

Docket: 2013-635(IT)I

BETWEEN:

RUBEN NOCON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on September 16, 2014, at Vancouver, British Columbia.

Before: The Honourable Justice Robert J. Hogan

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Selena Sit Christa Akey

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**JUDGMENT**

The appeals from the reassessments made under the *Income Tax Act* for the 2008 and 2009 taxation years are dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of November 2014.

“Robert J. Hogan”

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Hogan J.

Citation: 2014 TCC 345  
Date: 20141118  
Docket: 2013-635(IT)I

BETWEEN:

RUBEN NOCON,

Appellant,

and

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### **REASONS FOR JUDGMENT**

Hogan J.

#### I. Overview

[1] The Appellant, Ruben Nocon, is appealing reassessments by which the Minister of National Revenue (the “Minister”) disallowed claims for charitable donations as follows:

<b>Taxation Year</b>	<b>Donations Claimed</b>	<b>Donations Disallowed</b>
2008	\$1,950	\$1,950
2009	\$950	\$950

[2] The Minister alleges that the Appellant purchased false charitable donation receipts from his accountants, Fareed Raza and Saheem Raza (the “Raza Brothers”). The Raza Brothers provided accounting and tax services under the trade names Fareed Raza & Co. Inc. and F & A Accounting Corporation (“FA”). The Raza Brothers were charged with fraud for making false statements on income tax returns prepared by them for their clients.

[3] The onus of disproving the Minister’s assumptions was on the Appellant.

## II. Factual Background

[4] The Appellant immigrated to Canada from the Philippines in 1982. During the years under review, he worked at the Holiday Inn in the housekeeping department.

[5] The Appellant testified that he visited FA for the first time in 2009 to have his return for 2008 prepared prior to the 2008 filing due date. He chose FA because a friend of his had told him that he could make charitable donation claims to obtain tax refunds.

[6] The Appellant admitted that the \$1,950 claimed on his 2008 return as a donation to the Mehfuz Children Welfare Trust (the “Mehfuz Trust”) was incorrect. He testified that he gave one of the Raza Brothers \$200 in respect of that claim.

[7] The same practice was followed in 2010 for the 2009 taxation year. The Appellant admitted that he gave one of the Raza Brothers, or personnel working for them, \$200. He did not deny that he was aware that he had claimed a donation of \$950 to the Mehfuz Trust for his 2009 taxation year despite having given a much smaller amount.

[8] Ms. Jane Yang, an investigator with the enforcement division at the Vancouver Tax Services Office of the Canada Revenue Agency (the “CRA”), testified on behalf of the Respondent. In October of 2008, while attending an internal training session in Toronto, Ms. Yang learned that one of her colleagues in Toronto was having success in uncovering schemes used by tax preparers to sell forged charitable donation receipts to their clients.

[9] On her return to Vancouver, Ms. Yang discovered that a number of clients of FA appeared to have made large donations to the Mehfuz Trust. The donation pattern appeared to be abnormal. The taxpayers were donating a significant portion of their net income to the Mehfuz Trust.

[10] A criminal investigation was launched and a seizure was conducted at FA’s offices on July 14, 2010. The seized documents included receipts from the Mehfuz Trust, which Ms. Yang believed were forged, and Mr. Raza’s desk calendar. The calendar contained annotations that suggested that Mr. Raza was recording amounts that he was receiving in return for caregiver and donation receipts. Ms. Yang was able to establish that, in many cases, the amount indicated on the

calendar alongside a client's name represented from 8% to 11% of the amount claimed on the client's return as a gift to the Mehfuz Trust. Ms. Yang also observed that the receipts for the Mehfuz Trust seized at the FA offices were different from the official receipts issued by the Mehfuz Trust.

[11] As a result of her investigation, Ms. Yang concluded that the Raza Brothers had forged donation receipts totalling approximately \$12,000,000. Ms. Yang estimated that this scheme resulted in a loss of tax revenue of approximately \$4,700,000.

[12] Mr. Mashud Miah, the chairman and founder of the Mehfuz Trust, also testified on behalf of the Respondent. Mr. Miah was born in Bangladesh and immigrated to Canada in 1985. In addition to his duties at the Mehfuz Trust from 2001 to 2009, Mr. Miah worked as a cleaner.

[13] Mr. Miah explained that the Mehfuz Trust was named after his son, Mehfuz, who was born prematurely at a hospital in Vancouver. He believes that had his son been born prematurely in Bangladesh he likely would not have survived. In 1997, Mr. Miah was involved in two serious car accidents, and the treatment he received while in hospital again made him recognizant of the quality of health care services provided at Canadian hospitals. These events inspired him to establish the Mehfuz Trust in 2000-2001, with the assistance of Fareed Raza, as a vehicle to raise funds in Canada for the purpose of building and operating a medical clinic in Bangladesh. According to Mr. Miah, the clinic was built, and it offered health care to poor and handicapped children from 2003 to 2009. The clinic's operations were abandoned in 2009 after the Mehfuz Trust became tainted by the controversy surrounding the actions of the Raza Brothers.

