

Docket: 2007-444(IT)I

BETWEEN:

COWCILLA KRISHNA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on October 17, 2007 at Toronto, Ontario

Before: The Honourable Justice T. O'Connor

Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Laurent Bartleman

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act*, notice of which is dated July 7, 2005 and bears Assessment No. 33531, is dismissed for the reasons set forth in the attached Reasons for Judgment. There shall be no costs.

Signed at Ottawa, Canada this 13<sup>th</sup> day of November, 2007.

"T. O'Connor"  
\_\_\_\_\_  
O'Connor, J.

Citation: 2007TCC687  
Date: 20071113  
Docket: 2007-444(IT)I

BETWEEN:

COWCILLA KRISHNA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

O'Connor, J.

[1] The issue in this appeal is described in the following paragraphs of the Reply to the Notice of Appeal:

3. The Minister of National Revenue (the “Minister”) assessed the Appellant pursuant to subsection 160(1) of the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c.1 (the “Act”) by Notice of Assessment number 33531, dated July 7, 2005 for an amount of \$20,204.23.

4. The Appellant filed a Notice of Objection dated September 30, 2005 in respect of the Notice of Assessment.

5. The Minister confirmed the Notice of Assessment dated July 7, 2005 by Notification of Confirmation dated October 18, 2006.

6. In so assessing the Appellant and in confirming the assessment, the Minister assumed the same facts, as follows:

- (a) 916054 Ontario Inc. (the “Corporation”) was incorporated in October, 1990 and operated as Kris Auto Service;
- (b) at all material times, the Appellant and her spouse were the shareholders and directors of the Corporation;
- (c) the Corporation purchased a building located at 51 Chauncey Ave., Etobicoke, Ontario in 1992 for \$220,000 and sold the building in May, 2003 for \$415,000;
- (d) on September 10, 2003 the Appellant received the amount of \$126,000 from the Corporation;
- (e) the fair market of the consideration given by the Appellant for the \$126,000 she received from the Corporation was Nil; and
- (f) as at July 7, 2005, the Corporation was liable to pay federal tax, penalty and interest amounts in respect of the 1992, 1993 and 1994 taxation years as follows:

	<u>Federal Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
1992	\$ Nil	\$ Nil	\$ 270.39	\$ 270.39
1993	Nil	4,406.55	6,947.93	11,353.59
1994	<u>3,108.94</u>	<u>434.75</u>	<u>5,036.56</u>	<u>8,580.25</u>
Total	<u>\$3,108.94</u>	<u>\$4,840.41</u>	<u>\$12,254.88</u>	<u>\$20,204.23</u>

**B. ISSUES TO BE DECIDED**

7. The issue is whether the Minister properly assessed the Appellant under section 160 of the *Act*.

**PROVISIONS, GROUNDS RELIED ON AND RELIEF SOUGHT**

8. He relies on section 160 and subsections 248(1), 251(1) and 251(2) of the *Act*.

9. He submits that the Minister properly assessed the Appellant under the provisions of subsections 160(1) and 160(2) of the *Act* as:

- (a) pursuant to subsections 251(1) and 251(2) of the *Act*, the Appellant was not dealing at arm's length with the Corporation (the "Transferor");
- (b) the Transferor transferred property in the amount of \$126,000 to the Appellant. For the purposes of this *Act*, money constitutes property;
- (c) at the time the property was transferred to the Appellant, the fair market value of the property so transferred was \$126,000;
- (d) the Appellant provided no consideration for the property transferred from the Transferor; and
- (e) at the time the Transferor transferred property to the Appellant, the Transferor was liable to pay tax, penalty and interest amounting to \$20,204.23.

10. He requests that the appeal be dismissed.

[2] With respect to paragraph 6(b) of the Reply, the Appellant denies this and states in the Notice of Appeal that she was never in the business or ever part owner. Her testimony at the hearing of this appeal is contradictory. At one point she stated "I own a share of the business but I don't know much about it." Later, she says she was not a shareholder. In any event it is clear that the Appellant's husband was the sole director of the Corporation and controlled the Corporation and that the Corporation and the Appellant were not at arm's length.

[3] With respect to the Minister's assumption in paragraph 6(e) of the Reply that the Appellant gave no consideration for the \$126,000, the Appellant states in the Notice of Appeal as follows:

I don't believe I owe any money because the money that I received was to pay back my relatives that I had borrowed money from for the business starting in 1984. My husband would ask me for money when he was desperate to purchase machinery, tools and occasionally pay bills.

## Analysis

[4] The relevant provisions of the *Income Tax Act* (“Act”), so far as material, are as follows:

160. (1) Where a person has, on or after May 1, 1951, transferred property, either directly or indirectly, by means of a trust or by any other means whatever, to

(a) the person’s spouse ...

...

(c) a person with whom the person was not dealing at arm’s length,

the following rules apply:

...

(e) the transferee and transferor are jointly and severally liable to pay under this Act an amount equal to the lesser of

(i) the amount, if any, by which the fair market value of the property at the time it was transferred exceeds the fair market value at that time of the consideration given for the property, and

(ii) the total of all amounts each of which is an amount that the transferor is liable to pay under this Act in or in respect of the taxation year in which the property was transferred or any preceding taxation year,

...

Arm’s length

251. (1) For the purposes of this Act,

(a) related persons shall be deemed not to deal with each other at arm’s length;

Definition of "related persons"

(2) For the purpose of this Act, "related persons", or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

(b) a corporation and

(i) a person who controls the corporation, if it is controlled by one person,

(ii) a person who is a member of a related group that controls the corporation, or

(iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and

[5] In simple terms, these provisions, as applicable in this case, mean that if a person controls a corporation and if the corporation transfers property, which term includes money, to that person's wife for no consideration, the wife is liable for any taxes owed by the corporation at the time of the transfer.

[6] It is clear that in the present case money in the form of a cheque in the amount of \$126,000 was transferred by the Corporation to the Appellant. It is also clear that the Appellant's husband, Krishnamurthy Krishna, controlled the Corporation and consequently the Corporation and the Appellant are not dealing with each other at arm's length. Further, there was no satisfactory evidence that the Appellant gave consideration for the transfer of \$126,000 or that the Corporation owed the Appellant any monies. It was also established that at the time of the transfer, the Corporation owed \$20,204.23 in taxes.

[7] In short, the assumptions contained in the Reply to the Notice of Appeal have not been rebutted nor destroyed, except perhaps that the Appellant may not have been a director or shareholder of the Corporation. This is not material however because the Appellant's husband controlled the Corporation.

[8] Further, the statement by the Appellant in the Notice of Appeal and in her evidence that she was paying back relatives is not material in the present circumstances, the only issue being whether she received a transfer of money from the Corporation and not how she applied it.

[9] For all of the above reasons I must conclude that the Minister has properly assessed the Appellant. Consequently, the appeal is dismissed. There shall be no costs.

Signed at Ottawa, Canada this 13<sup>th</sup> day of November, 2007.

"T. O'Connor"

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O'Connor, J.

CITATION: 2007TCC687  
COURT FILE NO.: 2007-444(IT)I  
STYLE OF CAUSE: Cowcilla Krishna v. The Queen  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: October 17, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice T. O'Connor  
DATE OF JUDGMENT: November 13, 2007

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Laurent Bartleman

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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