

Docket: 2007-4392(IT)I

BETWEEN:

RAQUEL MENDOZA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeal of
Randie Mendoza (2007-4393(IT)I)
on June 23, 2008, at Montreal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the Appellant: Randie Mendoza

Counsel for the Respondent: Vlad Zolia
 Annick Provencher

JUDGMENT

The appeals from the reassessment dated July 26, 2006 under the *Income Tax Act* concerning the 2002 and 2004 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 28th day of November 2008.

“Réal Favreau“

Favreau J.

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Favreau J.

Citation: 2008 TCC 652
Date: 20081128
Dockets: 2007-4392(IT)I
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BETWEEN:

RAQUEL MENDOZA,
RANDIE MENDOZA,

Appellants,

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HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau, J.

[1] The Appellants are appealing the reassessments issued for the taxation years 2002, 2003 and 2004 by virtue of which the deductions claimed for child care expenses were disallowed and penalties, pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c.1 (5th supp.), as amended, (the “Act”), were levied on the refused amounts. The appeals were heard on common evidence.

[2] By virtue of a notice of reassessment dated July 26, 2006, the Minister of National Revenue (the “Minister”) refused the deduction of \$5,025 for the 2002 taxation year and \$10,300 for the 2004 taxation year, as eligible child care expenses, claimed by Mrs. Raquel Mendoza and applied the penalties on the amount of \$4,022 for the 2002 taxation year and on the amount of \$10,300 for the 2004 taxation year. The reassessment for the 2002 taxation year was beyond the normal reassessment period.

[3] By virtue of a notice of reassessment dated July 26, 2006, the Minister refused the deduction of \$9,200 for the 2003 taxation year, as eligible child care expenses, claimed by Mr. Randie Mendoza and applied the penalties on the refused amount.

[4] In order to establish the reassessments, the Minister relied on the following assumption of facts described in paragraph 8 of the Reply to the Notice of Appeal in respect of each appellant (on a consolidated basis):

8. a) The Appellant and her spouse, Randie Mendoza, are the parents of a daughter Rose Cassandra Mendoza, born on July 20, 2001, and son, Rex Christian Mendoza, born on December 18, 1996, the eligible children of the Appellant for the 2002 and 2004 taxation years; (admitted)

b) According to the Appellant [Raquel Mendoza]¹, during the 2002 taxation year Rose Cassandra Mendoza and Rex Christian Mendoza were provided day care by Aracili L. Curioso, and during the 2004 taxation year day care was provided by KIDZ Home Daycare; (admitted)

c) According to the Appellant [Randie Mendoza]¹, Rose Cassandra and Rex Christian attended KIDZ Home Daycare during the 2003 taxation year; (admitted)

d) For the 2002 taxation year the Appellant [Raquel Mendoza]¹, received a receipt, dated March 2, 2003, for the day care from Aracili L. Curioso for the period of June 2002 to mid September 2002, in the amount of \$2,013 for Rex Christian Mendoza; (admitted)

e) An additional receipt for the 2002 taxation year was received by the Appellant [Raquel Mendoza]¹, dated March 2, 2003, for the day care from Aracili L. Curioso for the period of August 9, 2002 to December 20, 2002, in the amount of \$3,012 for Rose Cassandra Mendoza; (admitted)

f) For the 2003 taxation year the Appellant [Randie Mendoza]¹ received a receipt, dated February 27, 2004 for the day care from KIDZ Home Daycare for the period of January 1, 2003 to December 31, 2003, in the amount of \$2,600 for Rex Christian Mendoza; (admitted)

g) For the 2003 taxation year the Appellant [Randie Mendoza]¹ also received a receipt, dated February 27, 2004, for the day care from KIDZ Home Daycare for the period of January 1, 2003 to December 31, 2003, in the amount of \$6,600 for Rose Cassandra Mendoza; (admitted)

¹ Name added in brackets for better understanding

- h) For the 2004 taxation year the Appellant [Randie Mendoza]¹ received a receipt, dated February 12, 2005, for the day care from KIDZ Home Daycare for the period of January, 2004 to December 31, 2004, in the amount of \$3,500 for Rex Christian Mendoza; (admitted)
- i) An additional receipt for the 2004 taxation year was received by the Appellant [Randie Mendoza]¹, dated February 12, 2005, for the day care from KIDZ Home Daycare for the period of January, 2004 to December 31, 2004, in the amount of \$6,800 for Rose Cassandra Mendoza; (admitted)
- j) The Appellant also claimed receipts, for child care for Rex Christian Mendoza, for the 2002 taxation year from Petit Chapiteau Commission Scolaire Montreal in the amount of \$120 and from Simonne-Monet Commission Scolaire Montreal in the amount of \$160; (admitted)
- k) According to the Appellant [Randie Mendoza]¹, Rose Cassandra Mendoza attended the KIDZ Home Daycare from June 3, 2002 to August 31, 2004; (denied as written because the relevant periods were from January 1 to December 31 of 2003 and from January 1 to December 31, of 2004)
- l) Arcili L. Curioso could not provide any evidence as to the attendance of Rose Cassandra Mendoza and Rex Christian Mendoza at her day care during the 2002 taxation year; (denied)
- m) The Appellant [Raquel Mendoza]¹, could not provide any evidence as any amounts paid to Arcili L. Curioso for the attendance of Rose Cassandra Mendoza and Rex Christian Mendoza at the day care of Arcili L. Curioso during the 2002 taxation year; (denied)
- n) In accordance with the Records of Attendance maintained by KIDZ Home Daycare Rose Cassandra Mendoza and Rex Christian Mendoza were not registered as attending KIDZ Home Daycare at anytime during the 2003 taxation year; (denied)
- o) In accordance with the Records of Attendance maintained by KIDZ Home Daycare Rose Cassandra Mendoza and Rex Christian Mendoza were not registered as attending KIDZ Home Daycare at anytime during the 2004 taxation year; (denied)
- p) Following an investigation of the KIDZ Home Daycare by the Minister, it was determined that KIDZ Home Daycare had issued the receipts to the Appellant [Raquel Mendoza]¹, in an amount greater than that which was accounted for in the books and records for KIDZ Home Daycare; (denied)

¹ Name added in brackets for better understanding

q) Following an investigation of the KIDZ Home Daycare by the Minister, it was determined that KIDZ Home Daycare had issued the receipts to the Appellant [Randie Mendoza]¹, in an amount greater than that which was accounted for in the books and records for KIDZ Home Daycare; (denied)

r) Following an analysis of the amounts paid to KIDZ Home Daycare by the Appellant [Randie Mendoza]¹, it was determined that for the 2003 taxation year there was no evidence of \$9,200 as being paid by the Appellant [Randie Mendoza]¹, as eligible day care expenses while the receipt issued to the Appellant [Randie Mendoza]¹, by KIDZ Home Daycare was in the amount of \$9,200; (denied)

s) For the alleged payments made to KIDZ Home Daycare the Appellant [Randie Mendoza]¹ could not substantiate the payment of eligible child care expenses in the amount of \$9,200 for the 2003 taxation year; (denied)

t) Following an analysis of the amounts paid to KIDZ Home Daycare by the Appellant [Raquel Mendoza]¹, it was determined that for the 2004 taxation year there was no evidence of \$10,300 as being paid by the Appellant [Raquel Mendoza]¹ as eligible day care expenses while the receipts issued to the Appellant [Raquel Mendoza]¹ by KIDZ Home Daycare were in the amount of \$10,300; (denied)

u) For the alleged payments made to KIDZ Home Daycare the Appellant [Raquel Mendoza]¹, could not substantiate the payment of eligible child care expenses in the amount of \$10,300 for the 2004 taxation year. (denied)

[5] Mrs. Raquel Mendoza was not present at the hearing of these appeals but she was represented by her husband.

[6] Mr. Randie Mendoza testified at the hearing and he filed as Exhibit A-1, two receipts dated March 2, 2003 signed by Mrs. Curioso by virtue of which she acknowledged having received the sums of \$2,013 and \$3,012 from the Appellants for child care services rendered for the period of June 2002 to mid-September 2002 for Rex Christian Mendoza and for the period of August 9, 2002 to December 20, 2002 for Rose Cassandra Mendoza. He further stated that the payments to Mrs. Curioso were made in cash at the end of each week.

[7] For 2003 and 2004, Mr. Randie Mendoza filed as Exhibit A-2, a home day care contract entered into with Mrs. Jane M. Corpuz, operating a daycare under the name of KIDZ Home Daycare. The contract bears the date of January 2003 and was to be effective for two years. The total amounts to be paid under the contract were \$125.00 per week for Rose Cassandra Mendoza and \$100.00 per week for Rex Christian Mendoza. The amounts were payable in cash.

¹ Name added in brackets for better understanding

[8] Mr. Randie Mendoza also filed as Exhibit A-3, a document from Immigration Canada which confirmed that Mr. Randie Mendoza had \$10,000 on hand when he moved to Canada in 1998.

[9] Finally, Mr. Randie Mendoza filed as Exhibit A-4, photocopies of four receipts signed by Mrs. Corpuz. The first two receipts were dated February 27, 2004 and were for the day care of Rose Cassandra Mendoza for the period beginning on January 1, 2003 and ending on December 31, 2003 in the amount of \$6,600 and for the day care of Rex Christian Mendoza for the same period and in the amount of \$2,600. The receipts for the period beginning on January 1, 2004 and ending on December 31, 2004 were both dated February 12, 2005 and were in the amounts of \$3,500 for day care of Rex Christian Mendoza and \$6,800 for day care of Rose Cassandra Mendoza.

[10] According to Mr. Randie Mendoza, his spouse usually dropped off the children at the daycare of Mrs. Curioso and he picked them up between 6:00 and 7:00 p.m. He also confirmed that Mrs. Curioso lived in a three-bedroom apartment close to his son's school and that she lived with her son.

[11] Mrs. Curioso who is now close to 70 years old, also testified and confirmed that the receipts she signed were prepared by Mrs. Raquel Mendoza. She further stated that she included in her income for the 2002 taxation year, the amounts of the receipts and that she did not have any other job and was not taking care of any other children. She also confirmed that her son was a friend of Mr. Randie Mendoza but she contradicted the testimony of Mr. Randie Mendoza when she said that the children were dropped off by Mr. Randie Mendoza and picked up by Mrs. Raquel Mendoza.

[12] Mr. André Faribault of the Canada Revenue Agency ("CRA") testified and explained that the audit originated from an anonymous written denunciation to the effect that certain Filipino accountants were issuing false child care receipts. Search warrants were issued in April 2005 in respect of three daycare centres and two accountants' offices. KIDZ Home Daycare was one of the targets.

[13] Mr. André Faribault explained how the audit has been conducted. A journal of attendance of children for the years 2002, 2003 and 2004 seized at the KIDZ Home Daycare has been filed as Exhibit R-1. Each child attending the daycare was identified by a number appearing on the left side of the journal. For KIDZ Home Daycare only, the name of 68 parents were listed while the daycare was operated in a

small 4-bedroom apartment (Exhibit R-3). The names of Raquel and Randie Mendoza appeared on that list as number 52.

[14] A notebook also seized at the KIDZ Home Daycare has been filed as Exhibit R-2. For 2003, the following entry has been made:

Rose Cassandra Mendoza	6,600.00	
Jan 01, 2003 – Dec 31, 2003		
Rex Christian Mendoza	2,600.00	
Jan 01, 2003 – Dec 31, 2003		
	<hr/>	
	9,200.00	
Parents: Randie S. Mendoza		
Raquel Mendoza		1,350

and, for 2004, the notebook contains the following entry:

Rose Cassandra Mendoza 6,800 =	\$10,300.00	
Date of birth: July 20/2001		
Date of Daycare: Jan 2004 - December 31, 2004		
Rex Christian Mendoza 3,700 .00		\$ 1,545.00
Date of birth: Dec 18/96		
Date of Daycare: Jan 2004 - Dec 31, 2004		
Parents: Raquel Mendoza		
Randie S. Mendoza		

[15] Mr. Faribault explained that the amounts of \$9,200 and \$10,300 represented the amounts of the receipts and that the amounts of \$1,350 and \$1,545 represented the commission charged for the issuance of the receipts (usually between 10% and 15%).

[16] The analysis of the revenues of Mrs. Corpuz for 2002, 2003 and 2004 prepared by Mr. Archambault based upon the journal of attendance (Exhibit R-4) shows that the children of Raquel and Randie Mendoza did not attend the daycare centre in 2003 and 2004.

[17] As a result of the investigation, criminal charges were laid against Mrs. Corpuz. She pleaded guilty and was fined. In a statutory declaration dated September 11, 2007, Mrs. Corpuz made the following declarations:

“I have kept in a notebook for the years 2002, 2003 and 2004, all the amounts of the false child care receipts that I have issued to the parents and all the amounts of the commissions that I have received from the parents (this document has been seized by “CRA” April 7th, 2005 and listed as number 1.38 of the exhibit schedule of the prosecution report).

[...]

I have kept in a notebook named “KIDZ HOME DAY CARE EUROPHIL” the following information in regards of the operations of my daycare, for the period starting in February 2002 to February 2004: the year, the month, the day, a list of the kids that I took care of, and for each kid, a “v” indicating the presence of the child at my daycare, the letter “A” indicating that the child was absent that day at my daycare and a figure representing the amount that I have received to take care of that kid (this document has been seized by “CRA” April 7th 2005 and listed as number 1.39 of the exhibit schedule of the prosecution report).

I have kept in an other notebook the same information mentioned above, for the period starting March 2004 until the month of December 2004 (this document has been seized by “CRA” April 7th 2005 and listed as number 1.40 of the exhibit schedule of the prosecution report).

For the year 2003, according to my memory and to my notebook (1.38), I have issued a false child care receipt of:

[...]

28 - \$ 6600+\$ 2600 totalling \$ 9200 from Randie Mendoza and Raquel Mendoza, parents of Rex and Rose;

For the year 2004, according to my memory and to my notebook (1.38), I have issued a false child care receipt of:

[...]

20 - \$ 6800 + \$ 3500 totalling \$ 10300 from Randie Mendoza and Raquel Mendoza, parents of Rex and Rose;

[18] In his testimony, Mr. Archambault further confirmed the amounts of the total income of Mrs. Raquel Mendoza and Mr. Randie Mendoza based on their tax returns for the taxation years 2002, 2003 and 2004. The total income of Mrs. Raquel Mendoza was \$13,230 for 2002, \$19,288 for 2003 and \$23,722 for 2004. The total income of Mr. Randie Mendoza was \$16,077 for 2002, \$16,974 for 2003 and \$26,606 for 2004.

[19] Finally, Mr. Archambault explained that Mrs. Corpuz included in her income all the amounts of the false receipts but claimed expenditures to offset the effect of the income inclusion.

[20] Mrs. Corpuz also testified at the hearing that the children of the Mendoza family never attended her daycare. She recognized having issued false receipts to the Mendoza family in consideration of a 15% commission. She also stated that the journal of attendance of children (Exhibit R-1) contains all the names of children who attended the daycare and amounts paid by the parents and that the amounts appearing on page 20 of the notebook (Exhibit R-2) represented the amounts of the false receipts issued to Raquel and Randie Mendoza for 2003 and the amount of the commission paid by them. She also confirmed that the receipts (Exhibit A-4) are the false receipts issued to the Mendoza family. She added that the contract referred to in Exhibit A-2 has been signed in 2005 at the request of the Mendoza family. Finally, she said that she had no other ledger or notebook that was not seized by the CRA contrary to what Mr. Randie Mendoza stated.

Analysis

[21] The first question is to determine whether or not the Minister was justified to reassess the 2002 taxation year beyond the normal reassessment period as provided by subsections 152(3.1) and 152(4.1) of the *Act*? To do so, the Minister must establish that Mrs. Raquel Mendoza, by claiming the child care deduction in the amount of \$5,025, can reasonably be seen as having made a misrepresentation that is attributable to neglect, carelessness or wilful default.

[22] The evidence on this point may be summarized as follows:

- a) the testimony of Mrs. Curioso was not too credible as she cannot remember anything except to have taken care of the children of the Mendoza family and that her son was Mr. Mendoza's friend;
- b) her testimony was in contradiction with the testimony of Mr. Randie Mendoza in that he said that his spouse brought the children to Mrs. Curioso's son's house and he picked them up between 5 and 6 o'clock. Mrs. Curioso stated that the children were brought by Mr. Mendoza and were picked up by Mrs. Raquel Mendoza around 6 o'clock;
- c) there is no proof of payment by Mrs. Raquel Mendoza of the child care expenses in the amount of \$5,025;
- d) the receipts were prepared by Mrs. Raquel Mendoza but were signed by Mrs. Curioso;

- e) child care expenses claimed as a deduction in the amount of \$5,305 in total does not appear reasonable considering the fact that both parents were receiving unemployment insurance benefits in 2002 and that Mrs. Raquel Mendoza has earned only \$6,777 as employment income in that year.
- f) Mrs. Raquel Mendoza did not testify at the hearing, so a negative inference is drawn from her absence.

[23] Considering the foregoing, I conclude that the Minister was justified to reassess the 2002 taxation year of Mrs. Raquel Mendoza to disallow the child care expenses in the amount of \$5,025 as Mrs. Raquel Mendoza has not demonstrated that such amount was actually paid as eligible child care expenses to Mrs. Curioso for the care of her children in accordance with subsection 63(3) of the *Act*. Furthermore, the Minister was justified to apply the penalties pursuant to subsection 163(2) of the *Act* on the amounts of \$4,022 for the 2002 taxation year, as by claiming these amounts as child care expenses, Mrs. Raquel Mendoza knowingly or under circumstances amounting to gross negligence, made or participated in, asserted to or acquiesced in the making of a false statement or omission, in filing her tax return for the 2002 taxation year as such an amount was not paid by Mrs. Raquel Mendoza as eligible child care expenses to Mrs. Curioso.

[24] The issues to be decided for the 2003 and 2004 taxation years concern the disallowance by the Minister of the amounts of \$9,200 and \$10,300 respectively claimed by Mr. Randie Mendoza and Mrs. Raquel Mendoza as child care expenses for the care of their eligible children at KIDZ Home Daycare and the application of penalties pursuant to subsection 163(2) of the *Act* on the amounts of \$9,200 for the 2003 taxation year and \$10,300 for the 2004 taxation year for the disallowed child care expenses.

[25] The evidence on these points is clear and is not contradicted in anyway. There is no proof of payment for child care expenses made by Mrs. Raquel Mendoza and by Mr. Randie Mendoza to KIDZ Home Daycare nor is there proof that the children of the Mendoza family ever attended the KIDZ Home Daycare during the 2003 and 2004 taxation years. On the contrary, Mrs. Corpuz confirmed in a statutory declaration that the children of the Mendoza family never attended her daycare centre, and that the receipts issued to them were false. She further testified that a commission had been paid by them to her in consideration of the issuance of the false receipts and that the document entitled "Home Day Care Contract" was effectively signed in 2005 and not in January of 2003, as indicated in the contract.

[26] Considering the foregoing, the Minister was justified to disallow the child care expenses claimed by Mr. Randie Mendoza in 2003 and by Mrs. Raquel Mendoza in 2004 and to apply the penalties pursuant to subsection 163(2) of the *Act* on the amount of \$9,200 for the 2003 taxation year of Mr. Randie Mendoza and on the amount of \$10,300 for the 2004 taxation year of Mrs. Raquel Mendoza.

[27] For all the reasons described above, the appeals for the 2002, 2003 and 2004 taxation years are dismissed.

Signed at Ottawa, Canada, this 28th day of November 2008.

“Réal Favreau“

Favreau J.

CITATION: 2008 TCC 652

COURT FILE NOS.: 2007-4392(IT)I
2007-4393(IT)I

STYLES OF CAUSE: Raquel Mendoza and HMQ
Randie Mendoza and HMQ

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: June 23, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: November 28, 2008

APPEARANCES:

For the Appellant Randie Mendoza:	The Appellant himself
Agent for the Appellant Raquel Mendoza:	Randie Mendoza
Counsel for the Respondent:	Vlad Zolia Annick Provencher

COUNSEL OF RECORD:

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