made in 1993. Table I-24 also makes it possible to match the dates the receipts were given with their numbers. By comparing the date of the appellant's deposits with the date of other deposits, it can be concluded that the majority of the receipts given to the appellant were backdated.

[28] Counsel for the respondent also emphasized the fact that table I-25 also shows the significant proportion of the appellant's donations compared to the cost of living. At the time, the appellant was receiving fairly substantial financial assistance from his father, and the amount of this assistance was almost the same as the amount of the donation. The changes of address on the receipts in relation to the dates on those receipts also support the contention that the receipts were

backdated. Counsel for the respondent closed by saying that it is strange that the amounts indicated on the receipts were all round figures when they should have reflected the total of the various amounts given on different occasions over the course of a year.

[29] As for the donations as a whole for the three taxation years, no record or journal of the appellant's contributions was found during the search by the auditors and, consequently, it is impossible to verify the exact amounts of the donations made by the appellant during the taxation years. As well, we should recall Ms. Langelier's testimony in which she maintained that no cash donation had actually been made or that, if amounts had been paid, they did not match the total appearing on the receipts since no cash amount was found in the Order's safe during the search, and there was no evidence that amounts of money had been sent to Lebanon or that the Order had received money corresponding to the receipts issued according to the financial statements of the Order.

[30] According to the table of the appellant's income in Exhibit I-25, it may be unlikely that a taxpayer could be so generous if his income and his personal needs do not enable him to make such donations.

[31] I am aware that a taxpayer has the right to be generous and that, if his donations comply with the provisions of the *Act*, they cannot be challenged. However, in the case at bar, it may be concluded from the preponderance of the evidence adduced by the respondent that the appellant took advantage of the scheme put in place by the Order for the three taxation years and that all his explanations are implausible.

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

[33] I also find that the respondent has proved that the appellant made a misrepresentation that is attributable to neglect, carelessness or wilful default. The Minister may therefore make reassessments after the normal reassessment period for the 1992 and 1993 taxation years.

[34] The appeals are accordingly dismissed.

Signed at Ottawa, Canada, this 13th day of January 1993.

“François Angers”

J.T.C.C.

Translation certified true
on this 24th day of February 2004.

Sophie Debbané, Revisor