Citation: 2013TCC314
Date: 20131**15**
Docket: 2013-1241(IT)I

BETWEEN:

NIGEL HALL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

(Delivered orally from the bench on September 24, 2013, in Toronto, Ontario)

Pizzitelli J.

[1] The Appellant appeals the denial of a charitable tax credit pursuant to section **118.1(3)** of the *Income Tax Act* ("*ITA*") in relation to his contribution of $24,800 to an entity that was not a registered charity and hence not a "qualified donee" in 2011 pursuant to section 149.1(1) of the *ITA* on the grounds such denial is a violation of Section 15(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter"*).

[2] The facts are not in dispute. In 2011 the Appellant donated the sum of $24,800 to the International Association of Scientologists ("IAS") which is involved in drug addiction education and treatment, disaster relief and other commendable charitable-like activities throughout the world; including the provision of transportation of medical staff, supplies and food in aid of the Haiti earthquake disaster a few years ago and a Drug-Free World program that works with government and community groups amongst other partners to educate at-risk kids. There is no dispute that IAS conducts what are normally considered charitable or charitable-like activities but that IAS is not a registered Charity in Canada nor apparently even applied to be.

[3] The Appellant takes the position that his choice to support the organization IAS which he considers his preferred charitable organization unfairly denies him the right to a charitable tax credit while other Canadians have access to such tax credit if

they choose to donate to registered charities; hence the provisions of the ITA requiring that the charity be a "qualified donee" or more simply put, a registered charity under section 149.1, is discriminatory and a violation of the above Charter provision

[4] The Respondent takes the position that there is no charter violation for two main reasons; namely that there is no law that grants every contribution made to a charitable organization a tax credit and hence no-one has been directly or by effect excluded from the benefit of any such law; and in the alternative that the Appellant has not demonstrated that the government made a distinction based on any enumerated grounds set out in s. 15(1) of the *Charter* or any analogous grounds.

[5] Section 15(1) of the *Charter* reads as follows:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[6] Subsection 118.1(3) allows an individual to claim a tax credit based on a formula that applies to the individual's "total gifts" for the year. The individual's "total gifts" for a year are defined in s. 118.1(1) as generally a percentage of the individual's "total charitable gifts" which are in turn defined in the same subsection as 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 preceding 5 years not earlier deducted, made to, *inter alia*, (a) a registered charity. A "registered charity" is in turn defined in subsection 248(1) to include a charitable organization, within the meanings assigned by subsection 149.1(1), resident in Canada that has applied to the Minister in prescribed form for registration and that is at the time so registered. There is no dispute as to the interpretations of these provisions *per se*. As indicated, the Appellant takes the position he should be entitled to the tax credit for contributions to a charitable organization that is not a registered charity because it has not applied for nor obtained registration as a registered charity under the *ITA*.

[7] In my view, the provision of a tax credit for contributions to a non –registered charity is not a benefit provided by subsection 118.1 of the *ITA*, hence subsection 15(1) of the *Charter* cannot be infringed. As set out in *Ali v Canada* 2008 FCA 190, the Federal Court of Appeal, relying on the Supreme Court of Canada decision in *Auton (Guardian ad litem of) v British Columbia (Attorney General)*, held that: "the *Charter* will not be infringed where the benefit sought is not one that is provided by

the law that is being challenged. …" How can it be discriminatory to deny the appellants a benefit that no one gets?"

[8] AAlthough the *Ali* case dealt with the non deductibility of off the shelf pharmaceuticals, the principle in my view is the same. The Appellant has not demonstrated that the particular provisions allowing tax credits for donations to registered charities directly discriminates against any particular charity, let alone IAS. Moreover, there is no discrimination by effect where, as Ryer J.A. stated in *Ali* in par 16: "the non-inclusion of a particular benefit is consistent with the purpose and scheme of the impugned legislation". Here, as the Respondent has pointed out, the scheme dealing with charitable tax credits has as its purpose to only provide tax credits, effectively subsidized by the Canadian taxpayer, to specific registered charities. As the Respondent has pointed out in *Vancouver Society of Immigrant and Visible Minority Women v MNR* [1999] I SCR 10, the Supreme Court of Canada has already dealt with the scheme of the *Act* dealing with charitable donations and in par 2 stated:

> Given the central role that charities plan in our society, the large sums of money devoted to charitable purposes, and the considerable privileges that attach to charitable status Parliament has considered it essential to provide a legal framework to regulate charities and their activities. That legal framework, which aims to ensure charities use the funds provided to them for charitable purposes in a efficient manner, is of ancient origin. The constantly evolving common law definition of charity has been incorporated into federal income tax legislation since charities were accorded special status under the Income War Tax Act, 1917.S.C.1917, c 28, s.5(d).

[9] The scheme allows any charitable organization to apply for registration if the requirements of the *ITA* are met by it as part of the legislative scheme to vet and reasonably monitor those organizations that effectively ask the Canadian public to partially fund their activities through the charitable tax credit provisions. No specific group is barred from applying and the decision to do so rests with the organization itself. If an organization chooses not to avail itself of such registration or fails to meet the requirements for registration, it does not mean there is discrimination when registration is not a matter of right for everyone. Moreover, if a taxpayer chooses to contribute to an organization that is not a registered charity rather than a registered charity, his personal choice does not mean he was denied the benefit of a law that only grants tax advantages for contributions made to registered charities. As the Supreme Court of Canada stated in par. 14 of *Auton;*

> "..a legislative choice not to accord a particular benefit absent demonstration of discriminatory purpose, policy or effect does not offend the principle and does not give rise to a s. 15(1) review. This Court had repeatedly held that the legislature is

> under no obligation to create a particular benefit. It is free to target the social programs it wishes to fund as a matter of public policy provided the benefit itself is not conferred in a discriminatory matter."

[10] In summary, I conclude that the benefit claimed by the Appellant cannot be viewed as a benefit provided by law and so does not fall into the Subsection 15(1) of the *Charter* scope; thus it is not necessary for me to further the inquiry as to whether the government made a distinction based on an enumerated ground thereunder or ground that is analogous to any of those enumerated grounds, although it is clear that the Appellant's argument that his freedom of choice to choose which charity to contribute to is discriminated against would hardly permit me to find he has been denied equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, nor any like grounds based on any of the Appellant's characteristics that are immutable.

[11] Accordingly, the appeal is dismissed.

These Reasons for Judgment are issued in substitution for the Reasons for Judgment dated October 2, 2013

Signed at Ottawa, Canada, this **15th** day of October 2013.

"F.J. Pizzitelli"

Pizzitelli J.

CITATION:	2013TCC314
COURT FILE NO.:	2013-1241(IT)I
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REASONS FOR JUDGMENT BY:	The Honourable Justice F.J. Pizzitelli
DATE OF JUDGMENT:	October 2, 2013
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APPEARANCES:

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