

Citation: 2014 TCC 217
Date: 20140709
Docket: 2013-1050(IT)I

BETWEEN:

NANA AMPOMAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

ORAL REASONS FOR JUDGMENT

(Delivered orally from the bench on June 18, 2014, in Ottawa, Ontario.)

Bocock J.

I. Introduction

[1] The Appellant, Nana Ampomah, appeals the 2006 reassessment of the Minister which disallowed a charitable donation tax credit. In her reply, the Minister asserts that the charitable donation receipt reflecting the charitable donations is not compliant with section 3501 of the *Income Tax Regulation Act* (the *Regulation*) as required by section 118.1 of the *Income Tax Act* (the *Act*). Further the Minister asserts by assumption that the cash charitable donations, in the amount of \$18,200 and as reflected within the charitable donation receipt of the Jesus Healing Center, were never made by the Appellant.

[2] The Respondent's *viva voce* evidence and submissions were heard by the Court on a common basis with the evidence and submissions provided in the matters of Pauline McCalla and Howard McCalla, being Court dockets 2013-1753(IT)I and 2013-1757(IT)I repetitively. Separate reasons for judgment have been prepared and issued in respect of those appeals.

II. Facts

[3] Ms. Ampomah testified on her own behalf. In her testimony she indicated that she attended the Jesus Healing Center's Sunday worship service twice a month commencing on New Year's Eve of 2005. During 2006, she would attend on

Sundays usually for 3 hours of services when she was not scheduled to work that day. Ms. Ampomah does not recall a second floor to the building in which the Jesus Healing Center was domiciled. This became a contentious point with respect to testimony offered by the Respondent's witness. She would deposit her twice monthly donations in an envelope provided which had the church's name printed on it and a blank space for a donor to write his or her name. She would donate whatever cash she had on hand, usually around \$100, with family members also given money by her to donate. She could not recall what other churches to which she donated, before or after the 2006 period.

[4] Ms. Ampomah also produced bank statements which indicated that she had withdrawn as cash from her bank the sum of \$19,020 over the course of the 2006 calendar year. Each entry was identified as an "ABM withdrawal" on the statements. Ms. Ampomah said the withdrawals were not for everyday use, but restricted exclusively to the cash donation for the Jesus Healing Center.

[5] In 2006, Ms. Ampomah earned a net income of \$88,713. The sum of \$18,200 would have represented 21 percent of her net income in that year as a charitable donation. During that year, she bore other financial obligations as well: she was married and had two children, ages 2 and 1 at the time.

[6] The donation receipt contained certain deficiencies:

- a) the charity's name was spelled incorrectly: namely "Center" as apposed to Centre (its official name registered with the Minister);
- b) the date of issuance for the receipt was missing;
- c) the locality or place of issuance for the receipt was missing; and
- d) lastly, there was no statement that the receipt was "an official receipt for *Income Tax Act* purposes".

[7] In addition to the testimony of Ms. Amponah, the evidence of one Mr. Huenemoeder, CRA Team Leader-Charities Audit, indicated that the Jesus Healing Center had failed to keep any meaningful books and records, issued 3 million dollars in donation receipts in just over 2 years, but only deposited some \$18,000 into its bank accounts during the same period. The pastors of the Jesus Healing

Center, during an interview with the Team Leader-Charities Audit, admitted that no sum ever approaching the 3 million dollars was received by the Jesus Healing Center and that charitable donation receipts were fabricated. Although some donations were received, the amounts were a small fraction (less than 7%) of the amounts receipted. No donation envelopes, receipt records or other evidence of any donations were ever produced or revealed during the CRA Audit. None of the 400 purported donors could provide collaborative or supporting proof of the donations.

III. Appellant's Submissions

[8] The Appellant's submission were as follows:

- a) Ms. Ampomah indicated she donated all of the money in good faith;
- b) she indicated that once the money was donated she had no idea what was done with the money or why insufficient records were kept by the Jesus Healing Center; and lastly,
- c) she indicated that her bank statements reflected withdrawals of the money which she gave as charitable donations and that should be sufficient evidence for the Court.

IV. The Law Generally

[9] The Court will first deal with the Appellant's assertion that she simply donated the money, received the receipt, had no further knowledge and should not be punished for her good faith and trust in a system she did not author or control.

[10] Statutorily the *Income Tax Act* ("Act") provide as follows:

Section 118.1(2)(a) of the Income Tax Act (the "Act") reads:

118.1(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;

[...]

[11] In turn, in subsection 3501(1) of the *Income Tax Regulation Act* (the “*Regulation*”) sets out the requirements for the charitable donation receipt the applicable sections relevant to these appeals are as follows:

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;

[...]

(d) the place or locality where the receipt was issued;

(e) [...]

(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;

[...]

[12] Numerous decisions of this Court have held unequivocally that deficiencies relating to the requisite information detailed above render the donation receipt invalid under subsection 118.1(2) and under the *Regulation* which state that the information must appear in the donation receipt. A recent decision of this Court, *Sowah v Canada*, 2013 TCC 297, reflects this where C. Miller, J. states:

[16] [...]

Case law is clear that these requirements are mandatory and are to be strictly adhered to (see for example the cases for *Afovia v. The Queen*, *Sklowdowski v The Queen*, *Plante v Canada*).

