

Docket: 2010-1714(IT)I

BETWEEN:

SEETA MADHOLLAL,

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:

Agent for the Appellant: Glen Lancaster  
Counsel for the Respondent: Samantha Hurst

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**JUDGMENT**

The appeal from the reassessments made under the *Income Tax Act* for the 2004 and 2005 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: 2010TCC524  
Date: 20101027  
Docket: 2010-1714(IT)I

BETWEEN:

SEETA MADHOLLAL,

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 Appellant's income tax liability for the 2004 and 2005 taxation years was reassessed on a net worth basis to include in income the amounts of \$24,688 and \$36,834 respectively. She was also assessed gross negligence penalties pursuant to subsection 163(2) of the *Income Tax Act* ("the Act").

[2] In her 2004 and 2005 income tax returns, the Appellant reported total income as follows:

	2004	2005
Rental Income	\$3,721.91	-
Net Business Income	14,662.32	\$8,067.00
Total Income	\$18,384.23	\$8,067.00

[3] The Appellant was represented by her accountant, Glen Lancaster. The witnesses at this hearing were the Appellant, her spouse, Puran Lall and Josephine Datu, an auditor with the Canada Revenue Agency ("CRA").

[4] The Appellant has disputed the calculations in the net worth analysis by focusing on several entries. It was her position that the Lexus and GMC van listed under Personal Assets were not registered in her name and should be deleted from the net worth statement. She owned no vehicles until she purchased a Mercedes Benz in 2005. In 2003 and 2004, the net worth statement should reflect that her residence at 7283 Sigsbee Drive (“the old residence”) was jointly owned by her and her brother, Rabindra, and not her alone. She also disagreed with many of the amounts included in the Personal Expenditure Worksheet. She stated that they were too high and she submitted a gas bill, a water bill and a hydro bill from the period in question to support her testimony.

[5] The Appellant testified that she had access to funds which were not included in the net worth statements. In 2004 and 2005, she received rental income as she rented three floors in her old residence to another family. In 2005, she inherited \$15,000 from her mother’s estate. She received her inheritance through her brother and she deposited the funds in her personal bank account. She used her inheritance to purchase the Mercedes Benz in 2005.

[6] In November 2005 she and her brother sold the old residence to her oldest son and her brother, Rameshwar. She purchased a home at 6860 Golden Hills Way (“the new residence”) with the profit from the sale of the old residence (\$96,000) and a personal line of credit of \$15,000. Her brother lent her his share of the profit and this plus the line of credit should be reflected in the net worth statement as liabilities.

[7] In 2004 and 2005, the Appellant reported that she operated a business called AOL Appliances Service (“AOL”). In 2004 she reported that she operated this business as a sole proprietor whereas, in 2005, she reported that she operated this business in a partnership. AOL serviced and repaired major appliances such as stoves, refrigerators, washers, dryers and dishwashers. The only employees of AOL were the Appellant, her spouse and her two sons. The Appellant’s duty was to answer the telephone and her spouse did the repair work with the assistance of their sons.

[8] It was the Appellant’s evidence that she and her spouse had separated in 2001 and reunited in 2005. Prior to getting back together, her spouse occasionally gave money to their sons. In 2004, their sons were 18 and 15.

## **Analysis**

[9] The net worth method is used by the Minister of National Revenue (“the Minister”) when a taxpayer has failed to file an income tax return or has filed an

income tax return that is grossly inaccurate and has kept no records or inadequate records. It is an unsatisfactory method of calculating a taxpayer's income but sometimes it is the only means open to the Minister. As stated by Bowman J., as he then was, in the case of *Bigayan v. The Queen*, [2000] 1 C.T.C. 2229 at paragraph 2:

[2] ... It is a blunt instrument, accurate within a range of indeterminate magnitude. It is based on an assumption that if one subtracts a taxpayer's net worth at the beginning of a year from that at the end, adds the taxpayer's expenditures in the year, deletes non-taxable receipts and accretions to value of existing assets, the net result, less any amount declared by the taxpayer, must be attributable to unreported income earned in the year, unless the taxpayer can demonstrate otherwise. It is at best an unsatisfactory method, arbitrary and inaccurate but sometimes it is the only means of approximating the income of a taxpayer.

[3] The best method of challenging a net worth assessment is to put forth evidence of what the taxpayer's income actually is. A less satisfactory, but nonetheless acceptable method is described by Cameron J. in *Chermenkoff v. Minister of National Revenue*, 49 DTC 680 at page 683:

In the absence of records, the alternative course open to the appellant was to prove that even on a proper and complete "net worth" basis the assessments were wrong

[10] The Minister must only show that the net worth of a taxpayer has increased between two points in time. He does not have to prove a taxable source of income.<sup>1</sup>

[11] Many cases involving net worth assessments are decided on the credibility of the Appellant and the witnesses and their explanations as to why the Minister's calculations are incorrect. This is such a case where my assessment of credibility will determine my decision as the Appellant has submitted few documents. At paragraph 23 of *Nichols v. The Queen*, 2009 TCC 334, I discussed the criteria that I could consider in assessing credibility:

[23] In assessing credibility I can consider inconsistencies or weaknesses in the evidence of witnesses, including internal inconsistencies (that is, whether the testimony changed while on the stand or from that given at discovery), prior inconsistent statements, and external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me). Second, I can assess the attitude and demeanour of the witness. Third, I can assess whether the witness has a motive to fabricate evidence or to mislead the court. Finally, I can consider the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable.

[12] In applying the criteria to the evidence, I have concluded that the Appellant has not produced convincing evidence to challenge the net worth assessment. After reviewing the evidence, I am left with numerous unanswered questions. Statements were made by the Appellant and arguments made by her representative that ought to have been supported by documents, if they existed.

[13] The Appellant's spouse, Puran, is an appliance technician. Prior to 2004, he operated, as a sole proprietor, a business called AOL Canada Refrigeration. It too was in the business of repairing appliances.

[14] On July 30, 2004, Puran was assigned into bankruptcy and he was discharged from bankruptcy in July 2005. It was the Appellant's evidence that her spouse worked for her after he declared bankruptcy until he was discharged from bankruptcy. Whereas, Puran testified that in 2004 he worked for his brother and in 2005 he worked for the Appellant.

[15] The pre-bankruptcy 2004 tax return filed by the Trustee on behalf of Puran, showed that he reported income of \$6,765 from AOL Canada Refrigeration. The post-bankruptcy 2004 return showed that Puran had employment income of \$12,795 from AOL Appliances Service. The Appellant's 2004 return showed that AOL Appliances Service paid \$12,795 to an employee in 2004. I conclude that Puran worked for the Appellant in 2004.

[16] The Minister calculated the Appellant's personal expenditures based on a household of four. It was the Appellant's evidence that she and Puran were separated in 2004 until the end of 2005. The personal expenditures should have been based on a household of 3. Puran testified that he and the Appellant separated in 1994; whereas, the Appellant stated that they separated in 2001. I note that the 2004 pre-bankruptcy return filed on behalf of Puran listed his address as the old residence and his telephone number as that of the Appellant's.<sup>2</sup> I have concluded that the Appellant and Puran resided together in 2004 and 2005 and the Minister was correct to base his calculations on a household of 4.

[17] The Appellant's representative submitted that the value of the Lexus and the GM van should be deleted from the calculations in the net worth statement. However, their value remained constant for each of the years and they do not contribute to an increase in the net worth discrepancy. As well, I have concluded that Puran was a member of the Appellant's household during the years in issue and the net worth calculations include all members of the household.

[18] If I acquiesced with the Appellant's request to remove one half of the value of the old residence from the calculation of the net worth, I would also have to remove one half of the liabilities associated with this asset. The result would decrease the unreported income in 2004 to \$23,904.22 and increase the unreported income in 2005 to \$83,177.40. The huge increase results from a decrease in the Appellant's net worth in 2004 and an increase in her net worth in 2005 as a consequence of her purchase of a Mercedes Benz valued at \$73,692 and the new residence valued at \$554,136.

[19] At one point in her evidence, the Appellant stated that she received an inheritance from her mother's estate and she deposited this amount in her bank account. I was not shown any bank statements to verify this statement. The Appellant later stated that she received the \$15,000 inheritance by way of an exchange method which she described. She received the inheritance in cash and in payments of \$500 over time.

[20] Ms. Datu stated that she met with the Appellant and her spouse. The Appellant did not tell her that she received an inheritance.

[21] As an aside, I found it to be curious that when the Appellant and her brother sold the old residence, their lawyer addressed all letters to Mr. and Mrs. Madhollal. The Appellant and Rabindra Madhollal signed the Acknowledgment and Direction in which they confirmed that they were spouses of one another. On a review of all the evidence, I am left with the uneasy feeling that the true state of affairs in this case has never been disclosed.

[22] The Appellant has not been able to persuade me that the estimation of personal expenditures was incorrect. It was Ms. Datu's evidence that the estimates used were those given to her by the Appellant and her spouse. The estimates used for Shelter were taken from the 2005 tax return filed by the Appellant.

### **Penalties**

[23] The amount of unreported income in relation to the income declared is significant. Ms. Datu noted in her Penalty Recommendation Report that the unreported income was 39% and 56% of reported income in 2004 and 2005 respectively. In addition, the Appellant used a tax preparer. She controlled the information supplied to complete her tax returns. I am satisfied based on all of the evidence that the Appellant's failure to report income "was attributable to a deliberate deception of the true state of her affairs with the intent to conceal taxable income".<sup>3</sup>

[24] 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.

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<sup>1</sup> *Hsu v. The Queen*, 2001 D.T.C. 5459

<sup>2</sup> See Bankruptcy Identification Form in exhibit R-2 and the invoice for the purchase of the Mercedes Benz.

<sup>3</sup> *Dao v. The Queen*, 2010 TCC 84

CITATION: 2010TCC524

COURT FILE NO.: 2010-1714(IT)I

STYLE OF CAUSE: SEETA MADHOLLAL AND  
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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:

Agent for the Appellant: Glen Lancaster  
Counsel for the Respondent: Samantha Hurst

COUNSEL OF RECORD:

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