

Dockets: 2012-4615(IT)G
2012-4572(GST)I
2012-4573(GST)I

BETWEEN:

MASOUMEH MEHRAVARAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on February 3 and 4, 2015, at
Vancouver, British Columbia
By: The Honourable Eugene P. Rossiter, Chief Justice

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Karen Truscott

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2004, 2005 and 2006 taxation years is dismissed in accordance with the attached reasons for judgment.

The appeals from the reassessments made under the *Excise Tax Act* for the reporting periods from January 1, 2004 to December 31, 2006 and a similar GST reassessment with respect to the Appellant being a member of a partnership for the same period of time are dismissed in accordance with the attached reasons for judgment.

Signed at Edmonton, Alberta, this 24th day of August 2015.

“E.P. Rossiter”

Rossiter C.J.

Citation: 2015 TCC 209
Date: 20150824
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BETWEEN:

MASOUMEH MEHRAVARAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rossiter C.J.

A. Overview:

[1] This matter comes to the Court by way of Notices of Appeal filed by the Appellant with respect to income tax for the taxation years 2004, 2005 and 2006, as well as reassessments for the GST reporting periods January 1, 2004 to December 31, 2006 and a similar GST reassessment with respect to the Appellant being a member of a partnership for the same period of time.

[2] The Appellant was married with three children during the periods in question. The Appellant's financial affairs intermingled with those of her husband and her eldest child (son) with respect to the businesses of importing goods, rugs, bicycles, boats, all-terrain vehicles and motorcycles. This intermingling was carried on into acquisition of assets and liabilities, use of credit cards, acquisition and payment of loans; basically there was a total intermingling of the financial affairs of the Appellant with her husband and her son and their business ventures.

[3] The Respondent conducted a net worth audit on the Appellant, her husband and her son, dividing liability equally between the three. The Minister carried out an assessment with respect to GST plus penalties and interest for the husband, the

son as well as a variety of partnerships that they may have been involved in their business endeavours. Objections were filed and confirmations were issued and the appeals were undertaken.

B. Factual Background:

[4] The Appellant was married to a Saadolha Mehrabi. From their marriage there were born three children, one of whom was their son, Amin Mehrabi (“Amin”). The Appellant moved to Canada in 1997 and separated from her husband in 2009, divorcing in 2012. Upon moving to Canada the Appellant became aware of her husband’s extra-marital affairs. She remained in the same household as her husband until the separation for the sake of the children because she did not want to cause them harm. She maintained the household during this period of time with little communication with the husband, not enjoying the normal benefits of the matrimonial relationship including normal communications, socialization, a conjugal relationship and the like. During the relevant period of time (2004 to 2006) the Appellant worked outside the home using her income to provide food and basic clothing for the children. Also, during this time, the Appellant’s husband was self-employed in a trucking business and conducted business activities with respect to the sale of motorcycles, boats, and importations of bicycles and an import and export rug business. During the same period of time Amin was the sole director and shareholder for a company named Atlas Energy Limited which was in the business of buying and selling all terrain vehicles, dirt bikes, and motorcycles. The Appellant was not involved in these businesses. The Appellant’s husband and Amin failed to maintain appropriate records and books of their business affairs.

[5] Suspicions arose on information received by the Respondent through the Fintrax system with respect to the activities of the Appellant, her husband and Amin which resulted in an audit of June, 2008 to November, 2010. During the conduct of the audit, a net worth assessment was completed on a factual basis with information obtained for the basis of the net worth from comprehensive disclosure carried out and obtained via normal authorizations from the Appellant, the husband and Amin as well as requirement notices from third parties. There was a significant lack of documentation, books, records of accounts but the Canada Revenue Agency (“CRA”) was able to conduct a factual audit and complete the net worth assessment for the Appellant, the husband and Amin’s affairs. There were numerous bank accounts in a variety of banks (RBC, TD Bank as well as trust companies); there were a wide variety of credit cards, loans and mortgages and payments. There was real estate owned in Port Moody and Coquitlam, B.C. as

well as Toronto, Ontario. There were a variety of corporations intermingled in the business and financial affairs of the family.

[6] During the relevant period the Appellant asserts that she was simply the wife of the husband, in a marriage of convenience as opposed to a traditional marriage. She was a practising Muslim and, in practising her faith she was basically totally subservient to her husband. She was not involved in the retention or obtaining advice from legal counsel or accountants who may have been involved in their financial affairs or during the course of this appeal, other than to attend at the lawyer's office on one occasion when a Notice of Appeal was to be filed. She could not afford the lawyer so she did not seek or obtain any further advice. The Appellant asserted that in approximately 2000 her husband demanded from her a Power of Attorney. She gave him a general Power of Attorney which continued to exist until after the separation in 2009. She did not have a copy of the Power of Attorney as it was retained by her husband. She had no knowledge or involvement in the family finances, or business or financial affairs of the husband nor Amin. She attended when and if required by her husband to sign any and all documents which he required for businesses and basically did what she was told as and when required, playing no role in the business affairs, the operations or activities or her husband or her son, Amin.

[7] The financial operations of the Appellant, the husband and Amin, as well as the corporations, were so intermingled that it was impossible to determine who was responsible for what in the financial affairs of the family as a whole or who owned what asset or owed what liability or earned what revenue. The auditor did conduct a detailed and comprehensive factual based net worth. At the end of the day, the Respondent was unable to allocate the responsibility with respect to GST except on an equal basis, such was the lack of records and accounts of the Appellant, the Appellant's husband and Amin.

C. Issues:

[8] 1. Did the Minister correctly reassess the Appellant for unreported income and if so did the Minister correctly levy penalties and assess for unpaid GST in relation to the unreported amounts?

[9] 2. Does the existence and exercise of a Power of Attorney from the Appellant to her husband affects the liability of the Appellant for the taxes and penalties assessed?

Law and Analysis:

[10] Subsection 152(7) of the *Income Tax Act* permits the Minister to perform net worth assessments. The Federal Court of Appeal in *Hsu v R*, 2001 FCA 240, stated:

23 Subsection 152(8) grants a presumption of validity to these assessments and places the initial onus upon the taxpayer to disprove the state of affairs assumed by the Minister (*Dezura v. Minister of National Revenue* (1947), 3 D.T.C. 1101 (Can. Ex. Ct.), at 1102). Notwithstanding the fact that such an assessment is “arbitrary”, the Minister is obliged to disclose the precise basis upon which it has been formulated (*Johnston v. Minister of National Revenue* (1948), 3 D.T.C. 1182 (S.C.C.), at 1183). Otherwise, the taxpayer would be unable to discharge his or her initial onus of demolishing the “exact assumptions made by the Minister but no more” (*Hickman Motors Ltd. v. R.* (1997), 97 D.T.C. 5363 (S.C.C.), at 5376).

... 31 By its very nature, a net worth assessment is an arbitrary and imprecise approximation of a taxpayer’s income. Any perceived unfairness relating to this type of assessment is resolved by recognizing that the taxpayer is in the best position to know his or her own taxable income. Where the factual basis of the Minister’s estimation is inaccurate, it should be a simple matter for the taxpayer to correct the Minister’s error to the satisfaction of the Court.

[11] Justice Bowman, as he then was, outlined some general principles related to net worth assessments in *Ramey v R*, [1993] 2 CTC 2119,

[6] ... A net worth assessment involves a comparison of a taxpayer’s net worth, i.e., the cost of his assets less his liabilities, at the beginning of a year, with his net worth at the end of the year. To the difference so determined there are added his expenditures in the year. The resulting figure is assumed to be his income unless the taxpayer establishes the contrary. Such assessments may be inaccurate within a range of indeterminate magnitude but unless they are shown to be wrong they stand. It is almost impossible to challenge such assessments piecemeal. The only truly effective way of disputing them is by means of a complete reconstruction of a taxpayer’s income for a year. A taxpayer whose business records and method of reporting income are in such a state of disarray that a net worth assessment is required is frequently the author of his or her own misfortunes.

[12] In regards to the gross negligence penalties, the FCA's decision in *Lacroix c R*, 2008 FCA 241, provides guidance on the application of such penalties in the context of a net worth assessment. The Court stated:¹

30 The facts in evidence in this case are such that the taxpayer's tax return made a misrepresentation of facts, and the only explanation offered by the taxpayer was found not to be credible. Clearly, there must be some other explanation for this income. It must therefore be concluded that the taxpayer had an unreported source of income, was aware of this source and refused to disclose it, since the explanation he gave was found not to be credible. In those circumstances, the conclusion that the false tax return was filed knowingly, or under circumstances amounting to gross negligence, is inescapable. This justifies not only a penalty, but also a reassessment beyond the statutory period.

... 32 What, then, of the burden of proof on the Minister? How does he discharge this burden? There may be circumstances where the Minister would be able to show direct evidence of the taxpayer's state of mind at the time the tax return was filed. However, in the vast majority of cases, the Minister will be limited to undermining the taxpayer's credibility by either adducing evidence or cross-examining the taxpayer. Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of subparagraph 152(4)(a)(i) and subsection 162(3) [*sic*].

[13] I am satisfied on the evidence presented before me that there was a comprehensive and detailed analysis conducted by the Respondent in doing a factual net worth. I am satisfied that the net worth assessment conducted involved a detailed and comprehensive comparison of the Appellant's, the husband's and the son, Amin's net worth and the cost of their assets less liabilities at the beginning of the relevant periods and their net worth at the end of the relevant periods. I have no doubt that some of the assessments may be somewhat inaccurate within the indeterminate magnitude, but they have not been shown to be wrong as they stand. I have only had the Appellant before us in this matter. No real substantive records were introduced by the Appellant nor was there any real dispute with respect to the method of underreporting income. The main issue of the Appellant's case surrounds the Power of Attorney given by the Appellant to her husband, the effect of that Power of Attorney, its use by the husband and the implications of its use by the husband on the Appellant and her liability for tax arising from its use.

¹ See also *Mensah v R*, 2008 TCC 378, for CJ Bowman's discussion of s. 163(2) penalties and the net worth assessment method. In that case, the appeal was allowed based on the taxpayer's evidence and credibility.

[14] The Appellant presented herself as a well spoken lady who had a sincere love for children, making them a priority in their life. She presented herself as a truthful person who wanted to present to the Court her life experiences and how the situation arose which placed her before the Court. She answered all questions directly, told her story, although in somewhat of an emotional manner when it involved very difficult issues such as care for her children or the infidelity of her husband; she described in detail the hardships of the relationship. She showed the resolve she had with respect to her religion and how her resolve with her religion led her to basically be a subservient spouse to her husband in all matters. She did not avoid answering difficult questions and maintained eye contact; she did not avoid any of the difficulties but was simply trying to present her side of the story and did so in a reasonable, calm and direct fashion. During cross-examination, albeit brief, she again responded in a fair and direct fashion answering all questions presented.

[15] I am, however, of the view that the law does not support the suggestion that a Power of Attorney can resolve a person such as the Appellant from a tax liability in the circumstances of this particular case.

[16] In *Caron v. R.*, [2002] 3 C.T.C. 2369, Justice Dussault stated that the Power of Attorney in that case was exercised for and on behalf of the Appellant. He stated in part as follows:

In my view, Andre Caron's deposits of cheques made out in his own name or of amounts belong to him in the Appellant's bank account constitute transfers of property within the meaning of section 160 of the Act since he legally divested himself of ownership of those amounts in favour of the Appellant, the sole account holder. The Power of Attorney obtained from the Appellant and dated May 7, 1992 (Exhibit A-2) did not transfer ownership of those amounts back to him but simply gave him a mandate to administer them for and on behalf of the Appellant as her agent. Such a Power of Attorney in no way implies that the Appellant gave up her ownership of the amounts deposited in her account since, under the very terms of the Power of Attorney, all the powers set out therein must be exercised for her and on her own behalf.

[17] In the appeal before the Court the particulars of the Power of Attorney were not provided, nor was a copy of the Power of Attorney produced.

[18] Justice Lamarre, as she then was, in *Drapeau v. R.*, 2010 TCC 314, affirmed at 2011 FCA 133, stated the following the following in the context of a Power of Attorney. The Court said in *obiter*:

... that if *carte blanche* was given, the Appellant must face the consequences. If the Appellant's hypothesis was real, he certainly did not take steps to support it. He took the risk, and if he actually gave Mr. Dagenais *carte blanche*, in the absence of better evidence, he must now face the consequences.

[19] In that case, the testimony related to a director's resignation and whether the Power of Attorney existed lacked credibility.

[20] Also, in *Greenwood v. R.*, 2000 Carswell Nat. 209, where the tax consequences were attributed to a true owner of funds, i.e. who the Power of Attorney was executed on behalf of, Associate Chief Justice Alban Garon, as he then was, stated in part as follows:

[59] The U.K. account earned 15,121.63 pounds over a period of six years. The Appellant did not include these interest amounts in computing his income because in his opinion it was not his income. According to the Appellant, the account belonged to his mother and it was merely held in the Appellant's name under a General Power of Attorney. When the Appellant's mother died in January, 1995, he had the account transferred to a joint account held by him and his wife.

...

[64] With some hesitation, I have concluded that it is likely that the monies in the above account with the Leeds & Holbeck Building Society belonged to his mother during the years in issue. Among other facts, I took into account the General Power of Attorney dated August 22, 1985, the deposit the Appellant had made in 1984 in partial reimbursement of a withdrawal made earlier on this account, the transfer of the monies to a joint account held by the Appellant and his wife on his mother's death.

[21] As noted, I do not believe that the Power of Attorney in this particular case can absolve the Appellant from a tax dispute. The Appellant must face and accept the consequences of the Power of Attorney she gave her husband and its use by the husband. We do not have the particulars of the Power of Attorney nor was a copy of it provided to the Court in the course of evidence, so we have not even had the opportunity to examine the extent of the Power of Attorney. Quite simply, the Appellant has failed to establish the Power of Attorney, its extent and how or why she should be absolved from its consequences to her in this tax dispute. Also, I have found that the net worth assessment was properly conducted. The appeal is dismissed.

Signed at Edmonton, Alberta, this 24th day of August 2015.

“E.P. Rossiter”

Rossiter C.J.

CITATION: 2015 TCC 209

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STYLE OF CAUSE: MASOUMEH MEHRAVARAN v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATES OF HEARING: February 3 and 4, 2015

REASONS FOR JUDGMENT BY: The Honourable E.P. Rossiter, Chief Justice

DATE OF JUDGMENT: August 24, 2015

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Karen Truscott

COUNSEL OF RECORD:

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