[17] [...] First, the receipt does not contain the statement that it is an official receipt for income tax purposes. In the case of *Ehiozomwangie v R*,^[4] Justice Campbell made it clear that the requirement that the receipt indicate that it is an official receipt for income tax purposes is one of the mandatory requirements. I agree. There can be no clearer reassurance to a taxpayer on the face of a receipt than an indication that it is an official receipt for tax purposes. Failure to meet this simple qualification casts real suspicion on the credibility of the receipt. It is a mandatory condition that has not been met in this case.

[18] Second, another simple requirement is the date on which the receipt was issued. On Ms. Sowah's receipt no date is given, only the year (January to December 2006). Again, this is a mandatory condition that simply has not been met.

[19] Third, the receipt must show the locality or place where the receipt was issued. This is a separate requirement from the address of the organization as recorded with the Minister. Here, while we might presume the address of the organization is the same place as where the receipt was issued, this should not be left to presumption. Maybe there are several Jesus Healing Centers throughout Toronto. It should be clear on the receipt from which place the receipt is issued. It is not. Again, a requirement has not been met.

[13] To be clear, it is not a matter of fault, responsibility, good faith or control. It is a mandatory requirement of the *Act* and the *Regulation*. There are other mandatory requirements with the *Act*, some people feel perhaps too many, but this is certainly one which, in this case, has not been met. For this clear and obvious breach of this mandatory requirement, this appeal must be dismissed.

[14] Although unnecessary, given the Court's dismissal on the basis of the donation receipt's many deficiencies, I will now turn to the issue of the evidence before this Court related to the cash donations having been given to the Jesus Healing Center. Legally, in light of the Minister's assumption, the Appellant is required to provide evidence on the balance of probabilities, that is more likely than not, that she gave the money.

[15] Although the cash withdrawals on the bank statements reflect a passing similarity in aggregate to the amount of the charitable donations, the similarities end there: there is no correspondence in time to Sunday worship attendance, the amounts do not fall evenly with twice monthly attendance and such withdrawals would not account for Ms. Ampomah's own expenditure of cash, aside from a mere \$800, for the entire year. Additionally, the donations constitute a staggering 21 percent relative to net income, yet there is no evidence connecting the withdrawals to the charity; part time attendance at Jesus Healing Center resulted in purported donations of \$18,200 and yet there is no recollection or donation receipts for churches regularly attended before and after Jesus Healing Center; and lastly, the charitable tax receipts for \$18,200 was purportedly picked up sometime in the spring of 2007 at Jesus Healing Center by a friend of the Appellant, whose name she can not now recall.

[16] Moreover, the following evidence offered in reply by the CRA Team Leader-Charities Audit has not been contradicted:

- a) not one of the 400 members of the Jesus Healing Center who purported to give these large donations to the Jesus Healing Center has ever produced a cheque, an ABM withdrawal slip, donation log or donation envelope relevant to the donations to the CRA;
- b) the amounts of the donations are very large, although oddly symmetrical as to amounts given each week and yet largely asymmetrical as to a logical and convenient amount someone would likely give by cash each week; and
- c) the pastor, or former pastor, admitted to CRA auditors the donation receipts were, at best, widely exaggerated and, at worst, bogus.

[17] On balance, the evidence of en bloc, untraceable and erratically recurring cash withdrawals, lacking any donation log, recipient information or a prototype of the cash donation envelope are simply not sufficient to establish more likely than not that the donations were actually made in such magnitude without some other objective evidence of their existence.

[18] A similar insertion of cash withdrawals in the case of *Afovia v Canada*, 2012 TCC 391 was dealt by Paris J. of this Court in his analysis of similar factual evidence:

[53] Mr. Bope insisted in his argument that he had the means to make the donations and that the bank records were proof that he had made them;

[54] In my view, the bank records filed by Mr. Bope are inconclusive as to whether any amounts were withdrawn to fund donations to PDGI. There are no regular, consistent withdrawals that one might expect if, as Mr. Bope testified, he made cash donations almost every week. Instead, the withdrawals are sporadic, and vary in amount from \$20 to \$1,200.

[55] Furthermore, Mr. Bope gave no reason for making donations in cash, and did not appear to have kept track of them himself. No particulars in dates and amounts of donations were given. As I indicated in the case of the *Afovias*, I would have expected there to be more attention paid to recording these donations on an ongoing basis given the relatively large sums involved.

[56] I also draw a negative inference from the failure of Mr. Bope to call his sister and his spouse to confirm his attention at the church or to confirm that they saw him make any donations.

[57] Finally, there was no evidence that Mr. Bope made gifts or donations to any other charity since his arrival in Canada in 2000.

[19] The present case is quite similar. There is no sense to the notion that a married person with 2 children, paying a mortgage, making the Appellant's salary donated \$18,200 in cash in one year to a church she attended with her family, but would call no witnesses to verify the donations and have so little regard to documenting the specific amounts, the dates and the record keeping for such sums.

[20] While some nominal donations may have been made, on the basis of the evidence and the balance of probabilities on which the matter must be decided, there is no plausible reason to conclude that any amount coming close to \$18,200 was given in 2006 by the Appellant to Jesus Healing Center.

[21] For these reasons, the appeal is dismissed.

Signed at Ottawa, Ontario, this 9th day of July 2014.

“R.S. Boccock”

Boccock J.

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