

Docket: 2012-2914(IT)I

BETWEEN:

FESTUS EHIOZOMWANGIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 26, 2013, at Toronto, Ontario

Before: The Honourable Justice Diane Campbell

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Jill Chisholm

JUDGMENT

The appeal from an assessment made under the *Income Tax Act* with respect to the 2006 taxation year is allowed, without costs, to the extent only of permitting the Respondent's concession of a charitable donation amount of \$165. The reassessment is referred back to the Minister of Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 6th day of May 2013.

“Diane Campbell”

Campbell J.

Citation: 2013 TCC 145
Date: 20130506
Docket: 2012-2914(IT)I

BETWEEN:

FESTUS EHIOZOMWANGIE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Campbell J.

[1] On October 2, 2008, the Appellant was reassessed for the 2006 taxation year. The Minister of National Revenue (“the Minister”) denied tax credits which had been claimed in respect to a number of charitable donations totalling \$10,198.

[2] Although the assumptions of fact referenced only donations to Centre D’Alphabetisation Multiculturel et Documentation (“Multiculturel”), the following receipts were submitted by the Appellant during the hearing (Exhibit A-1):

- (a) four receipts from Centenary Hospital Association (“Centenary”) in the total amount of \$108;
- (b) a receipt from Multiculturel in the amount of \$3,425;
- (c) a receipt from Metro Street Focus Organization (“Metro Street”) in the amount of \$4,220; and

(d) a receipt from Above All Christian Gathering in the amount of \$2,280.

[3] These receipts total \$10,033. At the outset of the hearing, Respondent Counsel advised that the Respondent was prepared to concede a donation of \$165 from the total amount of \$10,198 originally put in issue.

[4] The issue is whether the Appellant can claim the tax credits in respect to these alleged donations in the 2006 taxation year. It is the Appellant that has the onus or responsibility of proving, on a balance of probabilities, that he made charitable donations to these four different organizations in the amounts specified on the face of the receipts and that the receipts contain the information prescribed in the *Income Tax Act Regulations* (the “*Regulations*”).

[5] The Appellant is a registered nurse and he and his wife also operate a clothing and fabric store. His evidence was that one of his customers brought a flyer to his store respecting Multiculturel. He did not produce a copy of the flyer and he could not recall the name of the customer, although he stated that he called him after the initial meeting in respect to items he was prepared to donate to this organization. Those items consisted of clothing, fabric, computer equipment and a desk and some furniture, specifically, a mattress and couch. The items were picked up from the Appellant in January or February of 2006.

[6] In respect to the Metro Street receipt for \$4,220, the Appellant testified that his donation, like that to Multiculturel, consisted entirely of items such as clothing, toiletries and food products. He first heard of this organization through a couple who came to his store as customers. He did not recall their names and he was unsure of how they calculated the value of the donated items, although he thought the actual value was probably more than the amount stated on the receipt.

[7] The receipt for \$2,280 is from the Appellant’s church, Above All Christian Gathering, and states that the cash was received from the Appellant’s wife. The Appellant stated that each time he attended church, he donated cash amounts, between \$50 and \$200, which were placed in church envelopes and which contained his name. He produced two sample envelopes which contained the name of the church, and spaces for the donor name and amount of the donation that might be given. However, the Appellant did not produce any of the envelopes that would have been used to substantiate his donations in 2006, nor did he call any church official to verify the amount claimed.

[8] Finally, with respect to the four hospital receipts, the Appellant testified that he gave a monthly fee and that he was told he could have a monthly parking space for a donation.

[9] The auditor of the Canada Revenue Agency (“CRA”) testified that she had been assigned to an audit of Multiculturel and that, as a result of this audit, the charitable status of this organization was revoked. No records existed in support of its educational mandate or for its financial statements; receipts were deficient and could not be supported and it had exceeded its registered mandate by operating outside Canada. Although its director advised the auditor that “gifts in kind” were being shipped to Cameroon, there were no records, such as shipping/delivery documentation, to support this claim. Of the total seventy-one receipts that could be identified in 2006 by Multiculturel, sixty-eight were for “gifts in kind” and three were for gifts of services. In addition to these seventy-one receipts, there were missing receipts for which taxpayers could not be identified. The receipt to Multiculturel, which the Appellant produced in Exhibit A-1, was typical of the sixty-eight receipts issued for “gifts in kind” and, according to the auditor’s evidence, they all contained identical wording.

[10] The auditor also testified that the Appellant had e-filed his 2006 tax return and claimed a total of \$10,198 in donations but that he did not provide a breakdown. Until the hearing, she stated that he had never provided the receipts at Exhibit A-1, although asked to do so, and that the Multiculturel receipt had been obtained through the audit.

Analysis:

[11] Subsection 118.1(1) of the *Income Tax Act* (the “*Act*”) defines “total charitable gifts” by making a specific reference to “fair market value of a gift”. In part, it states:

“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 (...) 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, ...

[12] Subsection 118.1(2)(a) refers to receipts containing the prescribed information as proof of the gift:

(2) 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 proven by filing with the Minister

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

[...]

