

Citation: 2015 TCC 183

Date: 20150902

Docket: 2014-4258(IT)I

BETWEEN:

SANDRA PAULINE HEROUX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] The following reasons were given orally at the conclusion of the hearing of this appeal on May 4, 2015 in Winnipeg. The Appellant later requested a transcript of my oral reasons. I was informed by Registry staff that the recording equipment used at the hearing was apparently not working properly when I delivered the oral reasons and that no transcript was available. What follows is taken from my handwritten notes which I used to deliver the oral reasons, and therefore may not be an exact reproduction of those oral reasons.

[2] This is an appeal from an assessment made against the Appellant under subsection 160(1) of the *Income Tax Act* (the “ITA”), in respect of the tax liability of her spouse Glen Heroux. The details of Mr. Heroux’s liability are set in Exhibit R-3.

[3] The subsection 160(1) assessment is based on deposits made by Mr. Heroux to a joint bank account he held with the Appellant in 2011 and 2012, when he had a tax debt.

[4] The Appellant’s representative, Mr. Chris Shannon, advised the Court at the commencement of the hearing that the only issue being raised by the Appellant related to the underlying tax liability of Mr. Heroux. However, over the course of the hearing it became apparent that the Appellant was in fact alleging only that the Minister had “not shown that the person assessed was the Appellant.” In any

event, there was no evidence presented by the Appellant's representative to show that the tax liability of Mr. Heroux at the relevant times was other than the amount set out in the assumptions in the Reply to the Notice of Appeal at paragraph 11(f): \$22,387.82.

[5] With respect to the issue of identity, the collections officer who raised the subsection 160(1) assessment against the Appellant testified that, while she had not met the Appellant, she did cross-reference the Appellant's name and Social Insurance Number ("SIN") to the date of birth and address that the Canada Revenue Agency ("CRA") had in its records for Sandra Pauline Heroux and that they matched. This testimony was not challenged by Mr. Shannon in cross-examination.

[6] Mr. Shannon submitted that the Respondent failed to prove that the Appellant and the person identified in the notice of assessment were "one and the same." Specifically, he argued that the SIN shown on the assessment belonged to the Appellant and could not be used as a means of identifying a taxpayer. Therefore, Mr. Shannon said that the Respondent had not proved that the Appellant was connected with the SIN used by the Minister to assess Sandra Pauline Heroux.

[7] Mr. Shannon's submission cannot succeed. Even if a SIN could not be used as a means of identifying a taxpayer, which I do not accept, the evidence shows clearly that the Minister also used a number of other pieces of information to identify the Appellant as the person liable under subsection 160(1) of the *ITA* for the tax debts of Glen Heroux. In addition to a SIN, the Minister relied upon a date of birth and address to identify the Appellant.

[8] It is also open to me to draw a negative inference from the failure of the Appellant to testify at the hearing. There was no indication that she was unable for any reason to attend the hearing, and I infer from her absence that any testimony that she would have given concerning her identity, address and connection to Glen Heroux would not have been favourable to her case.

[9] Also, as pointed out by counsel for the Respondent, the onus is on the Appellant to demolish the Minister's assumption that she is the person who held the joint bank account with Glen Heroux at the relevant times. I agree with counsel that the Appellant has failed to discharge this onus.

[10] Finally, in rebuttal, Mr. Shannon raised a new argument: that the Appellant was not a resident of Canada and therefore was not liable under the *ITA* for the

amounts assessed. Mr. Shannon conceded that the Appellant was a resident of Manitoba, but maintained that a resident of Manitoba was not a resident of Canada. For obvious reasons, I reject the proposition that a resident of Manitoba is not a resident of Canada.

[11] The appeal is dismissed.

Signed at Montreal, Quebec this 2nd day of September 2015.

“B.Paris”

Paris J.

CITATION: 2015 TCC 183

COURT FILE NO.: 2014-4258(IT)I

STYLE OF CAUSE: SANDRA PAULINE HEROUX AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: May 4, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris

DATE OF JUDGMENT: May 5, 2015

REASONS FOR JUDGMENT: September 2, 2015

APPEARANCES:

Agent for the Appellant: Chris Shannon
Counsel for the Respondent: Neil Goodridge

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

For the Respondent: William F. Pentney
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