

Docket: 2014-3000(IT)I

BETWEEN:

JONATHAN J. HAYFRON-BENJAMIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 25, 2016, at Halifax, Nova Scotia

By: The Honourable Justice Don R. Sommerfeldt

Appearances:

Counsel for the Appellant: Godfred T. Chongatera

Counsel for the Respondent: Gregory B. King

JUDGMENT

The Appeal is allowed and the reassessment dated December 3, 2012 is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis set out in the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 10th day of June 2016.

“Don R. Sommerfeldt”

Sommerfeldt J.

Citation: 2016 TCC 151

Date: 20160610

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BETWEEN:

JONATHAN J. HAYFRON-BENJAMIN,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Sommerfeldt J.

I. INTRODUCTION

[1] These Reasons pertain to the Appeal by the Appellant in respect of a reassessment (the “Reassessment”) issued to him by the Canada Revenue Agency (the “CRA”), on behalf of the Minister of National Revenue (the “Minister”), in respect of the 2011 taxation year. The Reassessment, which was embodied in a Notice of Reassessment dated December 3, 2012, included in the computation of the Appellant’s unreported employment income the amount of \$5,759, allegedly paid to him by D+H Limited Partnership (“D+H”). As well, pursuant to subsection 163(1) of the *Income Tax Act*,¹ a penalty in respect of that unreported employment income was assessed.

[2] Although it was not clear from the pleadings, as the hearing progressed, it became apparent that the Appellant was alleging that he had been the victim of identity theft. As will be discussed below, a similar allegation had been raised, and refuted, in previous proceedings in this Court.² Although the Appellant did not provide any convincing evidence at the hearing of this Appeal that he had been the victim of identity theft, based on the evidence that was adduced, a possibility was raised that perhaps the Appellant’s brother, Albert Hayfron-Benjamin, had used the

¹ *Income Tax Act*, R.S.C. 1985 (5th Supplement), c. 1, as amended (the “ITA”).

² *Jonathan J. Hayfron-Benjamin v The Queen*, 2013 TCC 222, *aff’d*, 2015 FCA 196.

Appellant's name and Social Insurance Number ("SIN") to obtain employment. This possibility will be discussed further below.

II. BACKGROUND

A. Pleadings

[3] The Appellant's exceptionally brief Notice of Appeal did not set out any details concerning the factual circumstances that provided the context for the Reassessment, nor did the Notice of Appeal identify the issue in question or the basis on which the Appeal was brought. However, it appears that the Appellant attached to his Notice of Appeal a copy of the Notice of Confirmation sent to him by the CRA on December 2, 2013. The third and fourth paragraphs of the Notice of Confirmation read as follows:

The basis of your objection is that you did not work for D & H Partnership [*sic*] in 2011 thus the \$5,759.00 of employment income added to your tax return is incorrect. You also dispute the federal omission penalty of \$576.00 and arrears interest charged of \$77.00.

A review of the facts and documents submitted indicates that based on information received from D & H Partnership [*sic*], you did work for them from July 6, 2009 to March 1, 2011. Therefore, the employment income reported on the T4 from D & H Partnership [*sic*] has to be included as employment income, according to section 5 of the Income Tax Act.

[4] The 2011 T4 slip (Statement of Remuneration Paid) in respect of the unreported income was issued in the name of the Appellant by D+H. The original T4 slip was not produced; rather, the Respondent produced a reproduction (Tab 6 in Exhibit R-1), which was based on information contained in the original T4 slip. The reproduction does not show the employee's complete address; rather, only a postal code is shown. The postal code shown on the reproduced T4 slip is J8X 1A7, which corresponds to an address in Gatineau, Quebec, which will be discussed below.

B. Subpoena

[5] In a letter faxed to the Court on October 29, 2014, the Appellant advised that he had been trying unsuccessfully to obtain information from D+H about his 2011 T4 slip and the bank deposits in respect of the employment income referred to in that T4 slip. He requested that the Court prepare and serve a subpoena on D+H.

The Court provided the Appellant with a subpoena and advised him that it was his responsibility, not the Court's, to serve the subpoena.

[6] Apparently, the Appellant encountered some difficulty in obtaining from D+H the documents that he was seeking.³ Accordingly, on September 24, 2015 he filed a Notice of Motion for an Order to compel D+H to produce his employment records and direct-deposit information. On October 8, 2015 counsel for the Respondent sent a letter to the Court, stating that the appropriate way for the Appellant to obtain the desired documents from D+H was by way of a subpoena. On October 9, 2015 the Court issued an Order allowing the motion and directing the Appellant to serve a subpoena on D+H to obtain the desired documents. D+H subsequently provided documentation to the Appellant in a zip file, which he could not open. Cognizant of the Appellant's continued difficulty, and desirous to ensure that a representative of D+H would be available at the trial, which was heard in Halifax, counsel for the Respondent served a subpoena on Anna Di Pardo, who is the payroll manager in the finance department of D+H. As Ms. Di Pardo lives and works in or near Toronto, arrangements were made for her to provide her testimony by videoconference.

[7] As Ms. Di Pardo was testifying by videoconference from Toronto, it was decided that she should be the first witness at the hearing. As well, given that counsel for the Respondent had sent the subpoena to Ms. Di Pardo, it was decided that the direct examination of Ms. Di Pardo would be conducted by counsel for the Respondent.

C. Employment Particulars

[8] In her testimony, Ms. Di Pardo stated that D+H's business is cheque printing and technologies software. In 2009, D+H purchased Resolve Corporation ("Resolve"), which carried on a similar business. Although there was no detailed evidence in this regard, it appears that sometime in or after 2009 Resolve became part of D+H. In 2009 and 2010 it was Resolve that issued T4 slips to the Appellant, whereas in 2011 it was D+H that issued a T4 slip to him. Depending on the context, some of the references in these Reasons to D+H should be read as including a reference to Resolve, as well.

³ The nature of this difficulty was not made clear. It may have been due to ambiguous communication. There was no suggestion that D+H was being difficult or obstructionist.

[9] Ms. Di Pardo stated that, in preparation for her testimony, she reviewed the payroll file of an employee identified as Jonathan Hayfron-Benjamin.⁴ She had the paper version of that file with her when she testified. Ms. Di Pardo explained that, according to the documents in the payroll file, Jonathan Hayfron-Benjamin began to work for Resolve on July 6, 2009. During her testimony, Ms. Di Pardo identified and explained the commencement-of-employment documents that are in Mr. Hayfron-Benjamin's payroll file. Those documents include:

- a) a letter of employment dated June 30, 2009, which was written on the letterhead of Resolve and which was addressed to:

Jonathan Hayfron-Benjamin
##-# Henri Gauthier, Apt #⁵
Gatineau, Quebec
J8X 1A7

(Tab 10 in Exhibit R-1);

- b) the first four pages of a five-page Employee Agreement between Resolve and Jonathan Hayfron-Benjamin (Tab 11 in Exhibit R-1);
- c) a set of rules dated July 6, 2009, pertaining to cell phones, drinks, attendance and punctuality, and dress code (Tab 12 in Exhibit R-1);
- d) a Security Card Agreement dated July 6, 2009 (Tab 13 in Exhibit R-1);
- e) a Confidential Information and Property Rights Agreement dated July 6, 2009 (Tab 14 in Exhibit R-1);
- f) an Employee Conduct Agreement dated July 6, 2009 (Tab 15 in Exhibit R-1);
- g) a Swipe Card Agreement dated July 6, 2009 (Tab 16 in Exhibit R-1);

⁴ As one continues to read these Reasons, it will become apparent that more than one Mr. Hayfron-Benjamin is involved. Accordingly, I have used the term "the Appellant" in the context of references specific to the individual who is the subject of this Appeal. I have generally used the term "Jonathan Hayfron-Benjamin" or the term "Mr. Hayfron-Benjamin" in the context of references specific to the individual who was employed by Resolve or D+H.

⁵ The numbers in this address have been redacted.

- h) a federal and a provincial Personal Tax Credits Return (Tabs 17 and 18 in Exhibit R-1); and
- i) a direct-deposit banking document (the “Direct-Deposit Document”) (Tab 19 in Exhibit R-1).

(In these Reasons, I will refer to the documents listed above as the “Employment Documents”).

D. Signatures on Certain Employment Documents

[10] All of the Employment Documents, other than the Direct-Deposit Document, refer to an employee whose name is shown as “Jonathan Hayfron-Benjamin” and who, in some of those documents, including the Direct-Deposit Document, is identified by employee file number #####.⁶ Many of the Employment Documents were signed by the employee; however, the signatures on the various documents are not precisely the same. Although the signatures appear as though they could have been written by the same individual, they do not appear to be identical. The employee signatures on the letter of employment (Tab 10 in Exhibit R-1), the set of rules (Tab 12 in Exhibit R-1), the Security Card Agreement (Tab 13 in Exhibit R-1) and the Confidential Information and Property Rights Agreement (Tab 14 in Exhibit R-1) each appear to be the letters “JAHB” partially encircled by an oval-shaped line, generally extending from the “B” and going up, above and around some or all of the four letters. The curious feature of this version of the signatures is the inclusion of the letter “A” in the signature, as that does not appear to be one of the Appellant’s initials. The signatures on the Employee Conduct Agreement (Tab 15 in Exhibit R-1) and the Swipe Card Agreement (Tab 16 in Exhibit R-1) each appear to be the letters “JHB” encircled by an oval-shaped line, in both cases extending from the “B” and going up, above and around all three letters. However, the “J”s do not appear to be the same. There was no handwriting expert who testified at the trial; therefore, it is purely speculative as to whether the documents were signed by the same person and whether the person who signed those documents was actually the Appellant.