[13] An official receipt of a registered organization must contain the information as required by section 3501(1) of the *Regulations*:

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 donation is a cash donation, the day on which or the year during which the donation was received;

(e.1) where the donation is a gift of property other than cash

(i) the day on which the donation 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 day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);

(g) the name and address of the donor including, in the case of an individual, his first name and initial;

(h) the amount that is

(i) the amount of a cash donation, or

- (ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made;
- (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations; and
- (j) the name and Internet website of the Canada Revenue Agency.

[14] Although the auditor's testimony and the Respondent's submissions focussed on the lack of prescribed information in the receipts, provided by the Appellant at the hearing, the absence of any indication on the Appellant's part of the fair market value of the alleged donations is fatal to the Appellant's success in this appeal in respect to Multicultural and Metro Street. Both of these receipts referenced donations of goods in kind, such as clothing, furniture, computer equipment, food and toiletries. Justice Webb, in *Tu Van Le v. The Queen*, 2011 TCC 292, [2011] T.C.J. No. 233, ("*Le*"), at paragraphs 15 and 16 of his reasons, succinctly points to the requirement for a taxpayer, who wishes to claim a tax credit for donations of gifts in kind, like those enumerated in the two receipts, to provide evidence with respect to the fair market value of the items. Justice Webb's conclusions imply that, even though a taxpayer's receipts may otherwise meet the requirements of Regulation 3501(1), a claim for tax credits for charitable donations will be unsuccessful where no evidence is produced that would establish the fair market value of the items to the satisfaction of the court.

[15] These are similar to comments which I made at paragraph 32 of my reasons in *Tuar v. The Queen*, 2010 TCC 236, 2010 D.T.C. 1173, respecting the necessity for proof of fair market value of goods. The reasons in the *Le* case establish that the onus is on a taxpayer to produce adequate evidence of fair market value, if called upon to do so, and without it, all other things being equal, no claim can be made for tax credits. This requirement relates back to the definition of "total charitable gifts" in subsection 118.1(1) which bases it on the fair market value of a gift. With respect to this precondition alone, the Appellant is not entitled to claim the amounts as charitable donations for the Multicultural and Metro Street receipts.

[16] I do agree, however, with the auditor's evidence that these receipts also are deficient in respect to some of the prescribed information under the *Act* and *Regulations*. Neither receipt specifies the day on which the items were received nor the address and website of the CRA. The Metro Street receipt contains no authorized signature of the organization and does not reference that it is a receipt for income tax purposes. As I noted in my reasons in *Tuar*, receipts must contain the appropriate

information as prescribed by the relevant provisions in order for an appeal to be successful in claiming tax credits for charitable donations.

[17] In respect to the four receipts totalling \$108 from Centenary, these all clearly state that the amounts were paid for monthly passes that have a defined expiry date. On the face of these receipts, they are for parking fees for a limited period of time. There is no independent evidence of donative intent on the part of the Appellant, apart from his evidence that he would not have paid the amounts if they could not be considered charitable donations to the hospital. I simply reject that evidence as implausible. The receipts are exactly what each one says they are and that is for parking privileges at hospital premises.

[18] Finally, in respect to the receipt from the Appellant's church, Above All Christian Gathering, in the amount of \$2,280, except for the Appellant's evidence, that this amount was the total of the separate gifts of cash he gave in marked envelopes at each church attendance, the receipt is deficient in a number of respects, including: no specific identification of whether the gift was cash or goods in kind, omission of the donor's address and of the address and website of the CRA, and the receipt references a GST number, not a charitable registration number. In addition, the receipt was made out to the Appellant's wife and not to him.

[19] The Appellant provided no independent records to support his evidence that he made cash contributions to his church totalling this amount. If, as the Appellant testified, these contributions were made in marked envelopes, such as the two blank envelopes that he submitted in evidence, then he could have produced those in order to support his claim. Without verifiable records to support the alleged donations, the Appellant has not met the onus which he bears in this appeal.

[20] In addition to these deficiencies, however, I do not accept the Appellant's evidence as it related to his alleged donations. He was vague and imprecise regarding the details of all of these alleged donations. He was unable to recall names of individuals from these organizations, telephone numbers, flyer specifics or dates. Because much of his testimony was vague and some of it implausible, I cannot accept his story or the receipts (even if the receipts satisfied the requirements of the *Act*, which they do not) without independent evidence to support his testimony. In addition, the audit of Multicultural did little to support any of what the Appellant claimed this organization was doing. There were no records to support the delivery or shipment overseas of any goods. All of this casts doubt on the Appellant's evidence and consequently, without independent corroboration, his appeal in respect to the

2006 taxation year is allowed, without costs, to the extent only of permitting the Respondent's concession of a charitable donation amount of \$165.

Signed at Ottawa, Canada, this 6th day of May 2013.

“Diane Campbell”

Campbell J.

CITATION: 2013 TCC 145

COURT FILE NO.: 2012-2914(IT)I

STYLE OF CAUSE: FESTUS EHIOZOMWANGIE AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 26, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF JUDGMENT: May 6, 2013

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jill Chisholm

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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