

Docket: 2013-886(IT)I

BETWEEN:

IRAJ RASULI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on common evidence with the appeals of Khorshid Rasuli (2013-887(IT)I) on September 17, 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 2004, 2005, 2006 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.

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Citation: 2014 TCC 346  
Date: 20141118  
Dockets: 2013-886(IT)I  
2013-887(IT)I

BETWEEN:

IRAJ RASULI,  
KHORSHID RASULI,

Appellants,

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Respondent.

### **REASONS FOR JUDGMENT**

Hogan J.

#### I. Overview

[1] The Appellants, Iraj Rasuli and Khorshid Rasuli, husband and wife, are appealing reassessments by which the Minister of National Revenue (the “Minister”) disallowed claims for charitable donations as follows:

Iraj Rasuli

<b>Taxation Year</b>	<b>Donations Claimed</b>	<b>Donations Disallowed</b>
2004	\$5,000	\$5,000
2005	\$4,415	\$4,415
2006	\$9,290	\$9,290
2009	\$13,600	\$13,600

Khorshid Rasuli

<b>Taxation Year</b>	<b>Donations Claimed</b>	<b>Donations Disallowed</b>
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2004	\$5,005	\$5,005
2005	\$1,625	\$1,625
2006	\$7,790	\$7,790
2007	\$977	\$977
2009	\$13,582	\$13,582

[2] The appeals were heard on common evidence.

[3] The Minister alleges that the Appellants purchased false charitable donation receipts from their 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.

[4] The onus of disproving the Minister’s assumptions was on the Appellants, except in respect of the 2004, 2005, 2006 and 2007 taxation years, for which the reassessments were made after the normal reassessment period referred to in subsection 152(4) of the *Income Tax Act* (the “Act”). With respect to those taxation years, the Respondent has the onus of establishing that the Appellants made a misrepresentation in the circumstances set out in subparagraph 152(4)(a)(i) of the Act.

## II. Factual Background

[5] Mr. Rasuli testified on his own behalf and on behalf of Ms. Rasuli.

[6] Mr. Rasuli immigrated to Canada in 1990. The couple has six children, three of whom have special needs and are dependent on their parents. The children range in age today from 22 to 35 years old.

[7] In 2006, the Appellants purchased a supermarket using their home line of credit. Mr. Rasuli testified that they pay approximately \$1,000 per month of interest on this line of credit. According to the witness, it is only recently that the supermarket has been generating enough money to cover the expenses of that business. Mr. Rasuli testified that, prior to purchasing the supermarket in 2006, he worked as a salaried truck driver and that his wife, Ms. Rasuli, worked at the airport.

[8] Mr. Rasuli met Fareed Raza (“Mr. Raza”) in 2005 when he hired Mr. Raza to prepare the couple’s 2004 income tax returns. According to the witness, Mr.

Raza explained that the couple could lower their tax bill if they made charitable donations through him.

[9] Mr. Rasuli admitted that when the couple filed their returns for their 2004 taxation years, they had not paid the \$5,000 and \$5,005 claimed by Mr. and Ms. Rasuli, respectively, in those returns. According to the witness, Mr. Raza made the donations on their behalf on the understanding that he would be repaid by Mr. and Ms. Rasuli during the course of the year. Mr. Rasuli claims that the couple repaid Mr. Raza through cash instalments paid during the year.

[10] Mr. Rasuli claims that the couple followed the same process in the subsequent taxation years under appeal. Mr. Rasuli also stated that the couple did not read the tax returns prepared by Mr. Raza before they signed them.

[11] 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.

[12] On her return to Vancouver, Ms. Yang discovered that a number of clients of FA appeared to have made large donations to the Mehfuz Children Welfare Trust (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.

[13] 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.

[14] 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 approximately \$4,700,000 of tax revenue.

[15] Mr. Mashud Miah, the chairman and founder of the Mehruz 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 Mehruz Trust from 2001 to 2009, Mr. Miah worked as a cleaner.

[16] Mr. Miah explained that the Mehruz Trust was named after his son, Mehruz, 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 cognizant of the quality of health care services provided at Canadian hospitals. These events inspired him to establish the Mehruz 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 Mehruz Trust became tainted by the controversy surrounding the actions of the Raza Brothers.

