

Docket: 2007-2876(IT)G

BETWEEN:

GIOVANNI SPRIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard by telephone conference on December 10, 2008 at Ottawa, Canada.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant: Christopher Mostovac

Counsel for the Respondent: Annick Provencher

ORDER

UPON motion by the Appellant under section 58 of the *Tax Court of Canada Rules (General Procedure)* for a determination, before hearing, whether the audit method used by the Respondent in reassessing the Appellant was a legally recognized and valid one;

The motion is dismissed, with costs in the cause, in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 7th day of January 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 20
Date: 20090107
Docket: 2007-2876(IT)G

BETWEEN:

GIOVANNI SPRIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Boyle J.

[1] The Canada Revenue Agency (the “CRA”) issued net worth reassessments for the taxpayer’s 1996 to 2002 taxation years in respect of income assumed by the CRA to be from the operation of a convenience store and from drug trafficking. Counsel for the taxpayer has brought a motion under paragraph 58(1)(a) of the *Tax Court of Canada Rules (General Procedure)* (the “Rules”) asking the Court to determine, prior to the two-day trial scheduled for the first half of March 2009, whether the Minister’s so-called net worth computation method was a legally recognized and valid net worth estimate of the taxpayer’s income for the years in question.

[2] The taxpayer does not dispute that a net worth assessment is justified in the circumstances. He only challenges the validity of the CRA’s calculation methods. Specifically, it is the taxpayer’s position that the assets and income of his common-law spouse and his parents are not properly reflected in the CRA’s calculations.

[3] Section 58 of the *Rules* permits the Court to determine a question of fact, a question of law, or a question of mixed fact and law prior to the hearing of the appeal. It can do so if such an approach may dispose of all or part of the proceeding, substantially shorten the hearing, or result in a substantial saving of costs.

[4] A net worth estimation of a person's income is inherently fact-driven and fact-specific. It is largely a question of fact. Net worth assessments have been sanctioned by the courts as an appropriate income estimation method in certain circumstances. They are not the subject of any particular provisions of the *Income Tax Act*, and I am not aware that the limits of, or the permitted scope of or approach to, net worth computation methods have been prescribed or circumscribed by any decisions of the Tax Court or appellate courts.

[5] I am not persuaded that it would be appropriate for a motions judge to decide the outer limits of the use of a net worth calculation to roughly estimate the income of a taxpayer who has not kept adequate books and records. The trial judge in a net worth assessment is almost invariably asked to address perceived inaccuracies, oversights and inappropriate amounts. A trial judge, fully aware of the taxpayer's particular facts and circumstances, is well-placed to decide such issues. Whether a trial judge would go so far as to hold that certain adjustments or entries can never be appropriate in a net worth income estimate in any circumstances or that they can render the reassessments invalid is another matter, which I do not need to address in this motion. Such matters are best left for the trial judge to consider.

[6] The taxpayer's motion is dismissed, with costs in the cause.

Signed at Ottawa, Canada, this 7th day of January 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 20

COURT FILE NO.: 2007-2876(IT)G

STYLE OF CAUSE: GIOVANNI SPRIO v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: December 10, 2008

REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle

DATE OF ORDER: January 7, 2009

APPEARANCES:

 Counsel for the Appellant: Christopher Mostovac

 Counsel for the Respondent: Annick Provencher

COUNSEL OF RECORD:

 For the Appellant:

 Name: Christopher Mostovac

 Firm: Starnino Mostovac
 Montreal, Quebec

 For the Respondent: John H. Sims, Q.C.
 Deputy Attorney General of Canada
 Ottawa, Canada