

Docket: 2014-3738(IT)I

BETWEEN:

ALEXANDER DUGGAN,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

Appeal heard on May 22, 2015, at Windsor, Ontario, and by way of
videoconference on June 30, 2015, at Windsor and Ottawa, Ontario.

Before: The Honourable Justice Gaston Jorré

Appearances:

Counsel for the appellant: Bernadette Duggan

Counsel for the respondent: Gabrielle White

JUDGMENT

For the attached reasons for judgment, the appeal from the assessments made under the *Income Tax Act* for the 2007 and 2008 taxation years is dismissed.

Signed at Ottawa, Canada, this 9th day of July 2015.

“Gaston Jorré”

Jorré J.

Citation: 2015 TCC 175

Date: 20150720

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BETWEEN:

ALEXANDER DUGGAN,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

AMENDED REASONS FOR JUDGMENT

Jorré J.

[1] In his 2007 and 2008 taxation years the appellant claimed charitable credits in respect of charitable donations in the amount of \$20,000 and \$16,890, respectively. The Minister of National Revenue denied both of these charitable deductions. The appellant appeals from the Minister's assessments denying the deductions.

[2] The respondent takes the position that no charitable gifts were made. In the alternative, the respondent argues that the appellant did not provide receipts containing the information required pursuant to section 3501 of the *Income Tax Regulations*.

[3] This case is primarily one of fact and the issue of whether the charitable donations were made turns on credibility.

[4] In assessing the 2007 and 2008 taxation years, the Minister relied, *inter alia*, on the following assumptions of fact:

a) The Mega Church International ("Mega Church") was a registered charity in the 2007 taxation year and for a portion of the 2008 taxation year;

...

e) Mega Church's registration as a charity was revoked for cause by the Minister effective August 23, 2008;

f) Operation Save Canada's Teenagers ("Operation") was a registered charity in the 2008 taxation year;

...

k) the Appellant did not claim any charitable donations in any years prior to the 2007 taxation year;

- l) the Appellant claimed charitable donations of \$20,000 for the 2007 taxation year, which consisted of purported donations to Mega Church;
- m) the Appellant reported net income of \$126,620 for the 2007 taxation year;
- n) the amount of the alleged 2007 donations constituted 16% of the Appellant's reported net income for the 2007 taxation year;
- o) the alleged 2007 donation to Mega Church consisted of cash;
- p) Mega Church did not receive cash donations from the Appellant;**
- q) the Appellant did not transfer any property (cash or non-cash) to Mega Church in the 2007 taxation year or in any of the five immediately preceding taxation years;
- ...
- s) the Appellant claimed charitable donations of \$16,890 for the 2008 taxation year, which consisted of purported donations of \$10,270 to Mega Church and \$6,620 to Operation;
- t) the Appellant reported net income of \$145,799 for the 2008 taxation year;
- u) the amount of the alleged 2008 donations constituted 12% of the Appellant's reported net income for the 2008 taxation year;
- v) the alleged 2008 donations to Operation and Mega Church consisted of cash;
- w) Operation and Mega Church did not receive cash donations from the Appellant;**
- x) the Appellant did not transfer any property (cash or non-cash) to Operation or Mega Church in the 2008 taxation year or in any of the five immediately preceding taxation years;
- ...
- z) the Appellant failed to provide to the Minister receipts for the charitable donation tax credits claimed for the 2007 and 2008 taxation years that contained the information prescribed by section 3501 of the *Income Tax Regulations*.¹

[Emphasis added.]

¹ The remaining assumptions were:

- b) Mega Church failed to maintain adequate books and records;
- c) Mega Church did not devote all of its resources to charitable purposes and activities;
- d) Mega Church did not issue receipts in accordance with the *Income Tax Act*;
- ...
- g) Operation failed to maintain adequate books and records;
- h) Operation did not devote all of its resources to charitable purposes and activities;
- i) Operation did not issue receipts in accordance with the *Income Tax Act*;
- j) Operation's registration as a charity was revoked for cause by the Minister effective January 15, 2011;
- ...
- r) if the Appellant did transfer non-cash properties to Mega Church, the fair market value of the alleged non-cash properties was nominal;
- ...
- y) if the Appellant did transfer non-cash properties to Operation or Mega Church, the fair market value of the alleged non-cash properties was nominal; and
- ...

There was evidence given regarding the two charities by Gary Huenemoeder of the Canada Revenue Agency; however, as will become evident below, it is unnecessary for me to deal with it.

[5] The appellant is an engineer. He is married and has four children. The oldest was born in 1989 and the youngest was born in 1994. In 2007 the youngest was 13 and the oldest 18.

[6] The appellant testified that he made the charitable donations claimed in cash.

[7] He testified that his faith requires him to give a tithe of 10% of his income and that over and above that he gives offerings to the church. This was his way of life before coming to Canada and it continued after he arrived here. As soon as he earned money he felt that he was indebted for the tithe. He stated that:

The way I perceive and the way I have been brought up is that my tithe doesn't belong to me; it is a debt, so I take out my tithe first and foremost from every -- of my earnings. As soon as I have earned something, it becomes a debt that I have pay to God, so I take that out irrespective of what is in my account²

[8] The appellant filed Exhibit A-1, a listing he prepared. The first page of Exhibit A-1 is a listing that shows the dates and amounts of cash withdrawals used to make his cash donations in 2007 to Mega Church International. There were 28 donations ranging from \$100 to the largest one on June 27, 2007 in the amount of \$4,518.

[9] The second page of the exhibit shows the dates and amounts in 2008. There were 12 dates on which there were donations to Mega Church. These ranged from \$300 to \$2,000. There were 14 dates on which there were donations to "Operation Save Canada Teens";³ these ranged from \$300 to \$800.

[10] The appellant filed Exhibits A-16 and A-17. These are his bank statements for 2007 and 2008; I note that it appears that a couple of pages showing the last part of two months are missing. The appellant filed them to corroborate that he made cash withdrawals on the dates shown in Exhibit A-1 listing the donations and dates.⁴

[11] The appellant's practice was that he would give money when he went to church on Sunday. He would get the money earlier in the week from an automatic

² Transcript, page 12. I would just note that I am working with the electronic transcript and that my experience is that page numbering can vary somewhat when opening electronic transcripts on a screen as compared with printed versions.

³ "Operation Save Canada Teens" is the name as shown on Exhibit A-1.

⁴ Transcript, page 40. All references are to the transcript of May 22, 2015 when the evidence was completed. Argument was on June 30, 2015.

bank machine or from a teller. He never got the money on Saturday or Sunday but the withdrawal could be on any of the other five days of the week.⁵

[12] Then, on Sunday he would put the money into a preprinted envelope on which he wrote his name, his address, the amount and the date. He would then put his envelope in the basket passed around at offering time during the church service.

[13] Letters from the two charities confirming the donations were filed by the appellant as exhibits, as were receipts for the donation.⁶

[14] I regret, but for the reasons that follow, I cannot accept the appellant's testimony that he made donations to the two charities. As a result, he has not displaced the Minister's assumption that there were no donations.

[15] I set out below some of the considerations which lead me to this conclusion; taken individually, these considerations might not lead to the same conclusion. However, when taken together, the conclusion is inescapable that the appellant's evidence is simply not plausible.

[16] Specifically:

- (a) It is uncommon for individuals to donate large amounts of money in cash. It is also uncommon to carry around large amounts of cash. In the course of two years, 11 of the claimed donations made by the appellant were of \$1,000 or more. Two of the 11 were for over \$2,000 and one of the 11 was for \$4,518. The amounts were withdrawn from the bank account between two and five days before the Sunday church service.
- (b) In the course of the two years, there were also three weeks where the appellant made withdrawals twice in the same week for the purpose of obtaining cash to make donations. I recognize that the appellant testified that, because of trips and other reasons, he often had to obtain cash some days in advance. However, that does not explain why there

⁵ The respondent created a helpful aide in Exhibits R-1 (for identification) and R-2 (for identification); the sheets show visually on calendars for 2007 and 2008 the withdrawal dates set out in Exhibit A-1.

⁶ Exhibits A-9 to A-14.

would be weeks where there would be withdrawals on two different days.⁷

- (c) These large claimed donations totalling \$20,000 in the first year and \$16,890 in the second year take place at the same time as the bank account is continually swinging in and out of an overdraft position. Indeed, overdraft interest is paid in at least 22 of the 24 months in the two years. In the two years the statements show 17 occasions where there were NSF charges.⁸
- (d) One does not expect people to make significant donations at the same time as they are in overdraft from time to time.
- (e) The appellant testified that for him a tithe was a debt from the moment he earned anything and that he had felt the obligation to pay tithes well before he came to Canada. If I accepted the statement that he felt very strongly about the commitment to paying tithes, that could potentially explain the cash donations occurring even though it would, some of the time, put the appellant in a position where he had to pay relatively modest amounts of overdraft interest.⁹
- (f) I am unable to accept that the appellant felt such a strong obligation to pay tithes. He arrived in Canada in late 2003 and it is not surprising that in 2003 there were no charitable deductions claimed by the appellant in his 2003 tax return. However no donations were claimed by the appellant in his 2004, 2005 and 2006 tax returns. In 2004 his total income was quite low and I could understand that he might not make donations. However, in 2005 and, even more so, in 2006, he started to have a more significant total income and I cannot reconcile

⁷ The amount of \$4,518 was withdrawn four days before the church service. The appellant banked with one of the major financial institutions and I would note that his financial institution would have ABMs in many locations in the Greater Toronto Area as well as elsewhere in the country. At the time the appellant lived in Brampton and worked in downtown Toronto.

⁸ Because of missing pages, I do not know if overdraft interest was paid during two of the months. In the course of two years the bank account statements filed show no sufficient fund (NSF) charges on 17 occasions. See Exhibits A-16 and A-17. There are NSF charges shown on the following dates: in 2007, January 25, February 16, March 16, April 3, November 2 and, in 2008, January 3, 16 and 21, April 2, August 11 and 19, September 3 and 16, October 2, November 4, December 2 and 19.

⁹ And even though cheques sometimes were not honoured resulting in NSF fees.

the absence of any charitable donation claims with such a strong commitment to paying tithes.¹⁰

- (g) In addition, after the two years in issue there was a dramatic fall-off in the appellant's charitable contributions until 2012 when again he claimed a significant charitable contribution in his tax return. In 2009, no charitable deduction was claimed. In 2010 and 2011, about \$4,000 and \$3,500, respectively, were claimed, amounts of somewhat less than 5% of his income.¹¹
- (h) The appellant explained this drop-off in donations as being the result of his being "discouraged" from giving as a result of all the questions he received from the Canada Revenue Agency. I have difficulty reconciling this with the importance he says he attaches to tithing.¹²
- (i) The appellant states that the amount of \$4,517.99 described as "Cash Money #532" shown as a debit on June 27, 2007 in his bank account was a withdrawal to fund a donation of \$4,518 on the following Sunday. The respondent argued that I should conclude that it was not a cash withdrawal but, instead, a payment to a company called "Cash Money", a payday loan lender.
- (j) I am not prepared to conclude that this was a payment to "Cash Money", a payday loan lender. However, after carefully examining the bank statements where, elsewhere, cash withdrawals are shown as "w/d" or as "cash withdrawal" (or the first few letters of "withdrawal"), I am satisfied that the amount of \$4,517.99 on June 27, 2007 is not a cash withdrawal. Indeed, when one looks at other entries on the bank statement, the reasonable inference is that it is a direct payment, presumably by debit card, from the bank account and, as a consequence, it could not have funded a charitable donation of \$4,518 four days later.¹³

¹⁰ See the data for 2003 to 2006 in Exhibit R-13 at pages 1 to 4; total income is line 150. In 2006, the appellant's total income was about \$111,000; in that year he made an RRSP contribution of about \$11,000 or 10% of his income but no charitable donations whatsoever. See also pages 31 and 32 of the transcript.

¹¹ See Exhibit A-4 and pages 8 to 12 of Exhibit R-13. In 2009, 2010 and 2011, his total income was \$108,000, \$77,000 and \$130,000, respectively; see Exhibit R-13, pages 8 to 12.

¹² Again, taken alone, the drop-off for three years after 2008 would not lead me to my overall conclusion.

