

TAX COURT OF CANADA

BETWEEN:

MESFIN HAGOS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

HEARD BEFORE ASSOCIATE CHIEF JUSTICE ROSSITER

in the Courts Administration Service, Courtroom 6B,

180 Queen Street West,

Toronto, Ontario

on Tuesday, September 30, 2008 at 10:50 a.m.

ORAL REASONS FOR JUDGMENT

APPEARANCES:

Mesfin Hagos

Self-represented

Ms. Sharon Lee

For the Respondent

Also Present:

Mr. William O'Brien

Court Registrar

Ms. Linda O'Brien

Court Reporter

A.S.A.P. Reporting Services Inc. © 2008

200 Elgin Street, Suite 1105

130 King Street West, Suite 1800

Ottawa, Ontario K2P 1L5
(613) 564-2727

Toronto, Ontario M5X 1E3
(416) 861-8720

1 Toronto, Ontario

2 --- Upon commencing the Decision on Tuesday,

3 September 30, 2008 at 10:50 a.m.

4 JUSTICE ROSSITER: The Court will
5 deliver its judgment now.

6 This particular case concerns a
7 reassessment of the appellant's 2004 taxation year
8 where the Minister of National Revenue disallowed
9 the deduction in the amount of \$35,000 under
10 section 118, 118.2, medical expense tax credit of
11 the Act.

12 It appears that the appellant
13 became aware in December 2002 that his twin brother
14 Assefa Hagos was extremely ill. Assefa had at one
15 point in time been a Canadian resident. However,
16 it appears in 1998 he became a resident of Eritrea
17 and remained a resident of Eritrea until his death
18 in February 2003.

19 The appellant claims that he
20 incurred certain expenses in the amount of \$35,000
21 which he seeks to deduct from the computation of
22 his income for 2004.

23 In reviewing the evidence, the
24 amounts that he expended included \$12,000 for an
25 exit visa for his younger brother to help him with

1 the return of his twin brother to Canada; airline
2 tickets of approximately \$4,531; \$2,700 for hotel
3 and meals for himself; funeral expenses of \$4,000
4 for his twin brother; family expenses of \$6,750;
5 airport tax of \$250.

6 The position of the appellant is
7 that these expenses were incurred for and on behalf
8 really of himself because he is his twin brother.
9 That's basically the essence of his argument, even
10 though they were expended for the purpose of his
11 twin brother's health and to retrieve his twin
12 brother to Canada.

13 Section 118 of the Income Tax Act
14 is a section that deals with medical expense tax
15 credits. In particular, section 118.2 is the most
16 relevant provision.

17 The law is quite clear that the
18 appellant must satisfy all of the requirements of
19 section 118.2 in order to be eligible for a medical
20 expense tax credit.

21 Included in the requirements of
22 118.2 is that the moneys be expended in relation to
23 a dependent. A dependent is defined specifically
24 in section 118(6). It includes a brother if
25 resident in Canada at any time in the year. So

1 there's no question that the appellant's brother
2 was his brother who would appear to have been a
3 dependent to some extent, but was he a resident of
4 Canada at any time in the year?

5 He passed away in 2003, so he was
6 not a resident in Canada in 2004 when the moneys
7 were alleged to be expended and claimed. If we're
8 concerned with 2003, he was not a resident in
9 Canada in 2003. He was not a resident in Canada
10 since 1998, even though he was a citizen of Canada,
11 and, therefore, the claim for deductibility must
12 fail.

13 As well, the claim for
14 deductibility was for 2004 when in fact they must
15 be claimed in the year they were incurred, which is
16 2003, and for that reason, the expenses claimed
17 must also fail.

18 The Court has all kinds of
19 sympathy with respect to the personal circumstances
20 of the appellant, but, unfortunately, the Court
21 cannot make decisions based upon sympathy.

22 The Income Tax Act does not allow
23 deductibility on the facts presented. The Income
24 Tax Act does not allow the Court to bring into play
25 the concept of sympathy. It's as simple as that.

1 The jurisdiction of the Court does not extend to
2 makings decisions based upon sympathy.

3 The Federal Court of Appeal stated
4 quite succinctly in *Chaya v. R*, a decision of the
5 Federal Court of Appeal in 2004, 2004 DTC 6676,
6 when Justice Rothstein, speaking on behalf of the
7 Court, stated at paragraph 4 as follows:

8 "The applicant says the law
9 is unfair, and he asked the
10 Court to make an exception
11 for him; however, the Court
12 does not have that power.
13 The Court must take the
14 statute as it finds it. It
15 is not open to the Court to
16 make exceptions to the
17 statutory provisions on
18 grounds of fairness or
19 equity. If the applicant
20 considers the law unfair, his
21 remedy is with parliament,
22 not with this Court."

23 So I state that to the appellant
24 also. The appellant says that the law is unfair
25 and he asked the Tax Court to make an exception for

1 him. This Court, the Tax Court of Canada, does not
2 have that power. The Tax Court of Canada must take
3 the statute as it finds it. It is not open to the
4 Tax Court of Canada to make exceptions to the
5 statutory provisions on the grounds of fairness or
6 equity.

7 If the appellant considers the law
8 unfair, and I'm not saying that the law is not
9 unfair, all I'm saying is that if the appellant
10 considers the law unfair, his remedy is with
11 parliament, not with this Court.

12 No one is suggesting, Mr. Hagos,
13 that the Income Tax Act is fair. No one is
14 suggesting the Income Tax Act is reasonable. That
15 is not for me to determine.

16 My responsibility is to apply the
17 law as it is before me. The Income Tax Act speaks
18 precisely and clearly, as does the Federal Court of
19 Appeal.

20 For the grounds already spoken of,
21 I dismiss the appeal. There will be no order with
22 respect to costs.

23 Any questions, Mr. Hagos?

24 MR. HAGOS: I'm not sure how to
25 say this.

1 THE CHAIR: I'm not asking you to
2 say something. I'm asking: Do you have any
3 questions?

4 MR. HAGOS: Yeah, my question is,
5 maybe this could be my misunderstanding, I thought
6 this court was independent and was able to make
7 exceptions.

8 JUSTICE ROSSITER: This Court is
9 independent. We can make exceptions where the law
10 allows. The law does not allow us to make
11 exceptions in this particular case because the
12 facts do not fit within the confines of section
13 118.2 of the Income Tax Act. There is nothing I
14 can do. Okay.

15 MR. HAGOS: Yeah, so --

16 JUSTICE ROSSITER: Pardon me.

17 MR. HAGOS: How do I appeal this?

18 JUSTICE ROSSITER: If you want to
19 appeal it --

20 MR. HAGOS: Is this final or --

21 THE CHAIR: -- there is provisions
22 for you to appeal it to the Federal Court of
23 Appeal. I'm sure if you talk to Ms. Lee, she'll
24 tell you how the process works. I'm not in that
25 business, to be quite frank.

1 Ms. Lee, any questions?

2 MS. LEE: No, Your Honour.

3 JUSTICE ROSSITER: The appeal is
4 dismissed. Thank you. Have a good day.

5 --- Whereupon the proceedings adjourned

6 at 10:58 a.m.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Shorthand and transcribed therefrom,
the foregoing proceeding.

Linda O'Brien, Computer-Aided Transcription