Docket: 2010-500(IT)I

BETWEEN:

PIERRE HOBSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 29, 2010, at Montréal, Quebec

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Marc-André Rouet

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2007 taxation year is allowed and referred back to the Minister for reconsideration and reassessment on the basis that the Appellant's unreported business income in 2007 was not more than $2,754.

Signed at Ottawa, Canada, this 20th day of January, 2011.

"G. A. Sheridan"

Sheridan J.

Citation: 2011TCC29
Date: 20110120
Docket: 2010-500(IT)I

BETWEEN:

PIERRE HOBSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant, Pierre Hobson, is appealing the reassessment of the Minister of National Revenue pursuant to which $6,554 was added to his 2007 income as unreported business income from his dance school.

[2] The Appellant represented himself and testified on his own behalf. The Minister called the auditor in charge of the Appellant's file, Siradiou Barry. Both were credible in their evidence.

[3] The Appellant denied that the $6,554 discovered during Mr. Barry's deposit analysis was business income. He accounted for the amount as follows: he and his then girlfriend, JM, had been living together since 2003. As will be explained below, JM was not present at the hearing of this appeal. According to the Appellant, in 2007 he received a total of $10,154 from JM: $3,600 for her share of their annual apartment rent of $7,200; $2,700 for her share of their household expenses other than rent and $3,800 in various increments to finance certain business expenses i.e., deposits on the rental of dance performance space, lighting equipment and so on.

[4] The Appellant's explanation of the receipt of $3,600 for apartment rent was accepted at the audit stage leaving in issue in this appeal only the amounts of $2,700 and $3,800. However, the $3,600 allowed at the audit stage amount is relevant to the

interpretation of the words “monthly expenses” which appear in a declaration sworn by JM and upon which the Appellant primarily relies in support of his position. This document was also provided to the Appeals Officer at the objection stage. The text of JM’s sworn declaration reads as follows:

> I, the undersigned, [JM], living & residing at 2638 Lionel-Groulx apt # 1, Montreal, Quebec, H3J 1J8 do hereby declare as follows:
>
> a. That I was living with Mr. Hobson at the same address since June 2003.
> b. That I paid share of my monthly expenses in the amount of $ 400 to $ 500 in cash to Mr. Hobson from time to time.
> c. That the total amount paid to him for my share during the year 2007 was $ 2700.00.
> d. That I lend him the money to meet his daily business expenses in various payments totaling $ 3800.00 during the year 2007.
>
> I make this declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath in virtue of the Canada Evidence Act.
>
> AND IT HAVE SIGNED at Verdun, Quebec this twenty one day of May Two thousand Nine.
>
> [Emphasis added.]

[5] Also in evidence was a list[1] of the Appellant’s 2007 non-rental apartment expenses totalling approximately $5,400; this document was also provided to the Appeals Officer.

[6] By way of background, JM is a volunteer worker with Oxfam Québec; as such, her living expenses are covered but she does not receive wages for her work. According to the Appellant, she lived a modest lifestyle, minimizing her expenses wherever possible. From October 2008 to March 2009, she was posted in Nicaragua on a youth development project; during the objection stage JM was working in the Montreal office of Oxfam Québec[2]. From October 25, 2009 up to and including the time of this hearing she was in the Democratic Republic of the Congo where she was responsible for a “clean water” project.

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[1] Exhibit R-2.

[2] Exhibit A-1.

[7] In these circumstances, I accept the Appellant's argument that it would have been unreasonable to require JM to return from volunteer work in Africa to testify in an informal procedure appeal challenging an assessed amount of $1,480.42[3]. Similarly, I find nothing untoward in the Appellant's choice to proceed with the disposition of his appeal rather than accepting the Respondent's offer to ask the Court to adjourn it until such time as JM might return to Canada. As I understand it, this offer was made for the first time at the hearing of the appeal; it presumes that the Court would have granted such an adjournment and overlooks the expenses already incurred by the Court and the parties to be ready to proceed on the scheduled day.

[8] Thus, while I am not prepared to draw a negative inference from the Appellant's failure to call JM as a witness, it is not without other repercussions. The Appellant's position is that the words "monthly expenses" in JM's sworn declaration refer to her contribution to household expenses in addition to the $3,600 she paid for her share of the apartment rent. This makes some sense if one considers that when the declaration was sworn on May 21, 2009, the Minister had already accepted in his reassessment of April 23, 2009 that the Appellant had received $3,600 from JM as apartment rent. From this it would follow that there would be no need to make any further reference to the receipt of an amount for rent in the sworn declaration prepared for use at the objection stage. Hence, it could be inferred that the words "monthly expenses" refer only to the non-rental expenses.

[9] Counsel for the Respondent argued, however, that it was clear on the face of JM's sworn declaration that the total amount paid toward their expenses in 2007 was $2,700. As $3,600 was allowed by the auditor for rent alone, the Appellant had already experienced a windfall of some $900. (No adjustment can be made in this respect as the jurisprudence is clear that the Minister cannot use a taxpayer's appeal to correct errors in his assessment that would result in more tax payable.) At the very least, counsel argued, the sworn declaration is not clear enough to justify a finding that the Appellant had received a payment of $2,700 from JM in respect of household expenses in addition to the $3,600 he claimed she had paid as rent.

[10] I agree with counsel for the Respondent that the sworn declaration is ambiguous and that only JM could provide the necessary clarification. I also accept his argument that the list of household expenses in Exhibit R-2 showing a total of $5,400 (half of which just happens to be $2,700) does not take into account the percentage of those expenses which were attributed to business expenses at the audit stage.

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[3] Exhibit R-2, Notice of Reassessment dated April 23, 2009.

[11] It seems to me that because the Appellant bears the onus of proving that the $2,700 amount was not unreported business income, any ambiguity in JM's sworn declaration must be resolved in favour of the Respondent. In all the circumstances, there is insufficient evidence before me to conclude that the Appellant received $2,700 for household expenses in addition to the $3,600 the Minister accepted as having been received from JM for rent in 2007.

[12] That leaves, then, the Appellant's claim that he received and deposited in his account approximately $3,800 from JM as a loan for use in his business. At the objection stage, the Appeals Officer was unconvinced: there was no written loan agreement between the Appellant and JM, the Appellant had made no repayments on the loan and there was no deadline for doing so. The Appeals Officer was also troubled by the Appellant's inconsistent statements at the audit and the objection stage; first he said that all amounts had been deposited; when confronted with the discrepancy between the unaccounted-for amount of $9,154 identified by the auditor in his accounts and the $10,154 total the Appellant said JM had advanced to him, the Appellant said that he had kept some of the amounts received from her rather than depositing them. On these grounds, the Appeals Officer decided that the Appellant had not shown "*hors de tout doute raisonnable*"[4] that any such loan had been made.

[13] The standard of proof attached to the Appellant's onus of proving wrong the Minister's reassessment is on a balance of probabilities. On that basis, I am satisfied that the Appellant has met this burden in respect of the $3,800 loan. JM's sworn declaration is unequivocal that she paid that amount to the Appellant for that purpose and I have no reason to think the Appellant was untruthful in his testimony.

[14] Had the Appellant maintained a separate account for his business and kept better records, he might well have avoided having to distinguish JM's contributions from his business income. While the standard required under the legislation is adequacy, not perfection, his failure to strive towards the latter contributed, in no small part, to his problems. On the positive side, the auditor's notes and the objection report reveal that the Appellant was quick to co-operate with officials, complied with their requests for additional information and made reasonable attempts to substantiate his claims. At the hearing, he admitted his memory was not perfect: but for his mother having jogged his memory about her contributions to his finances in 2006 and 2007 and providing copies of the supporting cheques, those amounts would also have been attributed to unreported business income. By the same token, the Appellant also forgot about having received insurance proceeds of $638; this did not come to him

[4] Exhibit R-14, page 4.

until the objection stage when he was able to substantiate his claim by producing the cancelled cheque.

[15] In these circumstances, I am less troubled than the Appeals Officer by the apparent inconsistency in the Appellant's statements as to exactly how much of JM's contributions were deposited in his accounts. Given their payment in various increments on an irregular basis and the precariousness of the Appellant's financial situation, it strikes me as more, rather than less, likely that some of the cash received from JM would have gone directly to meet immediate needs rather than having been deposited into his account. While he failed to mention the loan during the audit, the reassessment no doubt sharpened his attention, inciting him to take a closer look at his records, such as they were, and to provide a more detailed account of his affairs at the objection stage. When considered in light of his personal relationship with JM and the Appellant's approach to records keeping, that they did not reduce their financial arrangements to writing or embark on a rigourous repayment schedule is hardly surprising. It is certainly not sufficient in itself to justify the conclusion that no such loan was made. I am satisfied that $3,800 of the $6,554 treated by the Minister as unreported business income in 2007 was in respect of a loan received by the Appellant from JM.

[16] For the reasons set out above, the appeal is allowed and referred back to the Minister for reconsideration and reassessment on the basis that the Appellant's unreported business income in 2007 was not more than $2,754.

Signed at Ottawa, Canada, this 20th day of January, 2011.

"G. A. Sheridan"

Sheridan J.

CITATION:	2011TCC29
COURT FILE NO.:	2010-500(IT)I
STYLE OF CAUSE:	PIERRE HOBSON AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	October 29, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice G. A. Sheridan
DATE OF JUDGMENT:	January 20, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Marc-André Rouet

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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