[17] Mr. Miah alleges that in 2008 he discovered Saheem Raza forging charitable donation receipts of the Mehruz 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 Mehruz 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

[18] 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), Ruben Nocon (2013-635(IT)I), Azim Bani (2012-3541(IT)I), Ladan Abootaleby-Pour (2013-1779(IT)I) and Oleg Komarynsky (2013-3354(IT)I).

[19] At the conclusion of the hearing of these appeals, an issue arose as to whether the evidence presented by the other seven or obtained by the Respondent

through the cross-examination of those appellants should form part of the record of the Appellants' appeals. I observe that the case management judge did not deal with this procedural question in his order setting down these appeals for hearing. I also note that the Appellants were not served with the pleadings in the other appeals and did not participate in the examination or cross-examination of the other appellants.

[20] Therefore, I will disregard the evidence of the other appellants for the purpose of disposing of these appeals.

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

[22] The Appellants' 2004 to 2007 taxation years were reassessed beyond the normal reassessment period. Therefore, the Respondent bears the onus of establishing that the Appellants made with respect to the gifts that they claimed for these taxation years a misrepresentation attributable to neglect, carelessness or wilful default. The Appellants argue that the Respondent has failed to discharge her onus with respect to those taxation years.

[23] For the sake of brevity, I incorporate by reference my credibility findings with respect to Ms. Yang's and Mr. 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.

[24] After considering all of the evidence, I find the Appellants' explanations of the circumstances surrounding their alleged charitable gifts to the Mehruz Trust to be implausible.

[25] First, I do not believe that the Appellants were in a financial position to make the alleged donations. With respect to the relevant taxation years, Mr. Rasuli reported net income and claimed donations to the Mehruz Trust in the following amounts:

<b>Taxation Year</b>	<b>Reported Net Income</b>	<b>Alleged Donations</b>	<b>% of Net Income</b>
2004	\$44,272	\$5,000	11.3%
2005	\$48,476	\$4,415	9.1%
2006	\$43,702	\$9,290	21.3%
2009	\$55,229	\$13,600	24.6%

[26] For her part, Ms. Rasuli reported net income and claimed donations to the Mehruz Trust as follows:

<b>Taxation Year</b>	<b>Reported Net Income</b>	<b>Alleged Donations</b>	<b>% of Net Income</b>
2004	\$30,902	\$5,005	16.2%
2005	\$33,081	\$1,625	4.9%
2006	\$48,906	\$7,790	15.9%
2007	\$29,749	\$977	3.3%
2009	\$39,804	\$13,582	34.1%

[27] As seen from the above, the Appellants' alleged donations represented a significant portion of their net income for each of the relevant years. The total amount of donations claimed for the 2004 to 2009 taxation years was over \$60,000, yet the Appellants acknowledge that they never met with officials of the charity to learn first-hand about its activities.

[28] The Appellants claim that they paid back to Mr. Raza, in cash payments not exceeding \$2,000, for the amounts that he donated on their behalf. They provided no documents to show how they kept track of what they owed Mr. Raza and what their repayment schedule was.

[29] The Appellants acknowledged that they had three children living with them who were completely dependent on them for support. They owed a mortgage on their personal residence. Furthermore, their supermarket was not a very profitable business.

[30] The alleged large gifts are also inconsistent with the Appellants' previous donation history. Moreover, I find it difficult to believe that the couple would have given thousands of dollars to Mr. Raza on a regular basis without requesting some record of receipt from him. I find it equally implausible that the Appellants would commit to gifting a substantial amount of their monthly net income without meeting with officials of the Mehruz Trust to learn first-hand about the organization's activities in Bangladesh.

[31] I am satisfied that the Appellants purchased from their accountants false donation receipts that were used by them to claim tax credits to which they were not entitled. Therefore, the Appellants knowingly made false representations in respect of the donations disallowed by the Minister for the 2004 to 2007 taxation years. Consequently, the Minister was justified in reassessing the Appellants for those years beyond the normal reassessment period.



[32] Finally, with respect to the other taxation years under appeal, the Appellants have failed to show that they made donations to the Mehfuz Trust.

[33] Therefore, the reassessments are upheld and the appeals are dismissed.

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

“Robert J. Hogan”

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Hogan J.

CITATION: 2014 TCC 346

COURT FILE NOS.: 2013-886(IT)I  
2013-887(IT)I

STYLE OF CAUSE: IRAJ RASULI and KHORSHID RASULI  
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: September 17, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: November 18, 2014

APPEARANCES:

For the Appellants: The Appellants themselves  
Counsel for the Respondent: Selena Sit  
Christa Akey

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada