

Docket: 2008-1292(IT)I

BETWEEN:

VICHIT SAMBOUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on February 9, 2010, at Montréal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Christina Ham

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* in respect of the 2000 and 2001 taxation years are dismissed, in accordance with the attached Reasons for Judgment.

The appeal from the reassessment made under the *Income Tax Act* for the 2002 taxation year is allowed in part, and the reassessment is referred back to the Minister for reconsideration and reassessment so that will subtracted the unreported income of \$13,726.85, adjusted as per the applicable interest and penalties, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 6th day of May 2010.

"Réal Favreau"

Favreau J.

Translation certified true
on this 18th day of November 2010

François Brunet, Revisor

Citation: 2010 TCC 249
Date: 20100506
Docket: 2008-1292(IT)I

BETWEEN:

VICHIT SAMBOUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] These are appeals under the informal procedure from reassessments made under the *Income Tax Act*, R.S.C. (1985) c. 1 (5th Supp.), as amended (the Act), in respect of the 2000, 2001 and 2002 taxation years.

[2] In making the reassessments on March 18, 2005, the Minister of National Revenue (the Minister) added the following amounts to the appellant's income after conducting an audit using the net worth method.

2000 = \$24,389

2001 = \$12,652

2002 = \$32,406

Penalties for negligence under subsection 163(2) of the Act were added to the unreported income amounts for the 2000, 2001 and 2002 taxation years, namely, \$3,962, \$2,887 and \$3,653 respectively.

[3] The reassessment for 2000, which was made after the taxpayer's normal assessment period, was revised on February 5, 2008, more specifically, the additional unreported income earlier established at \$24,389, was reduced by \$3,230, that is, to \$21,159. Accordingly, the net family income for 2000, earlier established at \$41,537,

was revised to \$38,307, and the penalty under subsection 163(2) of the Act was recalculated to take into account the decrease in the unreported income for the year in question.

[4] In determining the taxes owed by the appellant for the 2000, 2001 and 2002 taxation years, the Minister relied on the following facts set out in paragraph 28 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) During the years at issue, the appellant operated a sewing business.
- (b) The appellant did sewing work for the company S & F Clothing (Canada) Ltd.
- (c) The appellant did not report the income he received from S & F Clothing (Canada) Ltd for the 2000, 2001 and 2002 taxation years.
- (d) The appellant has four children.
- (e) The appellant's spouse is Buntha Horng.
- (f) In her income tax returns for the 2000, 2001 and 2002 taxation years, Buntha Horng reported the following income:

2000: \$8,640
2001: \$9,073
2002: \$23,438

- (g) In his income tax returns for the 2000, 2001 and 2002 taxation years, the appellant reported the following total income:

	2000	2001	2002
- Net business income	\$9,326	\$0	\$0
- Employment Income	\$0	\$17,274	\$29,910
- Net rental losses:	(\$686)	(\$462)	\$0
-Total income:	\$8,640	\$16,812	\$29,910

[5] According to the Canada Revenue Agency (CRA) auditor, the audit of the appellant's business followed an audit of S & F Clothing (Canada) Ltd during which the appellant's invoices for the period from May to September 2002 were found.

They were invoices for piecework sewing. After noticing that the amounts on those invoices had not been reported by the appellant in his 2002 income tax return, the CRA audited the appellant using the net worth method for the 2000, 2001 and 2002 taxation years.

[6] The appellant testified at the hearing and explained that those invoices were for sewing work done by his spouse at home. His spouse was employed by S & F Clothing (Canada) Ltd in 2000, 20001 and 2002, and she was even a production manager in 2002. During the initial interview with the auditor, the appellant stated that the agreement with S & F Clothing (Canada) Ltd was that the amounts paid for services rendered did not have to be reported to the tax authorities and that no T4 slips would be issued. At the hearing, the appellant explained that those invoices were paid with cheques made out in his name. According to the auditor, the payment of those invoices could not be traced in the appellant's bank accounts.

[7] The CRA auditor also noted that no rental income had been reported by the appellant in 2002 while such income had been reported for the 2000 and 2001 taxation years. In his testimony, the appellant acknowledged that, in 2002, he had purchased a rental property located at 4154–4156 Cl  roux Street in Laval, Quebec, in a 50/50 partnership with his spouse. He also stated that he had sold it in 2008 and given his former spouse the amount that belonged to her (the couple separated in 2007). The appellant did not explain why he had failed to report the rental income in his tax return for 2002.

[8] In his submissions following the receipt of his draft assessments, the appellant challenged, among other things, the validity of the CRA's assumptions used to estimate the cost of living. Apart from the adjustments made with respect to the 2000 taxation year, the appellant's submissions were not accepted by the CRA because the assumptions made were based on the information provided by the appellant himself without any supporting documents. Those assumptions were also corroborated by the appellant's credit card and bank account statements. Following the appellant's submissions, the CRA made him a very attractive settlement offer but he refused it because he did not want to pay penalties or interest or give up his right of appeal.

