Docket: 2009-3318(IT)I

BETWEEN:

KAYVON BOGZARAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 19, 2010 at Edmonton, Alberta

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Adam Gotfried Jane Conly (Student-at-law)

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2004, 2005 and 2006 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that (1) income for each of the 2004 and 2005 taxation years should be reduced by $9,600, (2) income for the 2006 taxation year should be reduced by $55,600, and (3) the penalties should be reduced accordingly.

Each party shall bear their own costs.

Signed at Ottawa, Canada this 1st day of September 2010.

"J. M. Woods"

Woods J.

Citation: 2010 TCC 457
Date: 20100901
Docket: 2009-3318(IT)I

BETWEEN:

KAYVON BOGZARAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] In net worth assessments issued to Kayvon Bogzaran under the *Income Tax Act*, his income was determined to be $37,321.82, $38,185.40 and $81,651.37 for the 2004, 2005 and 2006 taxation years, respectively. The question for determination is whether these amounts are a proper estimate of the appellant's income.

[2] The assessments included penalties under s. 162(1) of the *Act* for the failure to file income tax returns on time. The appellant acknowledges that this penalty is appropriate because he did not file on a timely basis.

[3] The appellant was self-represented at the hearing and testified on his own behalf. The only witness for the respondent was the auditor, John Suen, who testified first.

Audit and objections process

[4] This matter was brought to the attention of the Canada Revenue Agency (CRA) by the RCMP in British Columbia who had seized $46,600 from the appellant's vehicle on October 3, 2007. The appellant was arrested but there is no evidence that he was ever charged.

[5] These assessments were issued a few weeks after the money was seized and without the prior knowledge of the appellant. Although this appears to be appropriate in the circumstances, the audit was fairly cursory as a result. The assessments were based largely on the police report relating to the seizure (Ex. R-3) and property registration searches undertaken by the auditor.

[6] After the assessments were issued, an accountant acting on behalf of the appellant filed notices of objection as well as income tax returns for the years assessed. In the returns, income of approximately $20,000 annually was reported from a business of selling body building supplements and personal training services.

[7] The appeals officer was not satisfied that any adjustment to the net worth analysis was warranted and the assessments were confirmed.

[8] It is worth noting that, just before the assessments were confirmed approximately 18 months after the objections were filed, the appeals officer wrote to the appellant in care of the accountant and asked for supporting documentation. In a follow up call with the accountant, the appeals officer was advised that the accountant had not been in touch with the appellant for some time. The assessments were confirmed shortly thereafter. It appears that no effort was made to locate the appellant.

Net worth determination

[9] As mentioned above, the auditor determined the appellant's income to be $37,321.82, $38,185.40 and $81,651.37 for the 2004, 2005 and 2006 taxation years, respectively.

[10] As far as the auditor could determine, the appellant, who was in his late 20s at the time, did not have any assets during this period except for $46,000 in cash that was seized by the police in 2007. The cash was assumed to be income earned in 2006, which was the last taxation year that was under audit.

[11] It was also assumed that the appellant's income included his personal expenditures, which on scant information were determined for each year to be $40,707.35, $41,043.38 and $41,366.97, respectively.

[12] Except for two items, the personal expenditures were based on general information published by Statistics Canada. The exceptions were for rent and vehicle

payments, which were assumed to be approximately $17,000 and $9,600 annually. These amounts were based on statements found in the police report to the effect that the appellant had said that his monthly rent was $1,350 and his monthly vehicle payments were $850.

Discussion

[13] Net worth assessments are generally undertaken when the CRA does not have sufficient information to determine what a taxpayer's income is. I have no issue with the CRA's decisions to undertake a net worth analysis in this case and to issue the assessments without informing the appellant.

[14] As a general proposition, the appellant has the onus of establishing that the net worth calculation is wrong. This can be done by establishing non-taxable sources that account for the net worth or by establishing that errors were made in the determination of the net worth.

[15] As mentioned earlier, the appellant testified on his own behalf. He stated that the cash found in the vehicle was in part savings from his supplement and training business and partly represented gifts and a bequest. The explanation provided was that he did not have a bank account and kept money in a safe. He also testified that he had lived in his grandfather's house and paid about $350 in rent.

[16] As a whole, the testimony was far too brief and vague to be convincing. I would also note that to some extent the testimony was contrary to the police report. For example, the appellant testified that the cash was not hidden in the vehicle whereas the police report stated that the money was found in a suitcase lid liner. In addition, the police report states that the appellant informed them that he rented a house in the west end of Vancouver and lived by himself. At this hearing, the appellant testified that he had lived with his grandfather.

[17] My overall conclusion was that the appellant's testimony was not at all reliable.

[18] I reached a similar conclusion with respect to the hand-written receipts which were entered into evidence in support of the appellant's business income. The receipts could easily have been fabricated and actually looked as if they had been.

[19] None of the evidence provided by the appellant was reliable. Nevertheless, that is not the end of the matter. It is appropriate to make a couple of adjustments to the

net worth calculation.

[20] First, I am not satisfied that there was sufficient disclosure to the appellant in respect of his vehicle expenses. An appendix to the reply identifies an annual personal expenditure of $9,600, citing only “taxpayer’s representations” in explanation. There is no link to vehicle payments.

[21] I am not satisfied that the appellant understood what this item represented, especially in the circumstances where he was not involved in the audit and was not contacted during the appeals stage. Unless this item was clearly identified in the reply, it would be unfair to expect the appellant to lead evidence regarding vehicle expenses.

[22] Further, the police report states that the appellant was found driving a new Cadillac Escalade. It is likely that the vehicle payments that he reported to the police at that time were not made in the taxation years at issue.

[23] In these circumstances, this item should be excluded from the appellant’s net worth.

[24] Second, in my view the seized cash should not be attributed to 2006 income. Based on the evidence as a whole, it is more likely than not that this amount represented income earned in the latter half of 2007, shortly before the police seized the money on October 3, 2007.

[25] According to the appeals report (Ex. R-6), the Minister’s position was that the appellant had “amassed his wealth through illegal activity.” This assumption was not stated in the reply, and it should have been; however nothing turns on this as I am satisfied that the appellant was aware that this was the Minister’s position.

[26] There is very little evidence before me. However, based on a balance of probabilities it is likely that the seized money was earned through illegal activities.

[27] Although there is no evidence that the charges were ever laid, half of the seized money was forfeited in 2008 pursuant to a consent order pursuant to the *Civil Forfeiture Act*. The order was produced when I enquired what happened to the seized funds. Counsel’s position was that this was not relevant to this appeal but he did provide a copy of the forfeiture order. According to the order, the balance of the seized money went to the Receiver General of Canada. Counsel informed me that this was to satisfy the appellant’s tax obligation.

[28] In response, the appellant stated that his lawyer did not have the authority to consent to this order. In the circumstances of this appeal, this statement cannot be considered to be reliable.

[29] Although it is not directly relevant, I would also note that the appellant has a criminal record. Although no evidence was led with respect to this, according to published reasons of the B.C. Provincial Court dated January 19, 2009, the appellant received a sentence of 2½ years as a result of pleading guilty to a charge of unlawful confinement. According to the reasons, the appellant had been associating with persons involved in criminal activity.

[30] With this background, and given that the appellant did not provide a credible explanation for the funds, I find it likely that the seized money was derived from illegal activity.

[31] As a result, I find that the Minister was correct to add $46,000 to the appellant's income, but I do not think that it was reasonable to assume that the income was earned in the 2006 taxation year.

[32] The police found the money in October 2007; it was probably earned shortly before seizure. Accordingly, it should have been included in the appellant's income for the 2007 taxation year.

[33] Counsel for the respondent argued that the Minister's assumption that this amount was income in 2006 should stand unless the appellant satisfies the onus of demolishing the Minister's assumptions. That is certainly the general rule, but the assumptions made should take into account the information that is known by the Minister. In circumstances where the appellant was found with a large amount of suspected proceeds of crime in October 2007, the most reasonable assumption is that the income was earned in the 2007 taxation year.

[34] In the result, the appeal will be allowed, and the assessments will be referred to the Minister of National Revenue for reconsideration and reassessment on the basis that income for 2004 and 2005 should each be reduced by $9,600 and income for 2006 should be reduced by $55,600.

[35] Each party shall bear their own costs.

Signed at Ottawa, Canada this 1st day of September 2010.

"J. M. Woods"

Woods J.

CITATION:	2010 TCC 457
COURT FILE NO.:	2009-3318(IT)I
STYLE OF CAUSE:	KAYVON BOGZARAN and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	August 19, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice J. M. Woods
DATE OF JUDGMENT:	September 1, 2010

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Adam Gotfried Jane Conly (Student-at-law)

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada