

Docket: 2008-719(IT)I

BETWEEN:

ABBEY KATEREGGA SIRIVAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on October 24, 2008, at Toronto, Ontario
By: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Hong Ky (Eric) Luu

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are allowed, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that in computing income, the Appellant is entitled to deduct child support amounts of \$4,800 in each of 2003 and 2004. Interest and penalties are to be readjusted accordingly.

The purported appeal from the assessment made under the *Income Tax Act* for the 2005 taxation year is quashed.

The \$100 filing fee is to be refunded to the Appellant.

Signed at Ottawa, Canada, this 13th day of February 2009.

“Campbell J. Miller”

C. Miller J.

Citation: 2009 TCC 100
Date: 20090213
Docket: 2008-719(IT)I

BETWEEN:

ABBEY KATEREGGA SIRIVAR,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Miller J.

[1] Mr. Abbey Sirivar appeals, by way of the Informal Procedure, the reassessments of the Minister of National Revenue of his 2003, 2004 and 2005 taxation years. Mr. Sirivar raised several issues in his appeals though dropped one at trial and raised others. I will attempt to identify what I believe are the issues left before me:

- (i) Whether 2005 is properly before the Court?
- (ii) The deductibility of child support amounts in 2003 and 2004 of \$6,640 and \$4,800.
- (iii) With respect to the 2003 taxation year, whether the Minister failed to credit Mr. Sirivar for withholdings he claims were deducted for Canada Pension Plan (“CPP”) and income tax and remitted by Alterna Savings.
- (iv) Interest and penalties with respect to 2003, 2004 and 2005.

(i) *Is the 2005 taxation year properly before the Court?*

[2] No, it is not. There is no evidence that a Notice of Objection was ever filed pursuant to subsection 165(1) of the *Income Tax Act*. Certainly no such document was produced. Mr. Sirivar did produce a letter dated September 28, 2006 from the Canada Revenue Agency which referred to an objection to the 2005 taxation year, but this can only be a mistake because Mr. Sirivar did not file his 2005 tax return until January 2007. On balance, I conclude Mr. Sirivar failed to file a Notice of Objection for 2005 on a timely basis precluding him from now raising the 2005 taxation year in this appeal.

(ii) *Is Mr. Sirivar entitled to a deduction for child support amounts of \$6,640 (at trial Mr. Sirivar increased that amount to \$9,761) in 2003 and \$4,800 in 2004?*

[3] Mr. Sirivar testified that he was required by Court Order to pay \$400 per month in child support. Before dealing with additional payments in 2003, Mr. Sirivar must satisfy me that indeed any payments he made for child support were made pursuant to an Order of a Court made prior to May 1997. This is a requirement pursuant to subsections 60(b) and 56.1(4) of the *Act*. At trial, Mr. Sirivar provided a copy of a Court Order from the Ontario Superior Court of Justice dated July 27, 2007 which ordered that Mr. Sirivar's obligation to pay \$400 per month be terminated effective May 31, 2007. Unfortunately this Order did not identify the Order which gave rise to the obligation to pay the \$400. Mr. Sirivar did provide support for a finding that there was a child support Order dated June 3, 1986 ordering payments of \$300 per month. He testified this Order was varied shortly thereafter to increase the amount to \$400. At the time of trial, he produced no evidence of that subsequent Order. I therefore allowed him several weeks to locate the Order which ordered payment of \$400 per month. In that time, Mr. Sirivar was able to provide a copy of an Order of Judge Thompson dated April 23, 1987 which did in fact order payment of \$400 per month commencing February 1, 1987 for child support. I accept Mr. Sirivar's testimony that the \$400 per month was paid (albeit by way of garnishment) pursuant to this Order, and therefore, pursuant to subsections 60(b) and 56.1(4) of the *Act*, he is entitled to a deduction of \$4,800 in both 2003 and 2004.

[4] Mr. Sirivar attempted to prove that there were additional garnishments in 2003, but the computer-generated printouts that he relied upon in support of that position (Exhibit A-3) appear to relate to earlier years. They do not prove payment of anything over and above the \$400 per month in the 2003 taxation year.

(iii) *With respect to the 2003 taxation year, did the Minister fail to credit Mr. Sirivar with overpayments of CPP and income tax he claims may have been remitted by Alterna Savings (formerly CS Co-op), the organization which handled Mr. Sirivar's self-funded leave account?*

[5] The facts of the matter were confusing, but I need not try to straighten them out as there are a few fundamental facts which, unfortunately for Mr. Sirivar, result in the dismissal of this part of his appeal.

[6] Firstly, I will deal with the CPP overpayments to which Mr. Sirivar believes he is entitled to a refund. Mr. Sirivar brought no request for a ruling on this issue as required by section 26.1 of the *Canada Pension Plan*.¹ Only if such a ruling is requested and the taxpayer disagrees with the ruling can the taxpayer then appeal to the Minister, and it is only from that decision of the Minister that the taxpayer may appeal to this Court. I find there is no valid appeal with respect to CPP before this Court. Further, subsection 26.1(4) of the *Canada Pension Plan* states:

26.1(4) Unless a ruling has been requested with respect to a person in pensionable employment,

- (a) an amount deducted from the remuneration of the person or paid by an employer as a contribution for the person is deemed to have been deducted or paid in accordance with this *Act*; or
- (b) an amount that has not been so deducted or paid is deemed not to have been required to be deducted or paid in accordance with this *Act*.

[7] With respect to the income tax withholdings, I find Mr. Sirivar is not appealing the assessment of tax in connection with the self-funded leave plan, but is disputing how much has been collected and remitted. This does not go to the assessment of tax, which is the subject over which this Court has jurisdiction: the Court does not have jurisdiction regarding the collection of tax. Indeed, it is not clear whether Mr.

¹ R.S.C. 1985, c. C-8, as amended.

Sirivar's concern lies as much with Canada Revenue Agency as it does with Alterna Savings, for, as he asked in his additional written representations:²

- c) What amounts were actually deducted at source and withheld by the Self-Funded Leave Plan administrator as Taxes...?
- d) Were the amounts deducted at source and withheld by the Self-Funded Leave Plan administrator remitted to the respondent?
- e) If not, who has the legal right and obligation to recover these amounts from the Self-Funded Leave Plan administrator, given that, they were so deducted and withheld "IN-TRUST FOR HER MAJESTY, THE QUEEN, IN RIGHT OF CANADA"?

[8] These are not questions that go to the correctness of Mr. Sirivar's tax assessment. They go to the payment of such taxes, and, as I have indicated, that is a subject not within the Court's statutory mandate. Mr. Sirivar may have recourse to other Courts, but the relief he seeks ("an Order directing the Respondent to acknowledge and recognize the full amount of taxes paid in the amount of \$4,477.01") is not an Order this Court can provide.

[9] In summary, the appeal is allowed and referred back to the Minister for reconsideration and reassessment on the basis that Mr. Sirivar is entitled to deduct child support amounts of \$4,800 in 2003 and \$4,800 in 2004, with interest and penalties to be readjusted accordingly.

Signed at Ottawa, Canada, this 13th day of February 2009.

"Campbell J. Miller"

C. Miller J.

² Additional Representation in Respect of Self-Funded Leave of the Appellant filed December 29, 2008.

CITATION: 2008 TCC 100

COURT FILE NO.: 2008-719(IT)I

STYLE OF CAUSE: ABBEY KATEREGGA SIRIVAR and HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 24, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF JUDGMENT: February 13, 2009

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Hong Ky (Eric) Luu

COUNSEL OF RECORD:

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