

Docket: 2010-1105(IT)I

BETWEEN:

SHEKA BANGURA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on October 6 - 7, 2010, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Roxanne Wong

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**JUDGMENT**

The appeal from the Notice of Confirmation dated December 29, 2009 made under the *Income Tax Act* for the Appellant's 2005 and 2006 taxation years is dismissed.

Signed at Ottawa, Canada, this 27<sup>th</sup> day of October 2010.

“V.A. Miller”

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V.A. Miller, J.

Citation: 2010TCC551  
Date: 20101027  
Docket: 2010-1105(IT)I

BETWEEN:

SHEKA BANGURA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

(Delivered orally from the bench on October 7, 2010, in Toronto, Ontario)

V.A. Miller, J.

[1] The issues in this appeal are whether the Appellant incurred business losses in the amount of \$7,889.95 and \$5,396 in 2005 and 2006 respectively and whether the Appellant is entitled to a non-refundable tax credit for a charitable donation in 2005.

#### **Business Losses**

[2] According to the income tax returns filed by the Appellant, he incurred a loss from a business called “Bangura Moving and Delivery Co.”. In the Statement of Business Activities filed by the Appellant, he reported income of \$3,600 and \$3,500 and business expenses of \$11,489.95 and \$8,895 from his moving and delivery endeavours in 2005 and 2006.

[3] The Appellant had no documents to support the income and the expenses that he reported from his moving endeavour. It was his evidence that he and his spouse separated in 2005 and he left all his records in a box at his spouse’s apartment. He ceased to have access to those documents when he moved out of the apartment that he and his spouse had occupied. In 2005, he moved into unit 808 in the same apartment building as his former spouse. She lives in unit 814.

[4] It was his evidence that the person who prepared his income tax returns saw and used all of his invoices and receipts. He stated that he kept a box of receipts at his new apartment.

[5] The Appellant worked a full time job as a janitor with the Toronto Transit commission. In direct examination he stated that during 2005 and 2006 he was in the business of moving items during his spare time for friends and others who called on him. He was paid \$20 or \$25 per trip. He only moved items a short distance from his home and he used his van to do the moving.

[6] During cross-examination the Appellant's evidence changed. He stated that when he moved to unit 808 he did not have a moving business and he had no receipts. His van was repossessed in 2002 when he declared bankruptcy. He had a Ford car in 2005 and he took out the seats when he was moving items for his friends. He stopped doing deliveries at the end of 2005 when his delivery licence was cancelled. He did no deliveries in 2006. He did not have any records from his moving and delivery endeavours at his residence at unit 808. He didn't remember how many times he moved items for people in 2005 but he did say that he did not spend much time doing deliveries in 2005 as he had family problems.

[7] The Appellant's evidence was contradictory and implausible. As an example, if the Appellant did in fact make deliveries in 2005 and earned \$3500, he would have had to make between 140 and 175 deliveries. This flies in the face of the Appellant's evidence that he did not spend much time doing deliveries. Likewise, if the Appellant did not have access to his records after he and his spouse separated in 2005, then what records did he show the person who prepared his 2005 tax return in March 2006?

[8] I conclude from all of the evidence that the Appellant did not operate a moving or delivery business in 2005.

[9] When I consider the test given by the Supreme Court of Canada in *Stewart v. R.*, 2002 SCC 46 (S.C.C.), I conclude that the Appellant did not have a source of income from his delivery or moving endeavour in 2005. That test was given at paragraph 60 where the Court stated:

In summary, the issue of whether or not a taxpayer has a source of income is to be determined by looking at the commerciality of the activity in question. Where the activity contains no personal element and is clearly commercial, no further inquiry is necessary. Where the activity could be classified as a personal pursuit, then it must be determined whether or not the activity is being carried on in a sufficiently commercial manner to constitute a source of income.

[10] If the Appellant is to be believed, he moved or delivered items in his spare time only. He used his car. He delivered items for his friends and he would only do deliveries that were close by and took very little time. In this case, there was no commerciality or businesslike behaviour.

### **Charitable Donation**

[11] In 2005 the Appellant claimed a non-refundable tax credit for a charitable donation in the amount of \$15,000. He submitted two receipts with his income tax return, one for \$3,000 from City Chapel Ministries International (“City Chapel”) and another for \$12,000 from The Mega Church International (“Mega Church”).

[12] The Appellant stated that he gave \$5,000 in cash and gifts valued at \$10,000 to his church which is the Methodist Catholic Church at 145 Wilson Street in Toronto. His church then gave the cash and gifts to the City Chapel and Mega Church.

[13] I have not been convinced that the Appellant had \$15,000 to donate in 2005. After all deductions, he earned \$33,953.86 in 2005. It was his evidence that he paid rent, child support and an amount to the Trustee in Bankruptcy. These payments totalled \$17,144. The Appellant had disposable income of \$18,953.86 with which to purchase food, pay utilities, and other necessities. I find it implausible that he gave \$5,000 in cash and paid \$10,000 for goods which he donated to his church.

[14] Further the amounts were allegedly donated to the Methodist Catholic Church. This is the church which should have issued the receipt to the Appellant. As well, the receipts issued by City Chapel and Mega Church do not satisfy Regulation 3501 of the *Income Tax Regulations*. The date that the receipt was issued by the Mega Church does not appear on the receipt. The addresses on the receipts from the City Chapel and the Mega Church are not the addresses that were given by those organizations when they were registered by the Minister.

[15] For all of these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 27<sup>th</sup> day of October 2010.

“V.A. Miller”

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V.A. Miller, J.

CITATION: 2010TCC551

COURT FILE NO.: 2010-1105(IT)I

STYLE OF CAUSE: SHEKA BANGURA AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 6 & 7, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: October 27, 2010

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Roxanne Wong

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan,  
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