[11] The Personal Tax Credits Returns (Tabs 17 and 18 in Exhibit R-1) are not signed. In fact, the prescribed forms for those two Returns do not require them to be signed. The signature on the Direct-Deposit Document will be discussed below.

⁶ The employee file number has been redacted.

E. Initials on Employee Agreement

[12] The Employee Agreement (the first four pages of which are behind Tab 11 in Exhibit R-1) is a curiosity. It is a standard-form contract, with page notations in the lower left-hand corner of each page, indicating that a particular page is page 1 of 5, page 2 of 5, and so on. The copy that was produced by Ms. Di Pardo contains only pages 1 through 4. She indicated that page 5 (which was not produced) contains the signatures of the parties. She had no definitive explanation as to why page 5 was not provided to the Court. In the lower right-hand corner of pages 1 through 4 there is a short line above which the employee is to insert his or her initials. The initials at the bottom of pages 2, 3 and 4 appear to be “JHB”. However, the style of the initials on those three pages varies from page to page. In particular, the “J” on each of those three pages is distinctly different from the “J” on the other two pages. The initials at the bottom of page 1 appear to be a “J” somewhat similar to (but not exactly the same as) the “J” at the bottom of page 3, followed by a space, followed by the initials “AHB”. As noted above, no handwriting expert testified at the trial; therefore, I am not in a position to draw any conclusions from the initials. Nevertheless, it strikes me as peculiar that the initials on the four pages seem to vary from page to page. However, nothing may turn on this observation, as it is certainly permissible and not uncommon for the same individual to write his or her initials in more than one way.

F. Personal Tax Credits Returns

[13] Ms. Di Pardo identified a 2009 Personal Tax Credits Return (Form TD1) (Tab 17 in Exhibit R-1) for an employee named Jonathan Hayfron-Benjamin, whose address was shown as ##-# henri-Gauthier [*sic*] and whose SIN was shown as ###-###-###.⁷ A somewhat similar document, being a 2009 Ontario Personal Tax Credits Return (Form TD1ON) (Tab 18 in Exhibit R-1), was also identified by Ms. Di Pardo. The latter document also showed a birthdate of XXX ##, 19##.⁸ In cross-examination, the Appellant admitted that the SIN shown on the two Personal Tax Credits Returns is his SIN.

G. Direct-Deposit Document

⁷ The numbers in the address and the SIN have been redacted. The redacted numbers in the above address are the same as those referred to in footnote 5 above.

⁸ The birthdate has been redacted.

[14] Ms. Di Pardo identified a document (defined above as the “Direct-Deposit Document”) (Tab 19 in Exhibit R-1), which was entitled “Pre-Authorized Payment Service Notice of Change of Bank Account”, and which was used to authorize the direct deposit of employment income earned by the employee whose employee file number was #####,⁹ which, according to Ms. Di Pardo, was the employee file number issued by D+H to Jonathan Hayfron-Benjamin. Such income was to be deposited in a branch of the Bank of Nova Scotia located near Carleton University in Ottawa, Ontario. The Direct-Deposit Document authorized the payments to be deposited to account number #####.¹⁰ The Direct-Deposit Document, in one place, described the account holder’s name as “Mr A Hayfron-Benjamin” and, in another place, described the name of the customer as “Albert Hayfron-Benjamin”.¹¹

[15] The address of the bank’s customer (i.e., Albert Hayfron-Benjamin), as set out in handwriting on the Direct-Deposit Document, is ##-# henri-Gauthier,¹² which is the same address as that shown in the letter of employment and the two Personal Tax Credits Returns. It is not clear whether the customer’s handwritten postal code is J8X 1A7 or J8X 7A7. Nevertheless, it appears that, in the Employment Documents, the same address was used for both Jonathan Hayfron-Benjamin and Albert Hayfron-Benjamin.

[16] The Direct-Deposit Document, in the space below the address of the customer, contains a signature line, under which there is an asterisk in front of the word “signature”. A footnote designated by the asterisk states, “This Authorization must be signed in accordance with the signing authority required to operate the bank account.” This suggests that it is the customer of the bank who is to sign the

⁹ The employee file number has been redacted. The redacted number in the Direct-Deposit Document is the same as the employee file number referred to in footnote 6 above.

¹⁰ The bank account number has been redacted.

¹¹ In a letter which was dated November 1, 2013 from Steve Groves, the manager of the Bank of Nova Scotia located at 1709 Hollis Street in Halifax, which was addressed to the Appellant, and which was entered as Exhibit A-2, Mr. Groves stated that bank account no. ##### (which has been redacted and which is the same as the account number referred to in footnote 10 above) is not in the name of the Appellant. At the hearing, counsel for the Respondent noted that the letter from Mr. Groves constitutes hearsay evidence. As this Appeal was heard under the Informal Procedure, I allowed the letter to be admitted into evidence; however, I will not place any significant weight on the letter, other than to note that it is consistent with the Direct-Deposit Document, which clearly indicates that the particular bank account belongs to Albert Hayfron-Benjamin.