[9] At the hearing, the appellant respectfully submitted that two amounts should have been subtracted from the additional income for 2002 in connection with the appellant and his spouse's purchase of a residence located at 812 7th Avenue in Laval. The residence belonged to the brother of the appellant's spouse. The statement of disbursements of the executing notary refers to the fact that an amount of \$23,750 was paid in advance to the seller on a total sale price of \$95,000. As stated by the

notary in a note dated May 28, 2007, the \$23,750 down payment was not supported by any specific evidence other than the signature on the statement of disbursements that attests to it. No documentary evidence (cheques, receipts or bank statements) or testimonial evidence on the part of the seller, the appellant's spouse or representative from the appellant's financial institution was submitted in order to corroborate the payment of \$23,750 by the appellant and his spouse. Accordingly, the \$23,750 cannot be subtracted from the unreported income.

[10] The other point raised by the appellant concerns the amount of \$13,726.85 representing the balance of the sale price for the residence. The brother of the appellant's spouse instructed the notary retained to give that amount directly to his sister. A cheque dated April 16, 2002, in the amount of \$13,726.85 payable to Buntha Horng was therefore drawn on the notary's trust account. The cheque in question was endorsed by the appellant's spouse and deposited in a bank account that was unknown to the CRA and not audited by them. The respondent refuses to subtract the \$13,726.85 from the appellant's additional unreported income because no other documentary evidence corroborated who was the owner of the bank account that the cheque was deposited in. Even though the information concerning the bank account in question was not provided, the Court is of the opinion that there is enough evidence for the \$13,726.85 to be subtracted from the appellant's additional unreported income for the 2002 taxation year.

[11] Apart from the \$13,726.85 discussed in the paragraph above, the appellant did not explain the substantial gap between his assets and his expenses, as established by the CRA's net worth analysis. Although certain weaknesses or errors concerning some components of the net worth were noted at the hearing, those weaknesses or errors do not make it possible to discredit the merits of the exercise. The weaknesses or errors noted primarily concern two credit cards of the appellant, which the CRA did not take into account despite the fact that they had obtained the account statements for them, as well as some bank accounts including the one in which the cheque for \$13,726.85 was deposited, regarding which the CRA found no information.

[12] I think it is important to point out that the net worth method is essentially based on a set of components provided in part by the taxpayer himself as well as by a review of documents and supporting papers, by statistical data and by mathematical calculations. To completely discredit the validity of a net worth, the taxpayer must provide evidence that would make it possible to identify the source of his unreported income and show that it is not taxable.

[13] It is entirely up to the appellant to justify the gaps noted by means of the net worth method. To do so, he must establish, on the balance of probabilities, the plausibility, reasonableness, fairness and consistency of his claims. In this case, the appellant has not discharged his burden of proof.

[14] The appellant did not report the income from S & F Clothing (Canada) Ltd for the 2000, 2001 and 2002 taxation years and did not report rental income for the 2002 taxation year.

[15] Accordingly, it was warranted for the Minister to make reassessments in accordance with subsection 152(4) for the 2000 taxation year after the normal assessment period because the appellant made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed fraud in filing the return or in supplying information for that taxation year.

[16] The Minister also correctly established the goods and services tax credit in respect of the appellant for the 2000 taxation year under section 122.5 of the Act, which is calculated based on net family income.

[17] In the light of the facts above, the Court is of the opinion that the penalties imposed on the appellant for the 2000, 2001 and 2002 taxation years were appropriate and imposed in compliance with subsection 163(2) of the Act, because the appellant, knowingly, or under circumstances amounting to gross negligence, has made a false statement or omission in his returns by not adding to his income substantial amounts for the 2000, 2001 and 2002 taxation years.

[18] For these reasons, the appeals from the reassessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are dismissed and the appeal from the reassessment for the 2002 taxation year is allowed in part, and the reassessment is referred back to the Minister for reconsideration and reassessment in order to subtract the unreported income of \$13,726.85 with adjustments to interest and penalties.

Signed at Ottawa, Canada, this 6th day of May 2010.

"Réal Favreau"

Favreau J.

Translation certified true
on this 18th day of November 2010

François Brunet, Revisor

CITATION: 2010 TCC 249
COURT FILE NO.: 2008-1292(IT)I
STYLE OF CAUSE: Vichit Samboun and Her Majesty the Queen
PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: February 9, 2010
REASONS FOR JUDGMENT BY: The Honourable Justice R al Favreau
DATE OF JUDGMENT: May 6, 2010

APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Christina Ham

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada