

Docket: 2009-2243(IT)I

BETWEEN:

ALTAF KHANDWALA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 22 and 23, 2011 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: M. Dewshi

Counsel for the Respondent: Rita Araujo

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2004 and 2005 taxation years is dismissed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 3rd day of October 2011.

“J. M. Woods”

Woods J.

Citation: 2011 TCC 466
Date: 20111003
Docket: 2009-2243(IT)I

BETWEEN:

ALTAF KHANDWALA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] Altaf Khandwala was assessed under the *Income Tax Act* to include in his income amounts deposited in one of his bank accounts (“Deposits”). Gross negligence penalties were also imposed. The taxation years at issue are 2004 and 2005.

[2] Mr. Khandwala resides in the Toronto area and owns a corporation that operates a travel agency business. Both he and his wife are involved in the business.

[3] In 2007, the Canada Revenue Agency commenced an audit because the income reported on Mr. Khandwala’s tax returns was low. In 2004 and 2005 he reported income of \$12,500 and \$10,069, mostly in respect of the travel agency.

[4] The results of the audit were that Mr. Khandwala had properly reported his income from the travel agency, but the CRA were not satisfied that he had reported all his income. The source of the concern was the Deposits, which were made to a US currency bank account with TD Canada Trust.

[5] Assessments were issued bringing the Canadian dollar equivalent of the Deposits into income, with penalties. The amounts added to income were \$28,665

and \$34,944 for the 2004 and 2005 years, respectively. The penalties were \$2,477.45 and \$2,655.35.

[6] Mr. Khandwala submits that the funds generally represent proceeds from the sale of businesses when he lived in Chicago until October 2001. There were also repayments of loans that were given to friends, it is submitted. None of money deposited was income, it is submitted.

[7] The Crown submits that Mr. Khandwala has not provided sufficient reliable evidence in support, and in particular, it is submitted that Mr. Khandwala was not a credible witness.

[8] I agree with the Crown's position.

[9] As for documentary evidence, Mr. Khandwala introduced documents relating to three businesses, a gas station and convenience store, a wholesale business, and a taxi license. However, none of the documents provide clear support of Mr. Khandwala's position, as discussed below.

[10] Mr. Khandwala testified that he sold an interest in a gas station and convenience store in Chicago for US\$50,000. Two cheques were introduced in support from a company called Wala Wala Inc. in an aggregate amount of US\$19,000. They are the source of two of the Deposits at issue. Mr. Khandwala submits that these two deposits represent sale proceeds from this business.

[11] The problem with this submission is that there is insufficient evidence linking these cheques to proceeds from a sale of business. I would also note that the word "bonus" is written on the bottom of each of the cheques, which suggests that the cheques are not part of sale proceeds. In addition, there are no documents that show that Mr. Khandwala had an ownership interest in this business.

[12] The evidence as a whole is insufficient to establish a link between a sale of a gas station and convenience store and the Deposits.

[13] Mr. Khandwala also testified that he sold an interest in a wholesale business. A letter was introduced in support purportedly signed by the president of DT Distributors Inc. It supported Mr. Khandwala's testimony that he sold an interest in this business in 2001 for US\$92,500 and that the sale price was paid over time. The letter looks to have been prepared in support of the audit.

[14] There are three problems with the evidence relating to the wholesale business. First, the author of the letter was not present in Court and could not be cross-examined on the letter. Very little weight can be attached to it. Second, there are no contemporaneous documents relating to this business. Third, other than the letter, there is no evidence other than Mr. Khandwala's self-interested testimony which links the Deposits and this business.

[15] The evidence as a whole is not sufficient to link sale proceeds from a wholesale business to the Deposits.

[16] Mr. Khandwala also testified that he sold a taxi licence in Chicago in 2000 for about \$60,000. Documents were introduced in relation to this sale. I accept that a taxi licence was sold by Mr. Khandwala in 2000 but no link has been established between the sale proceeds and the Deposits which were made a few years later.

[17] According to Mr. Khandwala's testimony, these businesses are the source of most of the money deposited. As for loans from friends, Mr. Khandwala provided very little detail, and no supporting evidence.

[18] I would also note that one of the Deposits (US\$27,000) was a transfer from a bank account that Mr. Khandwala had in Chicago. Notwithstanding that bank statements were requested by the auditor, statements from this bank were never produced, either during the audit or at the hearing of the appeal.

[19] In addition to the problem of insufficient supporting documentation, there are also problems with Mr. Khandwala's testimony. Mr. Khandwala testified that he moved to Canada shortly after the September 11, 2001 attack. However, the Crown introduced evidence that Mr. Khandwala started filing income tax returns as a Canadian resident in 1997. No satisfactory explanation was provided for this. I would also note that no sale proceeds were reported on any of the Canadian returns.

[20] A further problem is that Mr. Khandwala made no mention of Wala Wala Inc. during the audit. He testified that he forgot about it until he saw the cheques in 2009. That is not a plausible explanation.

[21] Overall, the evidence was entirely unsatisfactory to rebut the Crown's assumption that the source of the Deposits was income that is subject to tax in 2004 and 2005.

[22] The penalties should also be upheld. The Crown has the burden which has

been discharged by producing evidence of the Deposits and by cross-examination of Mr. Khandwala. It is reasonable to conclude based on the evidence as whole that the amount of the Deposits was knowingly omitted by Mr. Khandwala from the income tax returns.

[23] I will now address some of the arguments made by the representative for Mr. Khandwala.

[24] Mr. Dewshi submits that the deposit method is not the best method of determining income. That may be true in some cases, but in this particular case it was reasonable for the Crown to assess based on the Deposits. There was very little activity in the US currency bank account and most of the amounts assessed relate to three large deposits. The deposit approach was reasonable in the circumstances.

[25] The representative also submits that Mr. Khandwala's position is supported by the audit of his income from the travel agency, which the auditor found to be proper. I do not agree. The auditor found that the profits from the travel agency business were small. Very little tax was paid. It is not logical to make the inference that there are no other sources of income.

[26] In addition, the following question is asked by the representative: "How does one prove no income?" I do not find this argument to be persuasive. Taxpayers who come before this Court routinely are able to prove their case by detailed and cogent testimony, supported by other evidence. In this case, I would note, for example, that Mr. Khandwala never did submit bank statements from his bank account in Chicago.

[27] The representative also suggests that if the Deposits were income, there would be a regular pattern to them. That may be a reasonable argument if there were some other reliable evidence indicating what the source of the Deposits was. The problem here is that there was very little, if any, reliable evidence.

[28] It is argued that Mr. Khandwala's prior accountant did not handle the appeal properly. It may be that the accountant did not do a proper job, but it seems to me that many of the problems in this case can be traced to Mr. Khandwala himself.

[29] Lastly it is argued that, if Mr. Khandwala were deceitful, he would not have brought funds from the United States into Canada. I do not accept this submission. It may have been that Mr. Khandwala was not expecting that the CRA would review his bank accounts.

[30] The appeal will be dismissed in its entirety. Each party shall bear their own costs.

Signed at Toronto, Ontario this 3rd day of October 2011.

“J. M. Woods”

Woods J.

CITATION: 2011 TCC 466
COURT FILE NO.: 2009-2243(IT)I
STYLE OF CAUSE: ALTAF KHANDWALA and HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: September 22 and 23, 2011

REASONS FOR JUDGMENT BY: Hon. J.M. Woods

DATE OF JUDGMENT: October 3, 2011

APPEARANCES:

Agent for the Appellant: M. Dewshi

Counsel for the Respondent: Rita Araujo

COUNSEL OF RECORD:

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