Docket: 2018-2164(IT)I

BETWEEN:

9228-2987 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on November 18 and 21, 2019, at Montreal, Quebec

Before: The Honourable Justice Dominique Lafleur

Appearances:

Counsel for the appellant:	Jean El Masri
Counsel for the respondent:	Justine Allaire-Rondeau

JUDGMENT

The appeals from the reassessments made pursuant to the *Income Tax Act* for the taxation years ending December 31, 2011, 2012, 2013 and 2014 are dismissed, without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 13th day of December 2019.

"Dominique Lafleur"

Lafleur J.

Citation: 2019 TCC 281
Date: 20191213
Docket: 2018-2164(IT)I

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REASONS FOR JUDGMENT

Lafleur J.

I. BACKGROUND AND ISSUES IN DISPUTE

[1] 9228-2987 Québec inc. (the appellant) is appealing the reassessments made by the Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Suppl.), (the Act) for the taxation years ending December 31, 2011, 2012, 2013 and 2014. In these reassessments, the Minister determined that net profits generated by the sale of buildings should be considered business income and not a capital gain and that the deduction claimed in respect of a $21,500 gift that the appellant made in 2012 could not be allowed for that year nor carried over to the 2014 taxation year.

[2] During 2011 and 2012, the appellant acquired two apartment buildings located on Rue de Bordeaux in Plateau-Mont-Royal, Montreal. There were eight apartments in the first building (4361, 4363, 4365, 4367, 4369, 4371, 4373 and 4375 Rue de Bordeaux) (Bordeaux 1). There were three apartments in the second building (4319, 4321 and 4323 Rue de Bordeaux) (Bordeaux 2). Shortly after the buildings were acquired, the appellant paid the tenants compensation to vacate their apartments voluntarily. Subsequently, it renovated the apartments, placed the buildings under joint ownership and sold the apartments in 2011, 2012 and 2013. In the 2011, 2012 and 2013 taxation years, the appellant made net profits of $359,786, $210,475 and $74,286, respectively, from the sale of the apartments.

[3] Only the nature of the net profits made by the appellant on the sale of the apartments is at issue. The parties agree on the amounts at issue. The appellant argues that when it acquired the buildings, it intended to invest in the buildings to earn rental income over a long period. The profits from the sale of buildings are therefore capital gains. It was only after the discovery of major structural problems that it changed its plans and decided to place the buildings under joint ownership and sell the apartments as individual units. The respondent's position is that, when the appellant acquired the buildings, it intended to make an investment, place the buildings under joint ownership and then resell the apartments at a profit and, consequently, generate business income.

[4] Regarding the issue of the deductibility of gifts, the respondent takes the position that the appellant did not make any gifts and that the receipt did not comply with the provisions of the Act, because the receipt was made out to David Nataf, the brother of Frédéric Nataf (president and sole shareholder of the appellant), and not to the appellant. The appellant argues that it validly made the gift and that the gift receipt is in compliance because there was a nominee agreement between the appellant and David Nataf.

[5] Thus, the following issues are before the Court:

1) Are the amounts of $359,786, $210,475 and $74,286 to be included as business income or as capital gains in computing the appellant's income for the taxation years ending December 31, 2011, 2012 and 2013, respectively?

2) Can a deduction in respect of gifts totalling $21,500 be granted to the appellant and carried over to the taxation year ending December 31, 2014?

[6] Frédéric Nataf (Mr. Nataf) and Akuvi Dansou, the Canada Revenue Agency auditor responsible for auditing the appellant's file, both testified at the hearing.

[7] Any statutory provision referred to in these reasons is a provision of the Act.

II. NATURE OF THE PROFITS FROM THE SALE OF THE BUILDINGS

A- The Act and the applicable principles

[8] The Act does not contain any tests to determine whether the gain from the disposition of a building is attributable to income and considered business income or attributable to capital and considered a capital gain. The characterization of the nature of a transaction will therefore depend on the facts of each case.

[9] However, the term "business" in subsection 248(1) includes "an adventure or concern in the nature of trade".

[10] In *Friesen v. Canada*, [1995] 3 S.C.R. 103 (*Friesen*), Major J. indicated that the concept of "an adventure in the nature of trade" is ". . . a judicial creation designed to determine which purchase and sale transactions are of a business nature and which are of a capital nature" (at paragraph 15).

