

Docket: 2013-2940(IT)I

BETWEEN:

SHAMA BOPE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 23, 2015, at Hamilton, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Dominique Gallant

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2009 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 12th day of May 2015.

“Rommel G. Masse”

Masse D.J.

Translation certified true
on this 18th day of June 2015

Daniela Guglietta, Translator

Citation: 2015 TCC 120

Date: 20150512

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REASONS FOR JUDGMENT

Masse D.J.

[1] The appellant, Shama Bope, is appealing the assessment of the Minister of National Revenue (hereinafter the Minister) respecting his 2009 taxation year for which the charitable donation tax credit of \$3,800 claimed was disallowed. First, the Minister submits that the receipt submitted by Mr. Bope fails to meet the requirements of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (hereinafter the Act), and the *Income Tax Regulations*, C.R.C., c. 945 (hereinafter the Regulations). Alternatively, he argues that, in any event, the appellant is unable to establish that he made cash donations of \$3,800 to Revival Time Ministries International (hereinafter Revival).

[2] Although the Notice of Appeal and the Reply to the Notice of Appeal were drafted in English, the trial took place in French. Thus, the Reasons for Judgment were also drafted in French.

Factual Background

[3] The appellant lives in Hamilton, Ontario. He works for an auto parts manufacturer. He is originally from Africa and has been in Canada since 2000. He stated that he wishes to help the people of Africa [TRANSLATION] “who are

suffering, people who are sick, . . . the poor.” His sister told him about the Revival church and he made charitable donations to said church that were intended for recipients in Africa. Although he only has a receipt for \$3,800, the appellant stated that he has donated a lot, well over \$10,000, in cash and property, or so he says. Furthermore, he has family in Africa to whom he sends money. With respect to the cash donations, he told us that he went to the bank to make withdrawals from his account. He only had one bank account. A portion of the withdrawals was for Revival and the rest was used to provide for his family. He put the money for Revival in an envelope which he gave to Revival. He made several donations per month and at the end of the year, Revival issued to him a receipt for the year. He stated that he did not note either the amounts allegedly provided to Revival or the dates of the alleged donations, but claims that he made donations each week or several times per month.

[4] In filing his income tax return for 2009, the appellant reported employment income of \$40,047.02. He also reported charitable donations of \$3,800 made to Revival and filed a receipt confirming these donations (see Exhibit A-1). This is a significant amount compared to his income for the taxation year in question, representing 10% of his gross income.

[5] The Minister assessed the appellant for the 2009 taxation year on April 15, 2010. The Minister allowed the charitable donations as reported. On April 21, 2011, the Minister reassessed him to disallow the \$3,800 charitable donation tax credit claimed by the appellant.

[6] The appellant objected to the reassessment; the Minister confirmed it on May 6, 2013.

[7] The Minister reassessed the appellant on the basis that the appellant did not make any charitable donation to Revival in 2009. In the alternative, the Minister concluded that the receipt issued to the appellant by Revival did not contain all of the information that is required to be included in a charitable receipt pursuant to section 3501 of the Regulations.

[8] For the reasons that follow, I conclude that the receipt provided by Revival does not contain all of the information required by the Regulations and that on this basis alone, the appeal must be dismissed. I also conclude that even if the receipt had conformed to the Regulations, the appellant failed to prove, on a balance of probabilities, that he made the donations in issue.

Statutory provisions

[9] A taxpayer is entitled to a tax credit for gifts made to a registered charity pursuant to subsection 118.1(3) of the Act. The making of the gift must be evidenced by a receipt for the gift that contains prescribed information. Paragraph 118.1(2)(a) provides as follows:

118.1(2) Proof of gift — An eligible amount of a gift is not to be included in the total charitable gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filing with the Minister

(a) a receipt for the gift that contains prescribed information;

...

[10] The prescribed information to be included in the official receipt for the charitable gift is listed in subsection 3501(1) of the Regulations. This subsection provides as follows:

3501(1) Contents of receipts — 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;

(b) the registration number assigned by the Minister to the organization;

(c) the serial number of the receipt;

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

(e) where the gift is a cash gift, the date on which or the year during which the gift was received;

(e.1) where the gift is of property other than cash

(i) the date on which the gift was received,

(ii) a brief description of the property, and

(iii) the name and address of the appraiser of the property if an appraisal is done;

(f) the date on which the receipt was issued;

(g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;

(h) the amount that is

(i) the amount of a cash gift, or

(ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;

(h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;

(h.2) the eligible amount of the gift;

(i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and

(j) the name and Internet website of the Canada Revenue Agency.

[Emphasis added.]

