

**Court File No.. 2008-830(IT)I
CITATION: 2009 TCC 86**

TAX COURT OF CANADA

BETWEEN:

DOROTHY VILLANUEVA,

Appellant,

-AND -

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

**Delivered orally from the Bench by Justice B. Paris on Friday, December 12, 2008,
701 West Georgia Street, Vancouver, British Columbia**

APPEARANCES:

Mr. C. Vasquez

For the Appellant

Ms. L. Zumpano

For the Respondent

M. Netley

The Registrar

**Allwest Reporting Ltd.
#1200-1125 Howe Street
Vancouver, British Columbia V6Z 2K8**

REASONS FOR JUDGMENT

(Edited from the transcript of Reasons delivered orally from the Bench at Vancouver, British Columbia on December 12, 2008)

This is an appeal from a penalty of \$2,891.20 imposed pursuant to subsection 163(1) of the *Income Tax Act* for repeated failure to report income. The penalty was imposed on the basis that the Appellant failed to report investment income of \$1,814 in her return of income filed for her 2000 taxation year and that she subsequently failed to report income totaling \$28,911 in her 2001 tax return.

The affidavits of CRA officer Jeffery Derrick's filed by the Respondent show that the Appellant was issued five T-5 records of investment income for 2000 showing a total of \$3,433 of investment income and that she failed to report \$1,814 of that income in her tax return.

Although the Appellant's return is not attached to Mr. Derrick's affidavits, I am satisfied by the remaining documentation that the Appellant failed to report a portion of the investment income in her tax return. A printout from the CRA electronic records show a

Allwest Reporting Ltd.
#1200 - 1125 Howe Street
Vancouver, B.C.
V6Z 2K8

reassessment of the Appellant's 2000 taxation year to increase her investment income by \$1,814 over the previously assessed amount of \$974 and a reconstructed copy of a letter to the Appellant from the CRA explaining that she had been reassessed for her 2000 taxation year to include investment income and interest income that she had failed to report.

On the basis of this evidence I find that on the balance of probabilities, there was a failure to report income in 2000. The affidavits also showed that the Appellant filed a return for her 2001 taxation year on April 30, 2002 which was almost completely blank save for the Appellant's personal information. The Appellant's husband gave evidence that on April 30th, 2002 he filed a blank tax return signed by the Appellant for her 2001 taxation year to which he had attached a copy of the T-4 slip from her employer.

He said that he knew the Appellant had income from other sources but did not fill out the return because he did not have time to calculate the income from the other sources and

wanted to avoid the late filing penalty by sending in the blank return by the filing deadline. He believed that the Appellant was in a refund position for the year and thought that he would have time to complete an amended return for her at a later time containing all the required information. He said that he felt it was less complicated to file a blank return than an incomplete one and said that there was never any intention not to declare income.

Copies of the Notices of Reassessment issued to the Appellant for her 2001 taxation year appear to confirm that the tax remitted by or on behalf of the Appellant for 2001 exceeded her tax liability for the year, and therefore that she was entitled to a refund of tax for that year when the blank return was filed. I also note that the blank return did not claim any refund of tax apart from \$50 for a provincial tax credit. This entry on the return appeared to be generated by a computer program but no evidence on the point was led.

In any event, the evidence demonstrates the Appellant would not have

underpaid tax as a result of filing a blank return and would not have obtained a refund of tax either.

With respect to the 2000 taxation year, the Appellant's husband said that any investment income received by the Appellant was split between them and only her share should have been included in her income. However, even if half the income shown on the Appellant's T-5 slips for 2000 was income belonging to her husband, the Appellant still failed to report all of the remaining half of the T-5 income. Therefore, the Respondent has proved that the Appellant has failed to report income that she was required to report in that year.

With respect to the 2001 taxation year, I accept the Appellant's husband's evidence that he attached the Appellant's T-4 slip for that year to the blank return he filed. His evidence on this point was unchallenged in cross-examination and the Respondent did not put in issue his credibility. I prefer the direct evidence of the Appellant's husband on the point to the affidavit evidence of Mr. Derrick's that

there was nothing attached to the return when it was filed. Mr. Derrick did not elaborate on the point in the affidavit nor was there any evidence presented to enable me to ascertain what steps were taken to ensure the integrity of returns received by the CRA at the location where this one was received.

I also find that the filing of the T-4 slip with the return amounted to the reporting of the income set out on the form in the amount of \$27,890 as required under the *Act*. As a result, the remaining amount of unreported income by which the Minister imposed the subsection 163(1) penalty for 2001 is \$1,022 and the ten-percent penalty would amount to \$102.20. I'm satisfied that the Minister has shown that the penalty to the extent of \$102.20 was properly levied.

The appeal is therefore allowed in part and the penalty is reduced by \$2,789.00.