

Docket: 2017-2748(IT)I

BETWEEN:

PHILIP OSEI TUTU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 26, 2018, at Toronto, Ontario.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Hye-Won (Caroline) Ahn

JUDGMENT

The appeal from the reassessments dated March 19, 2009 concerning the appellant's 2003 and 2004 taxation years is allowed as the respondent conceded that those years are statute-barred.

The appeal from the assessment dated April 21, 2008 concerning the appellant's 2006 taxation year is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of July 2018.

“Réal Favreau”

Favreau J.

Citation: 2018 TCC 128

Date: 20180718

Docket: 2017-2748(IT)I

BETWEEN:

PHILIP OSEI TUTU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] The issues in the appeal are:

- a) whether Mr. Tutu is entitled to claim charitable donation non-refundable tax credits for the 2003, 2004 and 2006 taxation years;
- b) whether Mr. Tutu is entitled to claim the spousal amount non-refundable tax credit for the 2006 taxation year; and
- c) whether the Minister of National Revenue was entitled to reassess Mr. Tutu after the normal reassessment period for the 2003 and 2004 taxation years.

[2] At the opening of the hearing, counsel for the respondent conceded the appeal from the reassessments dated March 19, 2009 concerning the appellant's 2003 and 2004 taxation years because the appellant has been reassessed after the normal reassessment period.

[3] The reply to the notice of appeal reads in part:

In determining the Appellant's tax liability for the 2003, 2004 and 2006 taxation years, the Minister of National Revenue assumed the following facts:

Charitable Donations (2003, 2004 and 2006)

- a) the Appellant did not make any donations, either by cash or cheque or gifts in kind, to any registered charity during the 2003, 2004 and 2006 taxation years;
- b) in particular, the Appellant did not voluntarily transfer any property that he owed (cash or non-cash) to any registered charity at any time during the 2003, 2004 and 2006 taxation years;
- c) the Appellant did not provide any receipts, official or otherwise, in respect of his alleged donations to any registered charity in respect of the 2003, 2004 and 2006 taxation years;
- d) the Appellant did not obtain or provide proof of any transfers of property that he may have made to a registered charity in 2003, 2004 and 2006 in the form of a validly issued official and non-deficient donation receipt;
- e) Frempong and Isaac (Ike) Amoako ("Amoako") were both Directors of Orbit where they worked together as tax preparers;
- f) Frempong, Amoako or Orbit prepared and filed the Appellant's returns;
- g) Amoako and Orbit were charged with defrauding the Government of Canada of income tax revenue in excess of \$5,000, pursuant to section 380(1)(a) of the Criminal Code of Canada, in respect of fraudulent charitable donation claims made by them on behalf of their clients for the 2004 through 2006 taxation years, as applicable (the "scheme");
- h) Amoako and Orbit pleaded guilty to the charges on June 16, 2011;
- i) Frempong was involved with the scheme before 2004 and during the 2004 to 2006 period to which Amoako and Orbit's guilty pleas applied;

Spousal Amount (2006)

- j) the Appellant did not provide receipts, books and records for the Minister to determine any federal spousal amount non-refundable tax credit allowable for the 2006 taxation year;
- k) the Appellant claimed a federal spousal amount non-refundable tax credit in the amount of \$7,505 for the 2006 taxation year;
- l) the Appellant did not have a spouse or common-law partner at any time in the 2006 taxation year;
- m) the Appellant did not support a spouse or common-law partner, at any time in the 2006 taxation year; and
- n) the Appellant has reported his marital status as Separated beginning in 1988.

[4] The appellant testified at the hearing. He explained that in 2006 he gave \$8,705 in cash in a lump sum to a representative of the Liberty Wellness Initiatives

Foundation (the “Foundation”). He said that he had never been to the Foundation’s office before 2008 (the year in which he was assessed) and he did not know exactly what charitable activities were carried on by the Foundation.

[5] The appellant did not provide any evidence confirming the transfer of money to the Foundation nor the withdrawal of funds from his bank account.

[6] The appellant filed his tax return for 2006 without any tax receipt for his donation to the Foundation. He explained that his tax return for that year was filed electronically by Raymond Frempong at Orbit Financial Services Ltd and that he has no copy of it.

[7] Concerning his claim for a spousal amount in the amount of \$7,505 for the 2006 taxation year, the appellant explained that the money was paid to a person taking care of his spouse who was living in Ghana and was very sick.

[8] The appellant stated that he married her in 1976 under a traditional marriage (not at church) and that he transferred money to her by monthly wire transfers through Western Union. The appellant did not provide the name of the person to whom the money was transferred to nor any document evidencing such transfer.

[9] During his cross-examination, the appellant recognized that in 2006 he was living separate from his spouse.

[10] No other witness was called at bar at the hearing.

Discussion and Conclusion

[11] Section 118.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the “*Act*”) sets out the legal framework for individuals to claim credits for charitable donations made during a taxation year. Paragraph 118.1(2)(a) provides that the making of the gift must be proven by filing a receipt containing prescribed information. The provision reads in part:

(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;

...

[12] The prescribed information required to be included in an official charitable receipt is listed in subsection 3501(1) of the *Income Tax Regulations CRC, c. 945, s. 3501 (1977)* (the “*Regulations*”).

[13] Based on the evidence as a whole, I conclude that the appeal in respect of the charitable donation should be dismissed because Mr. Tutu has not established that he made any gift to a registered charity during the 2006 taxation year.

[14] I support this conclusion based on the following reasons:

- (a) the appellant did not, as required by subsection 118.1(2) of the *Act*, obtain and provide proof of any gift that he may have made to a registered charity in 2006 in the form of a valid official charitable donation receipt in accordance with the other mandatory requirements of sections 3500 and 3501 of the *Regulations*. The Court is bound by subsection 118.1(2) of the *Act* and a valid tax receipt attesting the charitable donation is mandatory; and
- (b) Mr. Tutu has the burden to establish that a gift was made to a registered charity and he has not met that burden. The appellant does not know the exact amount of his donation to the Foundation; he does not remember the date when the donation was made nor the name of the person to whom it was made; he does not know the charitable activities carried on by the Foundation and he had never been to the Foundation’s office before 2008. Finally, the appellant did not provide any documentary evidence such as cancelled cheques, credit card receipts or bank statements that would have clearly shown that money was gifted to the Foundation in 2006.

[15] Similarly, I conclude that the appeal in respect of the spousal amount of \$7,505 should be dismissed since no supporting documentation has been submitted by the appellant that he had a spouse or a common-law partner at any time during the 2006 taxation year as required by paragraph 118(1)(a) of the *Act* nor that he paid spousal support for that year.

[16] For all these reasons, the appeal from the reassessments concerning the 2003 and 2004 taxation years is allowed and the appeal from the assessment dated April 21, 2008 concerning the 2006 taxation year is dismissed.

Signed at Ottawa, Canada, this 18th day of July 2018.

“Réal Favreau”

Favreau J.

CITATION: 2018 TCC 128
COURT FILE NO.: 2017-2748(IT)I
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PLACE OF HEARING: Toronto, Ontario
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REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau
DATE OF JUDGMENT: July 18, 2018

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Hye-Won (Caroline) Ahn

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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