¹³ I note that this payment put the appellant into an overdraft position. As of the end of June 25, 2007 the appellant has an overdraft of \$954.52. There are the three transactions on June 27, 2007: the first two are credits from TD Mutual Funds which, together, resulted in a positive balance of \$3,466.35 followed by the \$4,517.99 paid to "Cash Money #532" resulting in an overdraft of \$1,051.64 at the end of the day.

- (k) The \$4,518 gift was much larger than any other.
- (l) The appellant said that he earned income from consulting as well as his salary from his employer. He made this particular gift because he had been paid for consulting and the cheque had cleared; the gift was probably around 10% of what he received.¹⁴
- (m) This last statement is not plausible. In 2007, the appellant reported salaried earnings of just under \$144,000, a gross business income of \$16,000 and a net business loss of \$1,400.¹⁵ If the appellant had received his entire gross consulting income for the year shortly before making the donation, the \$4,518 donation would amount to 30% of that gross income from business in circumstances where he lost money from consulting in that year.
- (n) The appellant attended Mega Church until August 2008; the rest of his family attended a different church. He testified that it was at Mega Church that Operation was recommended to him. As a result, in 2008 he started to alternate his giving between Mega Church and Operation. Whether he gave to Mega Church or Operation, he would follow the same practice: getting money in advance, putting money in a preprinted envelope and giving it at offering time during the service.
- (o) He stopped giving to Mega Church after August 2008 after he learned that there were issues regarding Mega Church's charitable registration; he also stopped attending Mega Church and attended another church with his family.
- (p) Although Operation had been recommended by Mega Church, he nonetheless continued to give to Operation after August. He would go to Mega Church, which he no longer attended, to make his cash donations to Operation. I find this difficult to accept.
- (q) Exhibits A-10 and A-11 were letters from the charities obtained by the appellant to confirm his donations. I am satisfied that they cannot be the result of independent information held by the two charities. The letters show the dates and amounts of the donations made in 2008. They correspond with page 2 of Exhibit A-1 and show the donations

¹⁴ See the transcript, page 66.

¹⁵ See the printout at pages 5 and 6 of Exhibit R-13, notably lines 101, 162 and 135.

as being on the same day as the withdrawals.¹⁶ This is inconsistent with the appellant's testimony that he gave on Sundays. The charities could **not** have known when the cash was withdrawn.

[17] Given my conclusion that there were no donations, the appellant is not entitled to any charitable credits.¹⁷

[18] In addition, given my conclusion, it is unnecessary for me to deal with the respondent's argument that the receipts do not provide all the information required by section 3501 of the *Income Tax Regulations* and, accordingly, no charitable amount may be deducted because of paragraph 118.1(2)(a) of the *Income Tax Act*.

[19] The appeal is dismissed.

These amended reasons for judgment are issued in replacement of the reasons for judgment signed on July 9, 2015.

Signed at Ottawa, Canada, this 20th day of July 2015.

“Gaston Jorré”

Jorré J.

¹⁶ There is one exception: Exhibit A-11 shows February 26 instead of February 25; the 26th is a Tuesday, not a Sunday.

¹⁷ I will make a few brief comments about the appellant's argument. With respect to the issue whether the donations were made at all, the appellant first argued that he received no benefit since he did not receive credits for more than he donated. I am not sure how this helps the appellant. The first question is whether he made the donations; if he did not, as I have concluded, there is a benefit.

The appellant then argued that the amounts were proven by his testimony and substantiated by corroborating documents and by a consistent pattern of donations. For the reasons set out above I do not accept the appellant's evidence.

The balance of the appellant's argument dealt with the timing of the deregistration of the two charities, the conduct of the charities and whether the receipts provided the information required pursuant to section 3501 of the *Income Tax Regulations*. Having concluded that there were simply no donations, none of this matters and so I need not deal with those issues.

CITATION: 2015 TCC 175

COURT FILE NO.: 2014-3738(IT)I

STYLE OF CAUSE: ALEXANDER DUGGAN v. THE QUEEN

PLACE OF HEARING: Windsor, Ontario
Windsor and Ottawa, Ontario (videoconference)

DATES OF HEARING: May 22, 2015
June 30, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: July 9, 2015

DATE OF REASONS FOR JUDGMENT: July 9, 2015

DATE OF AMENDED REASONS FOR JUDGMENT: July 20, 2015

APPEARANCES:

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