¹² The numbers in the address have been redacted. The redacted numbers in the address are the same as those referred to in footnotes 5 and 7 above.

document. Some (but not all) of the elements of the customer signature at the bottom of the Direct-Deposit Document appear to be slightly similar to (but not the same as) the employee signature on the Employee Conduct Agreement (Tab 15 in Exhibit R-1) and the Swipe Card Agreement (Tab 16 in Exhibit R-1). However, it is not clear whether the first letter of the signature on the Direct-Deposit Document is an “A”, a “J” or some other letter. As there was no expert handwriting evidence, I am not putting any weight on the signature on the Direct-Deposit Document, other than to note that it is not clear who signed this document.

[17] In direct examination, Ms. Di Pardo stated that D+H did not have a requirement for an employee to have his or her paycheque deposited into a bank account in his or her own name. Rather, she stated that an employee could direct that his or her paycheque be deposited into a bank account of his or her choice. However, there was no suggestion by Ms. Di Pardo in her testimony or by counsel for the Respondent in his direct examination of Ms. Di Pardo or in his cross-examination of the Appellant that Jonathan Hayfron-Benjamin directed that his remuneration be deposited into Albert Hayfron-Benjamin’s bank account.

H. Signatures on T1 Adjustment Requests

[18] The Appellant used the CRA’s Telefile feature to file his 2009, 2010 and 2011 income tax returns. He testified that each year he encountered difficulty in filing his returns because he had multiple employers and the feature did not allow him to enter multiple T4 slips. Therefore, for each year, sometime after telefiling his return, he completed and sent to CRA a T1 Adjustment Request (each, an “Adjustment Request”), in which he provided particulars of the additional income and related deductions that had not been included on the telefiled returns. Each Adjustment Request was dated and signed by the Appellant. The signatures on the three Adjustment Requests (Tabs 1, 3 and 5 in Exhibit R-1) appear to be the initials “JHB” tightly encircled by an oval-shaped line, which is generally not as elongated as the oval-shaped line in the signatures on the Employment Documents discussed above. As well, the signatures on the three Adjustment Requests have a few more lines back and forth across the three initials than do the signatures on the Employment Documents. As there was no handwriting evidence adduced at the hearing, I have not drawn any conclusions from my consideration of the signatures on the Adjustment Requests.

I. Identification of Employee

[19] When cross-examined, Ms. Di Pardo testified that she had never met Jonathan Hayfron-Benjamin, nor had she seen any photographs of the person by that name who was employed by D+H. Accordingly, Ms. Di Pardo could not confirm that the Jonathan Hayfron-Benjamin who is the Appellant in this Appeal is the Jonathan Hayfron-Benjamin who was employed by D+H. She also indicated that the only information that she had in respect of this matter was what she could see in D+H's payroll records in respect of Jonathan Hayfron-Benjamin.

J. Work Hours and Location

[20] Ms. Di Pardo was unable to provide specific details as to the precise times on each day when Mr. Hayfron-Benjamin worked, although she noted that his agreement required him to work 37.5 hours per week. She said that some of D+H's employees worked at premises under the control of D+H, while others worked at their homes. She indicated that she did not think that Mr. Hayfron-Benjamin worked at his home. Ms. Di Pardo also explained that security cards were provided to employees, including Mr. Hayfron-Benjamin, so that they could access the building where D+H's premises were located; this factor may support the proposition that Mr. Hayfron-Benjamin worked at Resolve's or D+H's premises in Ottawa,¹³ and not at his home. The Swipe Card Agreement (Tab 16 in Exhibit R-1) indicates that Resolve had a time and attendance system, which was used to keep track of the hours worked each week by employees, as part of Resolve's automated payroll procedures. The Swipe Card Agreement reminded employees to swipe in and out each day to avoid errors in their compensation. This factor also supports the proposition that Mr. Hayfron-Benjamin worked at Resolve's or D+H's premises in Ottawa, and not at his home.

K. Appellant's Residence

[21] After Ms. Di Pardo had concluded her testimony, the Appellant testified. During his testimony, the Appellant stated that he has lived in Halifax since 2007 and that, from then until the date of the hearing, he had held various full-time and part-time jobs and had also attended a post-secondary institution, all in Halifax or Dartmouth. He testified that he has never lived at ##-# Henri Gauthier, Gatineau,

¹³ The document behind Tab 7 in Exhibit A-1 is an email from Ms. Di Pardo to the Appellant, which appears to have been sent in December 2015 and which states that the work location was 145 Robertson Road, Ottawa.