[14] Mr. Miah alleges that in 2008 he discovered Saheem Raza forging charitable donation receipts of the Mehfuz Trust on entering Saheem's office, which he was to clean as part of his cleaning services arrangement with FA. He testified that he saw Saheem signing his (Mr. Miah's) name to a receipt. He subsequently saw forged receipts lying around the office. In the spring of 2008, after consulting with a lawyer, he reported to the CRA that he suspected that the Raza Brothers were forging charitable donation receipts in the name of the Mehfuz Trust. Mr. Miah testified that he stopped using FA's accounting services in 2007 as a result of his suspicions regarding the Raza Brothers' improprieties.

### III. Analysis

[15] The Respondent presented common evidence in these appeals and the appeals of Jose Vekkal (2013-882(IT)I), Remmy Vekkal (2013-883(IT)I), Martin Izkendar (2013-220(IT)I), Azim Bani (2012-3541(IT)I), Iraj Rasuli (2013-886(IT)I), Khorshid Rasuli (2013-887(IT)I), Ladan Abootaleby-Pour (2013-1779(IT)I) and Oleg Komarynsky (2013-3354(IT)I).

[16] At the conclusion of the hearing of these appeals, an issue arose as to whether the evidence presented by the other eight appellants or obtained by the Respondent through the cross-examination of those appellants should form part of the Appellant's record herein. I observe that the case management judge did not deal with this procedural issue in setting down the appeals for hearing. I also note that the Appellant was not served with the pleadings in the other appeals and he did not partake in the examination or cross-examination of the other appellants. Therefore, I will disregard the evidence of the other appellants for the purpose of disposing of these appeals.

[17] In any event, nothing material turns on this matter as I did not find that evidence particularly relevant to the outcome of these appeals.

[18] For the sake of brevity, I incorporate by reference my credibility findings with respect to Ms. Jane Yang's and Mr. Mashud Miah's evidence as set out in paragraphs 24, 25, 26 and 27 of the reasons for judgment in the appeals of Jose Vekkal (2013-882(IT)I) and Remmy Vekkal (2013-883(IT)I) released on the same date as these reasons for judgment.

[19] As none of the taxation years at issue are statute-barred, the Appellant bears the onus of establishing that he actually made donations to the Mehruz Trust in the amounts claimed on his tax returns.

[20] The Appellant was the only person to provide evidence in support of his appeal. For the Appellant to be successful, his testimony must be found reliable with respect to the circumstances surrounding the alleged donations for which there is no corroboration. I am of the view that the Appellant's testimony fell well short of the mark in this regard.

[21] First, Mr. Nocon admitted that he did not make donations in the amounts claimed on his return. In fact, he admitted that he went to FA on the advice of a friend who had told him that he could purchase donation receipts.

[22] Finally, the donations were inconsistent with the Appellant's prior donation history.

[23] In his Notice of Appeal and written submissions provided after trial, the Appellant appears to shift the blame to his tax preparer for the false donation claims. He also asks for leniency from this Court in light of his health and marital issues and limited financial means.

[24] While I recognize that the Raza Brothers were the instigators of the false donation receipt scheme, I find the Appellant equally blameworthy. In particular, he discovered that the charitable donation claims on his 2008 and 2009 income tax returns did not correspond to the amounts given to Fareed Raza, yet he decided to turn a blind eye.

[25] With respect to the Appellant's emotional distress allegedly caused by the separation from his wife and by a shoulder injury, it should be noted that it is not the role of the Court to allow appeals on compassionate grounds. Such discretion falls within the power of the Minister. Should he wish to do so, the Appellant may attempt to seek redress in the form of a waiver of interest pursuant to subsection 220(3.1) of the *Income Tax Act*, or a remission order pursuant to subsection 23(2) of the *Financial Administration Act*.

[26] For these reasons, the reassessments are confirmed and the appeal is dismissed.

Signed at Ottawa, Canada, this 18th day of November 2014.

“Robert J. Hogan”

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Hogan J.

CITATION: 2014 TCC 345  
COURT FILE NO.: 2013-635(IT)I  
STYLE OF CAUSE: RUBEN NOCON v. HER MAJESTY THE QUEEN  
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REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan  
DATE OF JUDGMENT: November 18, 2014

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Selena Sit  
Christa Akey

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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