

Docket: 2013-4356(IT)I

BETWEEN:

SEYMOUR JOSEPH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 10, 2014, at Toronto, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Rita Araujo

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the Appellant's 2008 and 2009 taxation years is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Montréal, Québec this 23rd day of April 2014.

“Patrick Boyle”

Boyle J.

Citation: 2014 TCC 120

Date: 20140423

Docket: 2013-4356(IT)I

BETWEEN:

SEYMOUR JOSEPH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] Mr. Joseph has appealed to the Court from net worth assessments of his 2008 and 2009 taxation years. He represented himself in this informal procedure and was his only witness. He was assisted somewhat by Glenn Perrotte of Mobile Income Tax Preparation.

[2] Mr. Joseph's primary sources of income in the years in question were from two sources. Firstly, he is a general construction subcontractor and, during the years in question, most of his work was for Mercon Construction Inc. in Pickering. In addition, he worked on sound and light shows, mainly for live shows in churches. His subcontracting work, at least, was done under the name Team Executives Services Unlimited. In 2008 and 2009, Mr. Joseph reported \$16,527 and \$10,157 of income, respectively. This was made up primarily of his business income from these two sources which grossed \$39,416 and netted \$13,765 in 2008, and which grossed \$46,511 and netted \$10,157 in 2009.

[3] The Canada Revenue Agency ("CRA") reassessed to include additional net business income of \$31,942 and \$36,222 in 2008 and 2009, respectively. CRA used a net worth method to estimate his unreported income. CRA also assessed penalties of over \$4,000 in each year.

[4] In his appeal, Mr. Joseph does not take the position that the CRA's use of the net worth method was inappropriate as he maintained adequate books and

records for his income to be properly verified and determined. In his Notice of Appeal he takes the position that CRA's net worth numbers included as unreported income, amounts borrowed by him on bank loans, lines of credit and credit cards which are not taxable receipts.

[5] At the hearing, Mr. Joseph identified four loans or sets of loans which he felt should be backed out of the CRA net worth calculations.

[6] Firstly, Mr. Joseph put into evidence a letter from Mercon Construction Inc. confirming that in 2008 he borrowed \$3,000 from that company and repaid it in full within the year. Mr. Joseph's testimony was that he borrowed the amount in 2008 and repaid it fully in 2009. The Court is satisfied that no adjustment is required in respect of such a loan as it would have had no impact on any increase or decrease in net worth between January 1, 2008 and December 31, 2009, since it was both advanced and repaid within that period.

[7] The second and third sources of available cash put forward by Mr. Joseph at the hearing were a series of loans from two of his sisters-in-law. He gave evidence that Jasmine Watson, one of his wife's sisters, made several advances totalling U.S. \$3,500 in 2008 and 2009. He also gave evidence that another of his wife's sisters, Laurie-Anne Tonge loaned him another U.S. \$1,300 in 2008 and 2009. In addition to his testimony to this effect, he entered a number of brief letters from his sisters-in-law evidencing these loans. The Court has too many concerns with these letters and the evidence relating to these loans to conclude that these amounts were in fact advanced as described. Firstly, it should be noted that while the two sisters-in-law live on different islands some distance apart in the British Virgin Islands, all of the originals of these letters appear to be printed on identical paper stock, using the same template, the same font, and the same margins. Further, they are all on crisp, clean, unfolded paper. More significantly, Mr. Joseph claims they were prepared only recently to evidence the earlier loans, but it is clear from their wording and dating that the writer or writers had intended at the time of writing them that they would appear to have been written in 2008 and 2009. There are references to past personal events such as birthdays, holidays, schools and trips. Further, Mr. Joseph's testimony was clear that the funds were advanced by each of the sisters-in-law on their various visits to the Toronto region to stay with them, yet one of the letters clearly says that the sister-in-law is sending the money with her mother who will be visiting shortly. No supporting evidence recording deposits or recording repayments of these loans was provided to the Court. Even if the Court were to accept these loans as having been made, which it does not, Mr. Joseph said that mostly all of the 2008 loans were repaid before there were any loans made in

2009, and that part of the 2009 borrowings were repaid in 2009. Specifically, he estimated that approximately only \$400 was owing to one sister-in-law and \$200 to the other sister-in-law at the beginning of 2010. Therefore, as with the Mercon loan, most of the amounts allegedly borrowed would not have had an impact on his change of net worth between January 1, 2008 and December 31, 2009 in any event.

[8] Mr. Joseph's fourth loan that he maintains has not been properly reflected in the net worth calculations is a loan from President's Choice Financial. He did not provide any documents regarding this loan or these loan amounts beyond bank statements which show that \$220 was apparently paid from his account bi-weekly. His testimony was that this was an approximately \$20,000 five-year loan made in 2005 to enable him to make the down payment on their house. Even if there were sufficient evidence for the Court to reach any conclusion on the existence of this loan, which there is not, such an amount having been borrowed in 2005 and being repaid throughout the years 2008 and 2009 in question, would have increased his net worth, not reduced it, in any event.

[9] For these reasons, the Court is not satisfied that any adjustments are required to the net worth computations used in the assessments, or the assessments themselves, as a result of anything brought forward by the Appellant in his Notice of Appeal and at the hearing. For this reason the appeal will be dismissed.

[10] I should add that the Court does have some concerns with respect to the credibility of some of the evidence and Mr. Joseph's testimony. Firstly, I have already set out my concerns with respect to the letters from the sisters-in-law. Secondly, Mr. Joseph's wife did not testify though she might have had something relevant to say about the money received from her sisters-in-law and perhaps and mother-in-law, as well as on the family's spending reported in the net worth questionnaire on Personal Expenditures Worksheet. Further, Mr. Joseph's testimony about his phone expenses turned out to only be an estimate of his cell phone expenses and not his house phone or the other Bell services bundled with it which went otherwise undescribed until further questioning. The Personal Expenditures Worksheet numbers estimated by Mr. Joseph are clearly very questionable. In addition to the phone issue, he estimated that he, his wife and young daughter spent \$1,100 annually on food and none of that, or anything else, on cleaning supplies, health care or personal care, notwithstanding that his infant daughter was drinking formula and wore disposable diapers. Upon further questioning he acknowledged that a revised estimate would be more like twice that amount. Most tellingly, the taxpayer's reported estimates of payments on his home in respect of mortgage, principal, interest and taxes, insurance, heat, water, hydro

and payments on the President's Choice loan used to make the down payment, would have used up virtually all of his pre-tax reported income.

[11] The appeal is dismissed, without costs.

Signed at Montréal, Québec this 23rd day of April 2014.

“Patrick Boyle”

Boyle J.

CITATION: 2014 TCC 120
COURT FILE NO.: 2013-4356(IT)I
STYLE OF CAUSE: SEYMOUR JOSEPH AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: April 10, 2014
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle
DATE OF JUDGMENT: April 23, 2014

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Rita Araujo

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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