Quebec¹⁴ and that he has not lived in Ottawa since 2007, although he stated that he had lived in the Ottawa area (including Orleans and Hull) for a number of years before moving to Halifax in 2007.

III. ANALYSIS

A. Appellant's Explanation

[22] The Appellant was adamant that he has never worked for Resolve or for D+H.

[23] The Appellant could not provide a specific explanation as to how D+H came to issue a T4 slip to him for 2011, other than to suggest that he was the victim of identity theft. The Appellant stated that in 2003 he lost his SIN card. He reported the loss to Service Canada and to the RCMP. After an investigation, Service Canada informed the Appellant that it had not found any evidence of his SIN having been used fraudulently. To the best of the Appellant's knowledge, the RCMP did not lay charges against anyone concerning any misuse of his SIN.

[24] I encountered some difficulty in grappling with this issue, as the same position had been taken by the Appellant in a previous proceeding;¹⁵ however, in that proceeding Boyle J found the Appellant not to be a credible witness. Furthermore, although it appears that the Appellant's SIN may have been used by someone other than him to obtain employment, he has not gone back to Service Canada to ask it to look into this matter further.

B. Signatures

[25] During the direct examination and the cross-examination of the Appellant, neither counsel asked him if he could identify the Employment Documents or if he had signed any of them. In response to a question by me, after he had been examined by both counsel, the Appellant stated that the signature at the bottom of the second page of the employment letter was not his signature. In retrospect, perhaps I should have taken the Appellant through the remaining Employment Documents to ask him if he had signed or initialed those documents. However, not

¹⁴ The numbers in the address have been redacted. The redacted numbers in the address are the same as those referred to in footnotes 5, 7 and 12 above.

¹⁵ *Hayfron-Benjamin*, *supra* note 2.

wanting to intervene excessively in the questioning of the Appellant,¹⁶ I refrained from doing so.

[26] I then referred the Appellant to the Adjustment Request for 2009 (Tab 1 in Exhibit R-1). The Appellant confirmed that he had filled out that form and that the signature at the bottom of the form is his signature. I did not ask him about the signatures on the Adjustment Requests for 2010 and 2011.

C. Relationship Between Jonathan and Albert

[27] It was near the conclusion of the hearing before I learned that Jonathan Hayfron-Benjamin and Albert Hayfron-Benjamin are brothers. It would have been helpful to me if counsel, either in direct examination or cross-examination, had asked the Appellant whether he (i.e., the Appellant) had any knowledge of Albert Hayfron-Benjamin, who is the customer named in the Direct-Deposit Document.¹⁷ When I put that question to the Appellant, he merely stated that he knows Albert Hayfron-Benjamin. When I asked the Appellant who Albert is, the Appellant indicated only that Albert is a relative. It then required two more questions from me before I was finally told that Albert is the Appellant's brother. It was disappointing that this information came out only after several questions from me, and that it was not provided by the Appellant during his examination-in-chief. I was left with the impression that perhaps I was not being told the complete story.

[28] After I had asked a few questions of the Appellant, I provided counsel for the Appellant and counsel for the Respondent an opportunity to ask additional questions of the Appellant, to the extent that such questions pertained to answers given by the Appellant in response to my questions. Counsel for the Respondent asked the Appellant whether his brother, Albert, was legally entitled to work in Canada in 2011. I found the Appellant's answers to be somewhat evasive, although that may have been merely because the Appellant did not know the answer to the question, which is what he ultimately stated. In response to a follow-up question by

¹⁶ See the caution and direction given by the Federal Court of Appeal in *Heron Bay Investments Ltd. v The Queen*, 2010 FCA 203, at paragraphs 41 and 58.

¹⁷ In making this statement, I am simply commenting on what would have been helpful to me in deciding this case. I am not suggesting that it would necessarily have been helpful to either the Appellant or the Respondent. I acknowledge that counsel for the Appellant and counsel for the Respondent may have had strategic reasons (which I respect) for not asking such a question of the Appellant. My comments are not to be construed in any way as a criticism of the manner in which counsel conducted their respective examinations of the Appellant.

counsel for the Respondent, the Appellant stated that he did not provide his SIN to Albert for purposes of employment.

D. No Pleading or Oral Evidence Concerning Redirection of Remuneration

[29] During his testimony, the Appellant was not asked, in either direct examination or cross-examination, whether he had authorized any remuneration payable by Resolve or D+H to be deposited into the account at the Bank of Nova Scotia referenced in the Direct-Deposit Document. It would have been helpful to me if such a question had been put to the Appellant by counsel.¹⁸ However, perhaps that is a non-issue, given that, in paragraph 12 of the Reply, the Deputy Attorney General of Canada, on behalf of the Respondent, stated that he is relying on subsections 5(1) and 163(1) of the *ITA*. Hence, the Deputy Attorney General of Canada is not relying on subsection 56(2) of the *ITA*. As well, as stated in subparagraphs 10(f), (g) and (h) of the Reply, the Minister assumed the following facts:

- (f) The Appellant was paid by D+H on a bi-weekly basis, via direct bank deposit;
- (g) During the 2011 tax year, the Appellant received employment income of \$5,759 from D+H;
- (h) When filing his T1 return and making his T1 adjustment request for the 2011 tax year, the Appellant failed to include the employment income in the amount of \$5,759 received from D+H.

Notably, the Minister assumed that the Appellant was paid by D+H and that the Appellant received employment income in the amount of \$5,759 from D+H. The Minister did not assume that the Appellant directed D+H to pay such employment income to Albert Hayfron-Benjamin, nor did the Minister assume that D+H paid the employment income in the amount of \$5,759 to Albert Hayfron-Benjamin with the concurrence of the Appellant. Thus, I do not think that the Respondent has laid the groundwork for the application of subsection 56(2) of the *ITA*.

Furthermore, the Appellant's name does not appear on the Direct-Deposit Document. The only thing that might possibly connect the Direct-Deposit

¹⁸ Again, in making this comment, I am not being critical of counsel for the Appellant or counsel for the Respondent. I am simply acknowledging that it would have assisted me in making my decision if I had known this information. However, I appreciate that counsel may have had strategic reasons for not asking such a question of the Appellant.

Document to the Appellant is the employee number assigned by Resolve to the individual who was employed under the name of Jonathan Hayfron-Benjamin. As indicated above, the Direct-Deposit Document, on its face, appears to require the signature of the bank's customer (presumably the account holder), and not the signature of the employee. Therefore, there is no indication that Jonathan Hayfron-Benjamin signed this document. The signature may well be that of Albert Hayfron-Benjamin.

E. Credibility

[30] I have reservations about relying on the Appellant's testimony, given that he was not found to be a credible witness in his previous appearance in this Court,¹⁹ and given that I found some of his answers in the hearing before me to have been less than forthright and others to have been evasive.

[31] I have greater confidence in relying on the documentary evidence that was provided. Some of the documents, as summarized below, indicate that the Appellant has resided in the Halifax-Dartmouth region since 2007:

- a) A two-page document, which is behind Tab 6 in Exhibit A-1, and which contains a series of seven small rectangular boxes, numbered page 3 of 9 through page 9 of 9, each of which is entitled "Individual Identification Mailing Address," and all of which appear to be part of a computerized historical record of the Appellant's mailing addresses, shows that the Appellant had various mailing addresses in Ontario from April 15, 2004 to June 11, 2007 and that he had several mailing addresses in Halifax or Dartmouth from June 12, 2007 to October 23, 2009, which is the most recent date shown on the document. The document behind Tab 6 in Exhibit A-1 does not include pages 1 and 2, which presumably would have covered periods after October 23, 2009. This document does not show the Appellant's mailing address in 2011, let alone where he was residing in 2011, but it is consistent with his testimony that he moved from the Ottawa area to Halifax in 2007.
- b) A letter dated May 27, 2013 (behind Tab 1 in Exhibit A-1) from Melanie Neville, a Human Resources Associate with Aditya Birla

¹⁹ I recognize that the finding by Boyle J that the Appellant was not credible in the 2013 hearing does not automatically mean that the Appellant would not have been credible in the 2016 hearing.

Minacs (“Minacs”) in Dartmouth, Nova Scotia, states that the Appellant was then a full-time employee and that he had been employed with that organization since August 4, 2009. The letter also provides an address for the Appellant, which is the same as the most recent address shown on the Individual Identification Mailing Address document behind Tab 6 in Exhibit A-1. Ms. Neville did not appear at the hearing to confirm the contents of her letter. I acknowledge that the contents of her letter constitute hearsay evidence; however, as this hearing was conducted pursuant to the Informal Procedure, this Court is not bound by any legal or technical rules of evidence in conducting a hearing.²⁰ Furthermore, the fact that the same address is shown for the Appellant in Ms. Neville’s letter and in the most recent Individual Identification Mailing Address document provides an element of corroboration and reliability.

- c) A letter dated July 25, 2012 (Tab 2 in Exhibit A-1) from Debra Shea, Administrative Assistant at the Institute of Technology Campus of Nova Scotia Community College, states that the Appellant graduated with a diploma from that institution on July 18, 2012. This letter too is hearsay; however, the comments made above in respect of Ms. Neville’s letter, in the context of subsection 18.15(3) of the TCCA, are also applicable here.
- d) The CRA reproductions (Tab 2 in Exhibit R-1) of the 2009 T4 slips (Statements of Remuneration Paid) issued to the Appellant by Teletech Canada Inc. (“Teletech”), Convergys New Brunswick, Inc. (“Convergys”) and Minacs and the 2009 T4A slip (Statement of Pension, Retirement, Annuity, and Other Income) issued to the Appellant by Compagnie d’Assurance Standard Life du Canada all show the Appellant’s postal code as being B3K 2Z5, which is the postal code corresponding to his address in Halifax. The CRA reproduction of the 2009 T4 slip issued in the name of Jonathan Hayfron-Benjamin by Resolve shows a postal code of J8X 1A7, which is the postal code for the address in Gatineau which appears on the letter of employment and on the two Personal Tax Credits Returns, and which may be the postal code for the address of Albert Hayfron-Benjamin, as set out on the Direct-Deposit Document. Curiously, the CRA reproductions of the 2009 T4 slip and the 2009 T4A slip issued in the name of Jonathan Hayfron-Benjamin by J2 Global Canada Inc. (“J2”) show a

²⁰ Subsection 18.15(3) of the *Tax Court of Canada Act*, R.S.C. 1985, c. T-2, as amended (the “TCCA”).

postal code of J8X 1A8, which is similar to, but not the same as, the postal code of the above-mentioned address in Gatineau. The T4 slips issued by TeleTech, Convergys and Minacs show the province of employment as being Nova Scotia, whereas the T4 slips issued by Resolve and J2 show the province of employment as being Ontario.

- e) The CRA reproductions (Tab 4 in Exhibit R-1) of the 2010 T4 slips issued to the Appellant by Convergys and Minacs show the Appellant's postal code as being B3K 2Z5, which is the postal code corresponding to his address in Halifax. The CRA reproductions of the 2010 T4 slips issued to the Appellant by the Government of Canada show a postal code of B3K 5X5, which is an unidentified postal code for an address that appears to be in or near Halifax. The T4 slips issued by Convergys and Minacs show the province of employment as being Nova Scotia. For 2010 two T4 slips were issued to the Appellant by the Government of Canada; one T4 slip shows the province of employment as being Nova Scotia and the other shows the province of employment as being Ontario, notwithstanding that both T4 slips show the postal code as being B3K 5X5, which, as mentioned above, appears to relate to an address in or near Halifax.²¹ As well, Resolve issued a T4 slip in the name of Jonathan Hayfron-Benjamin for 2010. CRA's reproduction of that T4 slip shows a postal code of J8X 1A7, which seems to correspond to Albert Hayfron-Benjamin's address in Gatineau. The Resolve T4 slip shows the province of employment as being Ontario.
- f) The CRA's reproduction (Tab 6 in Exhibit R-1) of the T4 slip issued in the name of Jonathan Hayfron-Benjamin by D+H for 2011 shows the province of employment as being Ontario and the postal code of the employee as being J8X 1A7, which seems to correspond to Albert Hayfron-Benjamin's address in Gatineau, Quebec.
- g) The CRA's reproduction of the Appellant's 2010 Income Tax Return Information-Regular (Tab 8 in Exhibit A-1) shows the Appellant's address as being 5-2515 Brunswick Street, Halifax, Nova Scotia, B3K

²¹ I am perplexed by the issuance to the Appellant of two T4 slips by the Government of Canada for 2010, with one (indicating employment income of \$9,882.00) showing the province of employment as Nova Scotia, and the other (indicating employment income of \$4,062.60) showing the province of employment as Ontario. No explanation was provided at the hearing as to the reason for the Government of Canada having issued two T4 slips for 2010; however, I was not expecting an explanation, given that this Appeal deals with 2011, not 2010.

2Z5. This return was assessed on May 2, 2011, so the return was presumably filed sometime between January 1, 2011 and May 1, 2011.

My purpose in referring to the documents mentioned above is to show that, with the exception of the T4 slips issued by Resolve, D+H and J2, as well as one of the two T4 slips issued by the Government of Canada for 2010, the above-mentioned documents indicate that the Appellant had an address in or near Halifax from June 12, 2007 to May 2, 2011 and a place of employment in Nova Scotia during the same approximate period of time. This is significant because Ms. Di Pardo stated that, based on Jonathan Hayfron-Benjamin's letter of employment, he was not a work-from-home employee. It would follow that the individual employed under that name was working at D+H's premises in Ottawa, and not from his home.

[32] I found the testimony of Ms. Di Pardo to be forthright, credible and reliable. Of particular significance to this Appeal was her statement that D+H paid the employment remuneration in question into the bank account of Albert Hayfron-Benjamin, as that was the account referenced in the Direct-Deposit Document.

F. Resolution

[33] Based on the evidence of Ms. Di Pardo and the Direct-Deposit Document, it is clear that the remuneration paid by D+H for 2011 was deposited into a bank account belonging to Albert Hayfron-Benjamin and not to the Appellant. Furthermore, there is no allegation, pleading or conclusive evidence that Jonathan Hayfron-Benjamin directed D+H to pay remuneration ostensibly earned by him to Albert Hayfron-Benjamin.²²

[34] As I reviewed the signatures at the bottom of each of the signed Employment Documents, it seems to my untrained non-expert eye that the signatures are not all the same. As well, comparing the signatures on the Employment Documents with the signatures on the Adjustment Requests, it seems, again to my untrained non-expert eye, that some of the signatures on the Employment Documents have some similarity to, but are not the same as, the signatures on the Adjustment Requests. This suggests to me that it is plausible that someone who was misusing the Appellant's SIN may have forged his signature on

²² Given that the Appellant stated several times that he did not at any time work for Resolve or D+H, he, of course, would take the position that he did not earn any remuneration payable to him by either Resolve or D+H.

the Employment Documents. It would have been helpful to me if there had been expert handwriting evidence in this regard. Given that there was no such evidence and given that it is not my place to make a finding of forgery in the absence of such evidence, I do not base my decision on the apparent discrepancies in the signatures.

[35] Having considered the oral evidence, particularly that of Ms. Di Pardo, and having reviewed the documentary evidence, particularly the Direct-Deposit Document, I am satisfied on a balance of probabilities that the Appellant did not receive the remuneration in the amount of \$5,759.66 paid by D+H in 2011. As the concept of “receipt by the employee to be taxed” is a fundamental principle of the taxation of employment income,²³ and as there is no allegation, pleading, assumption or conclusive evidence²⁴ that the Appellant directed D+H to pay any remuneration to Albert Hayfron-Benjamin or that the Appellant concurred with such a payment,²⁵ I have concluded that the remuneration in the amount of \$5,759.66 is not to be included in computing the Appellant’s income for his 2011 taxation year.²⁶

[36] In reviewing the T4 slip (Tab 6 in Exhibit R-1) issued by D+H in the name of Jonathan Hayfron-Benjamin for 2011, I note that income tax in the amount of \$619.66, employee’s Canada Pension Plan contributions in the amount of \$245.11 and employee’s Employment Insurance premiums in the amount of \$102.39 were withheld by D+H from the remuneration. Accordingly, notwithstanding the conclusion that I have reached, I am satisfied that income tax and other source

²³ See subsection 5(1) of the *ITA* and *Phillips v The Queen*, [1994] 2 CTC 2416, 95 DTC 194 (TCC), ¶18.

²⁴ If the Appellant signed the Direct-Deposit Document, subsection 56(2) of the *ITA* might possibly be applicable. However, the Appellant’s name does not appear on the Direct-Deposit Document (although there is an employee number corresponding to the number assigned by Resolve to the employee employed under the name of Jonathan Hayfron-Benjamin). As well, as indicated above, the format of the Direct-Deposit Document suggests that it was signed by the bank account holder (also referred to as the customer), rather than by the employee.

²⁵ In other words, there was nothing to activate the application of subsection 56(2) of the *ITA*.

²⁶ I recognize that my finding in favor of the Appellant for 2011 might possibly appear to be at odds with the conclusion reached by Boyle J for 2009 and 2010. My conclusion should not be construed in any way as being a criticism of, or a disagreement with, the decision reached by Boyle J. Rather, my conclusion is simply an acknowledgement of the oral and documentary evidence adduced by Ms. Di Pardo in the hearing before me. It is my understanding that such evidence was not adduced in the hearing before Boyle J.

deductions have been withheld from the remuneration in question and presumably remitted to the CRA on behalf of the Receiver General for Canada.²⁷

[37] By reason of subsection 163(3) of the *ITA*, the burden of establishing the facts justifying the assessment of the penalty in the amount of \$576.00 assessed under subsection 163(1) of the *ITA* is on the Minister. As I have found that the Appellant did not receive the remuneration in the amount of \$5,759.66 paid by D+H in 2011, it follows that he did not fail to report that amount on his income tax return for 2011. Thus, the Minister has not established the facts necessary to justify the assessment of the penalty.

IV. CONCLUSION

[38] For the reasons set out above, this Appeal is allowed and the Reassessment is referred back to the Minister for reconsideration and reassessment on the basis that the remuneration in the amount of \$5,759.66 paid by D+H in respect of the period January 1, 2011 to March 1, 2011 is not to be included in computing the Appellant's income, and the penalty in the amount of \$576.00 under subsection 163(1) of the *ITA* is to be cancelled.

[39] Given that I found the Appellant to have been less than forthright in some of his answers and to have been evasive in other answers, I am not inclined to award costs in respect of this matter.

Signed at Ottawa, Canada, this 10th day of June 2016.

“Don R. Sommerfeldt”

Sommerfeldt J.

²⁷ If someone misused the Appellant's SIN to obtain employment with D+H, it may still be possible for the CRA to assess that individual; see subparagraph 152(4)(a)(i) of the *ITA*.

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AND HER MAJESTY THE QUEEN
PLACE OF HEARING: Halifax, Nova Scotia
DATE OF HEARING: January 25, 2016
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Sommerfeldt
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