[11] In *Friesen*, above, Major J. further indicated, at paragraph 16, that the first requirement for an adventure in the nature of trade is that it involve a "scheme for profit-making". The list of factors to be taken into account in determining whether this requirement is met was formulated as follows by Major J., referring to Interpretation Bulletin IT-218R at paragraph 17:

> (i) The taxpayer's intention with respect to the real estate at the time of purchase and the feasibility of that intention and the extent to which it was carried out. An intention to sell the property for a profit will make it more likely to be characterized as an adventure in the nature of trade.
>
> (ii) The nature of the business, profession, calling or trade of the taxpayer and associates. The more closely a taxpayer's business or occupation is related to real estate transactions, the more likely it is that the income will be considered business income rather than capital gain.
>
> (iii) The nature of the property and the use made of it by the taxpayer.
>
> (iv) The extent to which borrowed money was used to finance the transaction and the length of time that the real estate was held by the taxpayer. Transactions involving borrowed money and rapid resale are more likely to be adventures in the nature of trade.

[12] With regard to the intention, the Federal Court of Appeal expressed itself in these terms in *Canada Safeway Limited v. Canada*, 2008 FCA 24 (at paragraph 43):

> . . . although the courts have used various factors to determine whether a transaction constituted an adventure in the nature of trade or a capital transaction, namely, those found in IT-218R, the most determinative factor is the intention of the taxpayer at the time of acquiring the property. If that intention reveals a scheme for profit-making, then the Court will conclude that the transaction is an adventure in the nature of trade.
>
> [Emphasis added]

[13] Also, case law has developed the secondary intention test according to which, if, at the time the property was acquired, the taxpayer had in mind the possibility of selling the property at a profit if his long-term investment project could not be realized, the gain from the sale was attributable to income and not to capital (*Happy Valley Farms Ltd. v. The Queen* [1986], 7 F.T.R. 3, 86 DTC 6421).

B- Background facts

[14] Mr. Nataf was a businessman involved in property management during the taxation years at issue and still is today. Around 2007–2008, he acquired a duplex and, subsequently, in 2010 and 2011, he acquired other rental properties. Mr. Nataf owns commercial buildings in Saint-Lambert and Chambly, as well as residential rental buildings in Jonquière and Cap-de-la-Madeleine. From 2004 to 2010, he worked for Tov Group, a residential and commercial property management company. According to Mr. Nataf, the purpose of these acquisitions was to build a portfolio of properties to earn rental income from them. He is a shareholder in several business corporations incorporated over the years to acquire various properties.

The buildings: Bordeaux 1 and Bordeaux 2

[15] The appellant was incorporated in 2010 to acquire the two apartment buildings at issue, Bordeaux 1 and Bordeaux 2. According to Mr. Nataf, he also acquired these two buildings to build a rental property portfolio and increase his income. In both cases, the appellant and David Nataf entered into a nominee agreement to acquire the buildings.

[16] Also, Mr. Nataf testified that when the buildings were acquired, a company called ImmoMarketing was hired to manage the buildings. Among other things, managing the buildings involved collecting rents. However, Mr. Nataf testified that having discovered the extent of the structural problems in the two buildings shortly after their acquisition, he changed his plan regarding the fate of the buildings. He decided to repair the structure, renovate the apartments, place the buildings under joint ownership and sell the apartments. He did this to limit his damage, but admitted that he had made profits.

[17] According to Mr. Nataf, after having decided to finance the work and have it performed, he had no choice but to terminate the housing unit leases and continue the project.

Bordeaux 1

[18] On February 1, 2011, the appellant acquired Bordeaux 1 for $950,000. At the time of the purchase, all eight housing units were occupied. This amount was financed through a $550,000 mortgage granted by the credit union, a $100,000 interest-bearing mortgage on the balance of the sale price, and a loan made by a friend of Mr. Nataf ($300,000). According to the bill of sale, the appellant undertook to repay the balance of the sale price within one year of the purchase. Mr. Nataf testified that the $100,000 loan for the balance of the sale price had to be negotiated with the seller because the credit union found that Bordeaux 1 should be appraised at only $850,000, not $950,000.

[19] Before proceeding with the acquisition, Mr. Nataf visited the building and consulted the seller's documents, and in September or October 2010, he went on site to inspect the building with a friend who was an engineer. According to Mr. Nataf, a visual inspection was performed at that time. During this inspection, Mr. Nataf realized that the second-storey floor was not level. Also, the owner had informed Mr. Nataf that the Bisson company had installed piles under the building in 2004. Before making the purchase, Mr. Nataf had the Bisson company confirm that the building had not moved since the piles were installed. Mr. Nataf testified that he did not, however, inspect the basement of the building before the purchase.

[20] Shortly after the purchase, the apartment located at 4361 Rue de Bordeaux became vacant after the tenant left of his own accord. Mr. Nataf testified that while visiting the apartment, he noticed that the kitchen floor had sunk significantly. Grégoire Tremblay, a structural engineer, was then hired to inspect the building. After this inspection, and according to an email to Mr. Nataf dated April 10, 2011, the engineer found that there was a structural problem requiring an estimated $32,000 of work to rehabilitate the building.

[21] According to Mr. Nataf, rehabilitating the structure caused a lot of damage to the interior of the housing units, in particular to the floors and walls. As a result, other major repairs had to be done. In total, between $70,000 and $80,000 of work (including structural repairs) was performed. Mr. Nataf indicated that his counsel had then provided him with confirmation that he had no chance of winning a claim for hidden defects against the seller, given, among other things, that Grégoire Tremblay had only had to examine the basement of the building to find that there was a serious structural problem.

[22] Mr. Nataf testified that he did not have the cash to start the work. The credit union banker then suggested that he place Bordeaux 1 under joint ownership, i.e. sell the apartments as jointly owned units in order to facilitate financing by the credit union. In order to obtain the necessary financing to undertake the work, Mr. Nataf agreed to proceed with joint ownership, as advised by the banker. First, Mr. Nataf agreed to renovate and sell apartment 4361 as a jointly owned unit. The apartment was sold on August 31, 2011, for $360,000. A joint ownership agreement was also entered into on that date, which established each person's share in Bordeaux 1. The balance of the $100,000 sale price was then repaid in full.

[23] Mr. Nataf said that he subsequently realized that it was not possible to sell a single apartment as a jointly owned unit and rent the other apartments. Mr. Nataf then continued to take steps to evict the other tenants, terminate the leases and set up the structure to sell the other apartments.

[24] As of April 15, 2011, the appellant began to pay the tenants to vacate their housing units in Bordeaux 1. The tenants of Bordeaux 1 were paid amounts totalling approximately $122,000 to vacate their units in 2011 and 2012.

[25] The other Bordeaux 1 apartments were sold on the dates and for the prices (totalling $1,844,000, including the price of the apartment located at 4361 Rue de Bordeaux) indicated below:

- September 6, 2011: sale of 4375 Rue de Bordeaux for $317,000;
- December 23, 2011: sale of 4369 Rue de Bordeaux for $217,000;
- April 16, 2012: sale of 4373 Rue de Bordeaux for $188,000;
- April 19, 2012: sale of 4363 Rue de Bordeaux for $207,000;
- June 20, 2012: sale of 4365 Rue de Bordeaux for $185,000;
- August 31, 2012: sale of 4367 Rue de Bordeaux for $165,000;
- March 14, 2013: sale of 4371 Rue de Bordeaux for $205,000.

Bordeaux 2

[26] On April 19, 2012, the appellant acquired Bordeaux 2 for $725,000. This amount was partly financed through a $535,000 mortgage granted by the credit union and a $100,000 interest-bearing mortgage on the balance of the sale price. The appellant undertook to repay the balance of the sale price before December 14, 2012.

[27] According to Mr. Nataf, the sale of the Bordeaux 1 apartments allowed the appellant to make profits, and the appellant could therefore hope to reproduce the model he had become familiar with at Tov Group. Mr. Nataf testified that when he purchased Bordeaux 2, he had no intention of reselling the apartments.

[28] Mr. Nataf hired Grégoire Tremblay to inspect the structure. Mr. Tremblay inspected the structure in April 2012 and found that the structure was sound.

[29] However, shortly after the purchase, a representative of ImmoMarketing visited the apartment on the ground floor and noted that the floor was sinking. Mr. Nataf was then notified and hired Bisson to assess the structure. In a letter dated June 20, 2012, Bisson found that the Bordeaux 2 structure had sunk significantly and that piles would have to be installed at a cost of $25,800. A contract dated July 12, 2012, was awarded to Bisson to perform the work as quickly as possible, given the sinking at the back of the building.

[30] Mr. Nataf found that there was now no way that he could recoup his investment and therefore changed his plan. He thus decided to proceed in the same way as he had for Bordeaux 1. Mr. Nataf had the work done by Bisson in the summer of 2012. However, the evidence did not establish the amounts paid to the tenants of the Bordeaux 2 housing units.

[31] Subsequently, on August 2, 2012, the appellant sold the apartment located at 4323 Rue de Bordeaux for $370,000. On the same date, a joint ownership agreement was entered into. It established each person’s share in the building. The balance of the sale price was repaid.

[32] On November 6, 2012, the appellant sold the apartment located at 4321 Rue de Bordeaux for $289,000.

C- Analysis

[33] For the following reasons, I am satisfied that, on the balance of probabilities, the evidence has shown that, when Mr. Nataf acquired Bordeaux 1 and Bordeaux 2, he (and therefore the appellant) intended to resell the apartments at a profit. Also, the other factors to be considered in the analysis confirm this intention. Consequently, the profits from the sale of the Bordeaux 1 and Bordeaux 2 apartments must be included in computing the appellant's income as business income and not as a capital gain.

Mr. Nataf's (and therefore the appellant's) intention when the buildings were purchased

[34] According to Mr. Nataf, when the two buildings were purchased, he intended to keep them over the long term, renovate the apartments and rent them. His goal was to acquire assets that he would own for the long term in order to earn rental income. The fact that a management contract had been awarded to ImmoMarketing, that a friend had loaned him the money for the downpayment, that Mr. Nataf was new to real estate—which tends to demonstrate that he could not afford to do the work—and that a nominee agreement had been entered into to obtain financing are all elements indicating Mr. Nataf's intention to keep the buildings over the long term. It was only when he noticed the buildings' significant structural problems, shortly after having purchased the buildings, that he changed his plans. He had the necessary repairs made, placed the buildings under joint ownership and sold the apartments as individual units. According to Mr. Nataf, when structural problems arose, he did not have the funds to perform the repairs, which explains why his plans changed. Similarly, Mr. Nataf argues that he placed the buildings under joint ownership on the advice of his banker, in order to obtain the necessary financing to perform the work.

[35] However, I find that when Bordeaux 1 and Bordeaux 2 were acquired, Mr. Nataf in fact intended to resell the apartments at a profit, after the buildings had been placed under joint ownership.

[36] First, the evidence showed that Mr. Nataf knew the condition of the buildings when he acquired them, as well as the extent of the buildings' structural problems. Also, the evidence showed that Mr. Nataf visited the buildings before acquiring them.

[37] Mr. Nataf went to the Bordeaux 1 site (in September or October 2010) to perform an inspection with a friend who was an engineer. According to Mr. Nataf's testimony, only a visual inspection was performed. However, I do not find it plausible that he performed only a visual inspection of the building prior to purchasing Bordeaux 1. The purchase and sale agreement dated September 16, 2010, effectively stipulated that the buyer was required to visit the building in order to complete the purchase. This requirement was amended on September 21, 2010. The amendment indicated that after the buyer had visited the building, an inspection clause was to be added to the purchase and sale agreement stipulating that the buyer would perform an inspection of the building no later than September 29, 2010, and if he was not fully satisfied, he could cancel the purchase and sale agreement. On November 3, 2010, the buyer confirmed that he was satisfied with the building. Also, I do not find it plausible that no one went to visit the basement of the building to detect the existence and extent of Bordeaux 1's structural problem following the visit of the building performed in September or October 2010, and especially following the amendment to the purchase and sale agreement. Mr. Nataf testified that Grégoire Tremblay only had to inspect the basement of Bordeaux 1 to become aware of Bordeaux 1's structural problem.

[38] Furthermore, it is not plausible that it was only after the tenant left the housing unit located at 4361 Rue de Bordeaux, which occurred just after Bordeaux 1 was purchased, that Mr. Nataf realized that the kitchen floor in that apartment had sunk and that there must therefore have been a more serious structural problem than he had thought. One of the conditions of purchase in the purchase and sale agreement expressly stipulated that the buyer had to visit the building. Subsequently, an inspection clause was added. With the experience that Mr. Nataf had acquired in real estate management within Tov Group, it is unlikely that he did not visit the apartments before buying the building, given that there were piles under the Bordeaux 1 structure.

[39] With regard to Bordeaux 2, the bill of sale specified that the buyer had examined the building on February 20, 2012 (section 6 under the title "Vendor Declarations"). Mr. Nataf claims that Grégoire Tremblay did not inspect Bordeaux 2 until April 2012. However, Mr. Nataf's testimony did not convince me. Given Mr. Nataf's experience with Bordeaux 1 and his extensive property management experience, it is highly unlikely that Mr. Nataf did not perform an inspection of Bordeaux 2 before acquiring it. Also, with respect to Bordeaux 2, Mr. Nataf testified that a representative of ImmoMarketing had noticed that the floor of the ground floor apartment was sinking during a simple visit shortly after the appellant had acquired the building. I do not find it plausible that the sinking

floor was not noted during the Bordeaux 2 inspection performed before the purchase.

[40] Mr. Nataf testified that he only realized the extent of the problems with the building after he acquired Bordeaux 1. In this regard, he entered into evidence the email from Grégoire Tremblay dated April 10, 2011, which described the problem and provided an estimate of the repair cost. Next, Mr. Nataf met with his banker, who suggested that he proceed with joint ownership, which would enable him to obtain financing for the work to be done. Mr. Nataf then renovated the apartment located at 4361 Rue de Bordeaux and, on August 31, 2011, sold the apartment and placed the building under joint ownership. Subsequently, having realized that he could not sell only one apartment and have tenants in the others, he set up the structure to sell the other apartments. However, the joint ownership agreement was signed when the apartment located at 4361 Rue de Bordeaux was sold on August 31, 2011. This joint ownership agreement set out each party's share in the building, i.e. that of the buyers of 4361 Rue de Bordeaux and that of the appellant. I fail to see why the appellant could not have kept the other apartments and rented them. I am not persuaded by this argument.

[41] Also, the two cheques that the appellant issued to terminate the leases on the housing units located at 4363 and 4373 Rue de Bordeaux were dated April 15, 2011, five days after the date of the email from Grégoire Tremblay. The fact that the lease termination cheques began to be issued on April 15, 2011, demonstrates that Mr. Nataf had always intended to renovate and resell the Bordeaux 1 apartments at a profit. I find it highly unlikely that Mr. Nataf was unaware of the problems with Bordeaux 1, and the extent of these problems, when he acquired the building.

[42] Also, I am not satisfied that Mr. Nataf did not have the funds to have the work done. The appellant paid a tenant $26,000 to agree to vacate her housing unit.

[43] Similarly, the deed by which the appellant acquired Bordeaux 1 stipulated the following under the title [TRANSLATION] "Terms and conditions":

> 6. Release clause
>
> The seller agrees to release his mortgage on the undivided rights sold to the first three (3) buyers, without any repayment. The buyer agrees to pay the full balance due plus interest accrued upon the fourth (4) sale.
>
> 7. Rental of the building that was sold

> The buyer will not give a release in advance of more than one month's rent and will not lease the building that was sold or part of it at an amount significantly below its rental value, without the written consent of the seller. Similarly, the buyer may not amend or terminate a lease prematurely without the seller's written consent, for as long as the seller remains a mortgagee.

[44] Paragraph 6 confirms that when Mr. Nataf acquired Bordeaux 1, he intended to resell the apartments at a profit. This paragraph even provides for joint ownership of the building. It therefore seems that joint ownership of the building was already considered when Bordeaux 1 was purchased. This casts doubt on Mr. Nataf's testimony regarding his intention and concerning the fact that his banker had suggested that he place the building under joint ownership to obtain additional financing to perform the work.

[45] At the hearing, Mr. Nataf testified that he was unaware of the existence of paragraph 6 cited above. He claimed that the notary had probably copied a paragraph from another deed and inserted it in error. According to Mr. Nataf, the only document relating to the balance of the sale price is the email from the notary's assistant requesting details of the agreement with the seller, produced in evidence at the hearing. However, in that email, the notary's assistant requested details regarding the payment of interest on the balance of the sale price, and the email did not address anything else. Furthermore, the fact that the purchase and sale agreement does not mention this condition is irrelevant. Mr. Nataf also indicated that, if he had been made aware of the paragraph in question, he would not have repaid the balance of the sale price after the sale of the first apartment, and he would have kept the amounts received until the repayment deadline. I am not persuaded by this argument because the interest would have continued to accrue. I therefore do not accept Mr. Nataf's testimony in this regard.

[46] During oral argument, counsel for the appellant indicated that paragraph 6 was meaningless because it is not possible to mortgage a portion of real property. However, in this case, whether or not that is possible from the standpoint of civil law is irrelevant. What I must determine is Mr. Nataf's intention when he acquired Bordeaux 1. My purpose is not to interpret paragraph 6 in terms of applicable civil law. For the same reasons, the fact that paragraphs 6 and 7 are incompatible is irrelevant.

[47] Based on all the evidence, I am not satisfied that the idea of placing the buildings under joint ownership came from the appellant's banker. On the contrary, I conclude that when Bordeaux 1 and Bordeaux 2 were purchased, Mr. Nataf

intended to place the buildings under joint ownership and sell the apartments at a profit.

[48] Mr. Nataf did not produce in evidence a copy of the building management agreement that the appellant allegedly entered into with ImmoMarketing when the buildings were acquired. That agreement would have been useful to at least partially corroborate Mr. Nataf's testimony. Also, the appellant did not call the engineers to provide testimony at the hearing on the condition of the buildings and concerning when the structural problems were discovered.

Other factors

Period of ownership

[49] The periods of ownership of the apartments were very short: 6 to 18 months for Bordeaux 1 and 4 to 7 months for Bordeaux 2. These periods tend to indicate that when the buildings were purchased, there was an intention to resell them at a profit. However, the appellant argues that, in this case, the period of ownership is not a decisive factor because Mr. Nataf only discovered the structural problems shortly after the purchases were made. Nevertheless, as I indicated above, the evidence has demonstrated that, on a balance of probabilities, Mr. Nataf knew the condition of the buildings when he acquired them.

Nature of the appellant's business and Mr. Nataf's occupation

[50] Mr. Nataf is an experienced real estate businessman. He worked for many years for Tov Group, a residential and commercial property management company. The Court is of the opinion that Mr. Nataf must have known that he could make a profit by flipping Bordeaux 1 and Bordeaux 2. Also, the fact that the appellant incorporated itself to acquire the properties indicates an intention to buy and resell at a profit.

Nature and use of the property

[51] The buildings are located in a highly desirable area of Montreal. This factor is indicative of an intention to resell at a profit.

Financing

[52] The purchase of Bordeaux 1 was 100% financed by loans, which means that Mr. Nataf did not personally pay anything to acquire the building. Also, the balance of the sale price was payable within one year of the acquisition. With respect to Bordeaux 2, the balance of the sale price was payable within eight months of the acquisition. These factors seem to indicate an intention to acquire the buildings for the purpose of rapid resale, given the rather short time frames. Financing the entire purchase of Bordeaux 1 through loans also indicates the same intention.

III. THE GIFT

A- The Act

[53] Subsection 110.1(1) stipulates that for the purpose of computing the taxable income of a corporation for a taxation year, it may deduct the total of all amounts each of which is the eligible amount of a gift made by the corporation in the year or in any of the five preceding taxation years to a qualified donee, up to a certain amount (which is not at issue in this case).

[54] Paragraph 110.1(2)(*a*) stipulates that, for the gift to be deductible under subsection 110.1(1), the making of the gift must be evidenced by filing with the Minister a receipt that contains prescribed information.

[55] The prescribed information to be included in the official receipt for a charitable donation is listed in subsection 3501(1) of the *Income Tax Regulations* (C.R.C., c. 945) (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 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.

[56] Subsection 3501(4) of the Regulations also contains rules for receipts issued to replace previously issued receipts. Pursuant to this paragraph, in addition to its own serial number, the replacement receipt must, among other things, indicate the serial number of the receipt that was originally issued. Subsection 3501(4) reads as follows:

3501(4) An official receipt issued to replace an official receipt previously issued shall show clearly that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of the receipt originally issued.

[57] The case law of this Court is clear that the requirements set out in subsection 3501(1) of the Regulations are mandatory and are to be strictly adhered to (*Sowah v. The Queen*, 2013 TCC 297 at paragraph 16; *Afovia v. The Queen*, 2012 TCC 391, at paragraph 9*; Plante v. Canada*, [1999] TCJ No. 51 (QL), at paragraph 48).