Analysis

[11] This is not the first time that the appellant raises the exact same issues before this Court (see *Afovia v. The Queen*, 2012 TCC 391 (CanLII), 2013 DTC 1016, [2012] TCJ No. 314 (QL)). In *Afovia*, the appellant had made cash donations totalling \$4,600 in 2007 and \$5,600 in 2008 to an alleged charitable organization called Parole de Grace London. Justice Paris of this Court dismissed Mr. Bope's appeals, because he was not entitled to a charitable donation tax credit. Given the similarity of the issues in the case at bar with those in *Afovia*, I do not see how I can conclude differently than Justice Paris.

[12] The analysis I must conduct is parallel to the one I performed in *Kuzi Mapish v. The Queen*, 2013-3695(IT)I (TCC), February 23, 2015, and the same result ensues.

[13] Read together, the provisions mentioned above require that the following elements must be satisfied in order to be entitled to a charitable donation tax credit:

(a) a gift;

(b) a receipt to prove that it was a charitable donation.

[14] The Minister submits that the appellant has not proven the existence of either or both of these elements. I agree.

Validity of receipts

[15] In *Afovia v. The Queen, supra*, Justice Paris reviewed the issue of the existence of a charitable donation and a receipt to substantiate it. He stated as follows with respect to the receipt requirements:

[9] The question that must be decided by this Court is whether it is mandatory that a charitable donation receipt contain all of the information listed in subsection 3501(1) of the Regulations, including a serial number and the name and Internet website of the Canada Revenue Agency. On the basis of the clear wording of that provision, I find that all of the information listed there is mandatory. The material portion of the section states that “every official receipt issued by a registered organization ... shall show clearly in such a manner that it cannot be readily altered ...” the information listed in paragraphs (a) to (j). (Emphasis added.)

...

[12] The appellants did not suggest and I am unable to conclude that giving the word “shall” in section 3501 of the Regulations an imperative meaning would lead to an unreasonable outcome. Parliament may have chosen to include the requirement for a serial number on charitable receipts to facilitate audits of charitable donations, in other words by ensuring that records of donations are kept in an orderly fashion; the inclusion of the CRA website address permits a donor to verify whether the charity is registered and whether the donation is eligible for the charitable donation tax credit. I also find that an imperative construction is consistent with the context. For example, the requirement for serial numbers on receipts is also referred to in subsections 3501(1.1), (3) and (4) and the requirement for the CRA website address is repeated in subsection 3501(1.1) of the Regulations. I therefore find that the information listed in subsection 3501(1) of the Regulations is mandatory for official charitable receipts.

[13] Since none of the receipts provided to the appellants by PDGL contain all of the prescribed information, they do not meet the requirements of subsection 118.1(2) of the Act and, for this reason, the appellants' claims for charitable gift credits cannot succeed.

[14] The fact that the appellants were unaware of what information was required on a charitable receipt cannot relieve them of the obligation to support their claim for the charitable donation tax credits with official receipts that contain the prescribed information. This Court is bound by subsection 118.1(2) of the Act.

[16] Justice Paris reiterated these same principles in *Ofori-Darko v. The Queen*, 2014 TCC 54 (CanLII), 2014 DTC 1074, at paragraph 14:

[14] Furthermore the receipts do not show when the gifts in kind were received by Redemption or what their fair market value was at that time. Finally the receipts fail to show the locality or place of issuance of the receipt. As I indicated in the case of *Afovia et al. v. The Queen*, the information listed in subsection 3501(1) of the *ITR*, the information listed in subsection 3501(1) of the *ITR* is mandatory for charitable donation receipts, and therefore the receipts in these appeals are insufficient to prove the making of a gift as provided for in paragraph 118.1(2)(a) of the *ITA*. **[Footnote omitted.]**

[17] In *Sowah v. The Queen*, 2013 TCC 297 (CanLII), 2013 DTC 1234, Justice Miller also made similar findings, stating that

[16] . . . Case law is clear that these requirements [set out in subsection 3501(1) of the Regulations] are mandatory and are to be strictly adhered to (see for example the cases of *Afovia v The Queen*, *Sklowdowski v The Queen*, *Plante v Canada*).

[17] Does the receipt provided by the Appellant meet all the requirements? It does not. It fails on three counts. 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*, 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.

[20] The Appellant has therefore not provided a receipt with the prescribed information and has therefore not met the second condition necessary to obtain

credit for a charitable donation. The Appeal can be dismissed on that basis
[Footnotes omitted].

[18] In the case at bar, the inadequacies of the receipt are as follows:

- (a) the receipt does not show the locality or place where the receipt was issued. The receipt in this case (Exhibit A-1) lists multiple addresses for Revival: Toronto, Zambia, Texas, Botswana and Cameroon. The organization in this case also has a Web site. However, the appellant resides in Hamilton. Thus, where was the receipt issued? In Toronto, Hamilton or abroad? As indicated in *Sowah, supra*, the requirement pertaining to the locality or place where the receipt was issued is a separate requirement from the address of the organization as recorded with the Minister. While we might presume that the address of the organization is the locality or place where the receipt was issued, this should not be left to presumption. It should be clear on the receipt from which place the receipt is issued, because the address of the organization may be different from the place where the receipt was issued. This is a mandatory condition;
- (b) the receipt must show the date on which or the year during which the gift was received. There is only one date on the receipt, December 31, 2009. This supposes that the appellant only made a donation of \$3,800 on that date, which is not the case. The appellant claims that that he made several donations of various amounts each month of the year. No particulars of the dates and amounts of the donations were provided. Thus, the receipt does not meet the criteria set out in paragraph 3501(1)(g) of the Regulations. It seems strange to me that the appellant did not ask for a receipt each time he made a donation. The appellant should have obtained a receipt each time he made a donation or at least a receipt showing all the donations and their dates. The total amount of the donations was significant compared to the appellant's income. It is therefore surprising that the appellant neither asked for nor obtained a receipt each time he made a donation. Again, this is a mandatory condition;

[19] These are requirements that were not met. All these requirements are mandatory. It is not a matter of fault, liability, negligence, good faith or bad faith. These are mandatory requirements of the Act and Regulations. The appellant is

therefore not entitled to a charitable donation tax credit under subsection 118.1(2) of the Act and the appeal must be dismissed for that reason alone.

Proof of donations

[20] The onus is on the appellant to provide proof of the donations he claims to have made to Revival. The applicable standard of proof is the balance of probabilities. This means that the appellant must demonstrate that it is more likely than not that he made the donations in question. The only support for his position is his own testimony and the receipt issued by Revival. This is not sufficient in the circumstances.

[21] The appellant submits that he made the donations in cash and property totalling over \$10,000 in value. However, he provided the Minister with a receipt showing cash donations of only \$3,800. Why did he not obtain one or more receipts indicating the exact amount he donated? He admits that he did not keep a record of the amounts he donated each week or each month. He said that he made withdrawals from his bank account to provide for his family and to make donations to Revival. He put the money in an envelope and gave it to the church. At the end of the year, the church issued him a receipt showing the total amount he donated. He stated that his wife worked and earned a significant amount of income to allow the appellant to make such donations. However, the bank statements he provided the Canada Revenue Agency (hereinafter the Agency) with show that his bank account was consistently in overdraft. Although Mr. Bope said he had the means to make the donations, the evidence showed that he owed money on his line of credit during the year in issue.

[22] Gary Huenemoeder is the Audit Team Leader at the Agency's Charities Directorate. He stated that Revival obtained its registration number on July 1, 2006. The Agency audited Revival for 2006, 2007 and 2008. The Agency requested Revival's accounting books and records, but all the accounting records were seized because Revival did not pay rent of \$321. Revival provided bank statements, receipts for donations and various bank drafts. Following a review of said documents, Mr. Huenemoeder found that Revival had reported income in excess of \$830,000 for its first year of operation, which seemed to be very high for a first year. According to the review of the bank account statements, the organization allegedly deposited 1.8 million dollars in the bank. Mr. Huenemoeder suspected that something was wrong. The Agency therefore required the production of documents from banks that conducted business with Revival. Upon reviewing those documents, the Agency discovered that only \$3,000 had been

deposited in the banks. Thus, all of the documents that were provided to the Agency by the organization were false. The Agency contacted 920 donors, requiring proof of payment of the donations, and they all indicated that they had paid cash and not by cheque or by bank draft. It is unlikely that all these donors paid their donations in cash. An investigation was conducted in respect of Daniel Mokwe, Revival's pastor, but he fled Canada before the Agency was able to lay criminal charges against him. Mr. Huenemoeder found no evidence of charitable activities organized by Revival. Its registration as a charitable organization was therefore revoked on January 8, 2011. Mr. Huenemoeder reviewed the appellant's file and found no evidence of the donations supposedly made by the appellant.

Conclusion

[23] The appellant was unable to confirm either the exact amounts he donated to Revival or on which dates he made the donations. The appellant failed to provide any cheque, any ATM withdrawal slip, any record of donations, or any donation envelope related to the alleged donations. The Court cannot therefore determine the exactly amount, if any, the appellant donated to Revival. The receipt in issue is the only evidence of donations made and said receipt was issued by an organization that was apparently defrauding the system. Aside from the receipt, no document or account statement was adduced to support the appellant's claims. The appellant failed to provide any objective evidence to rebut the Minister's assumptions that he did not make the cash donations. Therefore, the appellant failed to meet his burden of proof.

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

Signed at Kingston, Ontario, this 12th day of May 2015.

“Rommel G. Masse”

Masse D.J.

Translation certified true
on this 18th day of June 2015

Daniela Guglietta, Translator

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DATE OF JUDGMENT: May 12, 2015

APPEARANCES:

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