

Docket: 2016-2392(IT)I

BETWEEN:

AJIBOLA MADAMIDOLA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 1, 2017, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Agent for the Appellant: Sarah Akinyele
Counsel for the Respondent: Hye-Won (Caroline) Ahn

JUDGMENT

The Appeals from the reassessments made under the *Income Tax Act* with respect to the 2004 and 2005 taxation years are dismissed.

Signed at Ottawa, Canada, this 6th day of December 2017.

“Campbell J. Miller”

C. Miller J.

Citation: 2017 TCC 245

Date: 20171206

Docket: 2016-2392(IT)I

BETWEEN:

AJIBOLA MADAMIDOLA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

C. Miller J.

[1] Mr. Madamidola is a member of the Nigerian Canadian Muslim Association (the “Association”) and has been for several years. Indeed, he served as secretary at some stage. He claimed he made charitable donations to the Association of \$4,058 and \$8,458 (\$2,000 cash and \$6,458 for donations in kind) in 2004 and 2005 respectively.

[2] Mr. Madamidola provided receipts for these donations which can be described as follows. For 2004, the receipt has the name of the Association with the address of 86 Rivalda Road, Weston, Ontario, along with the registration number and an indication that the receipt is an official receipt for income tax purposes. It indicates that \$4,058 was received from Mr. Madamidola being a donation for January to December 2004, stipulating that the date received was January – December 2004. The receipt was issued on January 3, 2005.

[3] For the 2005 taxation year, again the Association’s name is at the top of the receipt with the same address as indicated for 2004, along with the registration number and the necessary indication that the receipt is an official receipt for income tax purposes. This receipt states “donated chairs and tables for the auditorium estimated at \$6,458 and cash donation of \$2,000”. The date received is indicated as January to December 2005 and this receipt is dated December 30, 2005.

[4] The Minister of National Revenue (the “Minister”) assessed Mr. Madamidola on November 27, 2006 for the years 2004 and 2005 denying the credits arising from the claimed donations. The Minister issued a Notice of Confirmation in May 2015 confirming that assessment.

[5] Mr. Madamidola testified the cash donations were made after requests for donations throughout the year and not in one lump sum. He testified further that he would give cash or cheques to the financial secretary of the Association, though could not remember the name of the financial secretary at the time. He also stated the Association kept a card for each member recording their donations, but he had not requested such card or obtained any copies of such records. His agent also testified that she had sought records and had been advised there was a ledger, though again nothing was produced at trial. Mr. Madamidola knew in 2006 and 2007 that these donations were being investigated, but did not provide at that time, or since, any records from the Association or banks to support the donations. No officer of the Association, which is still in existence, was called to corroborate Mr. Madamidola’s explanation. I do note that the assessment was not confirmed for eight years, and it is not surprising that records at this point may not be available, though I also note that no efforts appear to have been made in 2006 or 2007 when Mr. Madamidola first was aware that the Canada Revenue Agency (the “CRA”) were questioning the legitimacy of the charitable donations.

[6] Mr. Madamidola stated that in 2004, \$4,000 of the donation was in cash with the small balance representing food donations for events during Ramadan.

[7] Mr. Madamidola claimed in 2005 that \$6,458 was a donation of tables and three dozen folding chairs. The balance of \$2,000, he maintained, was a cash donation. He stated that an evaluation committee of the Association evaluated the tables and chairs, though he could not recall precisely whether they relied on a receipt he might have provided or established their own value. He testified that the evaluation committee was made up of volunteers with some expertise in the area. Again, he could not recall any names, nor did any member of the Association testify. Mr. Madamidola gave no evidence of where he acquired the tables and chairs.

[8] Mr. Madamidola testified that the Association moved several times over many years, at times using other mosques until they could secure their own premises at 190 Milvan Drive in Weston. This is confirmed by records produced by an officer of the CRA who indicated that several addresses for the Association were recorded with the CRA, none of which, however, was 86 Rivalda Road, the

address on the receipt. While Mr. Madamidola's agent attempted to paint these records as confusing and with overlapping addresses, I did not find them so. The government records indicated either a mailing address and physical address or both for a certain period of time. None of these periods overlapped: there was no uncertainty.

[9] Is Mr. Madamidola entitled to tax credits in 2004 and 2005 based on charitable donations he claims he made in those years? There are two elements to this inquiry. First, did Mr. Madamidola actually make the donations in those amounts claimed, and second, did he obtain proper charitable donation receipts for such amounts. If either question is answered in the negative then Mr. Madamidola's Appeals must be dismissed. I will deal with the second question first.

[10] Did Mr. Madamidola obtain proper receipts? The *Income Tax Act* (the "Act") and *Income Tax Regulations* (the "Regulations") in this regard read as follows for the years in issue:

118.1(1) "total charitable gifts", of an individual for a taxation year, means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts, the total cultural gifts or the total ecological gifts of the individual for the year) made by the individual in the year or in any of the five preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to a qualified donee, to the extent that the amount was not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year; ...

118.1(2) Proof of gift. An eligible amount of a gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(d) a receipt for the gift that contains prescribed information; ...

3501(1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

(a) the name and address in Canada of the organization as recorded with the Minister;

- (b) the registration number assigned by the Minister to the organization;
- (c) the serial number of the receipt;
- (d) the place or locality where the receipt was issued;
- (e) where the gift is a cash gift, the date on which or the year during which the gift was received;
- (e.1) where the gift is of property other than cash
 - (i) the date on which the gift was received,
 - (ii) a brief description of the property, and
 - (iii) the name and address of the appraiser of the property if an appraisal is done;
- (f) the date on which the receipt was issued;
- (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
- (h) the amount that is
 - (i) the amount of a cash gift, or
 - (ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;
- (h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;
- (h.2) the eligible amount of the gift;
- (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and
- (j) the name and Internet website of the Canada Revenue Agency.

[11] There has been considerable jurisprudence regarding these requirements, concluding that they are to be diligently followed and failure to meet any

requirement is fatal to determine the legitimacy of the receipt. As Justice Tardif indicated in *Plante v Canada*:¹

46. The requirements in question are not frivolous or unimportant; on the contrary, the information required is fundamental, and absolutely necessary for checking both that the indicated value is accurate and that the gift was actually made.

47. The purpose of such requirements is to prevent abuses of any kind. They are the minimum requirements for defining the kind of gift that can qualify the taxpayer making it for a tax deduction.

48. If the requirements as to the nature of the information that a receipt must contain are not met, the receipt must be rejected, with the result that the holder of the receipt loses tax benefits. Accordingly, even though a taxpayer may have made a gift of a painting, he or she cannot claim the potential deduction if the appraisal and the receipt issued for the gift do not comply with the requirements of the Act and the Regulations made thereunder.

[12] So, are there any deficiencies in the receipts provided by Mr. Madamidola? I believe there are: the most glaring being the very first requirement that the receipt must state the address “as recorded with the Minister”. I am satisfied that at no time was 86 Rivalda Road an address “recorded with the Minister”. It is for the charity to register with the Minister and to ensure that any changes are duly recorded with the Minister. The Association has not done so. This is not an insignificant requirement but one that should give the public some comfort that charities issuing receipts are indeed the very charities operating in the very places on record with the Minister. This deficiency alone is fatal to Mr. Madamidola’s case. Yet, there is more. The receipt is to be clear from which place and/or locality the receipt was issued. Where, as here, the evidence suggests the Association operated in different places over the years, it is even more important that the receipt be clear in that regard. Further, neither receipt provides Mr. Madamidola’s address.

[13] The *Regulations* also stipulate that if the donation is a gift in kind then the receipt must state the date on which it was received. The receipts in Mr. Madamidola’s case simply state the whole year. This may be sufficient for cash donations but it is insufficient for gifts in kind: an actual date is required.

¹ [1999] TCJ No. 51.

[14] As well as these several deficiencies, I am concerned that an evaluation committee of the Association set the value for the tables and chairs in excess of \$6,000, yet no information was provided as to who these appraisers were and how they came up with that value. As has been pointed out in prior cases, *Le v Canada*² and *Ehiozomwangie v Canada*³ for example, the gift in kind is to be based on fair market value as required in the very definition of “total charitable gifts”, as it read in the years in issue. This can best be established by appraisal reports, failing which Mr. Madamidola might have provided other evidence as to fair market value (the most logical being receipts for the purchase of the furniture). He was unable to do so. It has not been proven that the tables and chairs had the fair market value Mr. Madamidola claims.

[15] For these reasons, I conclude the receipts do not meet the stringent requirements of the *Act* and *Regulations* and Mr. Madamidola’s Appeals are dismissed.

[16] It is, therefore, unnecessary for me to make a finding on the first question of whether or not Mr. Madamidola actually made these donations. He may well have donated something to the Association. He has been unable to convince me, on balance, however, that the amounts set out on the receipts are an accurate reflection of what he actually donated. I reach this conclusion based on the lack of corroborating evidence from the Association, the inability to recall names of fellow members, the lack of any documentary proof and the lack of any requests by Mr. Madamidola back in 2006 and 2007 for documents from the Association (including for an amended receipt itself).

[17] The Appeals are dismissed.

Signed at Ottawa, Canada, this 6th day of December 2017.

“Campbell J. Miller”

C. Miller J.

² 2011 TCC 292.

³ 2013 TCC 145.

CITATION: 2017 TCC 245
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DATE OF JUDGMENT: December 6, 2017

APPEARANCES:

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