B- Background facts

[58] Two cheques totalling $21,500 dated October 24, 2012, were filed as evidence. One was drawn from an account at the Caisse populaire de l'Est du Plateau. The other was drawn from an account at the Caisse populaire du Mont-Royal. The cheques were issued to VMM, the Vaad Mishmeres Mitzvos charitable organization. The name on both cheques is David Nataf, and the address on them is 273 Notre-Dame Avenue, Saint-Lambert.

[59] According to Mr. Nataf, the appellant is the real holder of both bank accounts, and the funds in the accounts belong to the appellant. His brother David never deposited any money into the accounts. Mr. Nataf was the one who decided to make the gifts, on behalf of the appellant. Also, 273 Notre-Dame Avenue is the appellant's address, and it is not a personal address.

[60] The receipt issued by VMM is a duplicate made out to David Nataf. According to Mr. Nataf, he lost the original. Mr. Nataf testified that VMM refused to issue the receipt to the appellant, because it had received clear instructions from its accountants to issue receipts to the persons who issued the cheques.

[61] Mr. Nataf also filed as evidence a letter dated April 10, 2015, signed by the President of VMM and confirming that VMM had received the amount of $21,500 from David Nataf, on behalf of the appellant.

C- Analysis

[62] In order to be entitled to the deduction claimed in respect of a gift, the appellant must demonstrate that the following two requirements have been met: 1 – a gift must have been made to a registered charity; and 2 – a receipt that meets the requirements prescribed by subsection 3501(1) of the Regulations must have been issued by the organization. In this case, the Court must verify whether the appellant made a gift and whether the receipt issued meets the requirements set out in the Regulations.

[63] For the following reasons, I find that the evidence has demonstrated, on a balance of probabilities, that the appellant did in fact make a gift totalling $21,500 in October 2012. However, because the receipt issued by VMM does not meet all the requirements set out in the Regulations, the deduction claimed in respect of the gift by the appellant for the taxation year ending December 31, 2014, cannot be granted.

[64] Two cheques totalling $21,500, dated October 24, 2012, were filed as evidence. One was drawn from an account at the Caisse populaire de l'Est du Plateau, and the other was drawn from an account at the Caisse populaire du Mont-Royal. The cheques produced in evidence were drawn from the bank accounts opened for Bordeaux 1 and Bordeaux 2 (Exhibit I-1, Tab 18, at page 18). Mr. Nataf also testified that his intention was to gift the amount in question through the appellant.

[65] The fact that David Nataf's name is on the cheques simply appears to be consistent with the fact that David Nataf and the appellant entered into nominee agreements for the acquisition of Bordeaux 1 and Bordeaux 2. The nominee agreements provide that the nominee will act as the appellant's agent for the purchase of the buildings and that the appellant appoints the nominee to acquire the building and exercise all the rights attached to it, in accordance with the appellant's instructions (section 2.01). The agreements also provide that all funds required for the buildings and for all expenses will be advanced by the appellant (section 5.01) and that all income generated by the buildings will belong to the appellant (section 4.04). There are no provisions expressly dealing with the authority to sign cheques. However, because the agreements provide that David Nataf exercises all the rights attached to the buildings and that all the income generated by the buildings belongs to the appellant, it can be concluded that if David Nataf's name appears on the cheques, they are on the cheques pursuant to the provisions of the nominee agreements.

[66] Paragraph 3501(1)(*g*) of the Regulations states that the name of the donor must appear on the receipt. However the receipt issued by VMM does not meet this requirement, because David Nataf's name is on the receipt instead of the name of the appellant, who is the donor in this case. The letter from VMM dated April 10, 2015, cannot supplement the content of the receipt. Also, because the receipt was a duplicate, in addition to its own serial number, it had to indicate the serial number of the original receipt, which was not the case.

IV. CONCLUSION

[67] For these reasons, the appeals from the reassessments made pursuant to the Act for the taxation years ending December 31, 2011, 2012, 2013 and 2014 are dismissed, without costs.

Signed at Ottawa, Canada, this 13th day of December 2019.

"Dominique Lafleur"

Lafleur J.

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DOCKET:	2018-2164(IT)I
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