

Docket: 2010-1458(GST)I

BETWEEN:

CATHERINE ANTWI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of
Catherine Antwi (2010-2690(IT)I) on April 13, 2011, at Toronto, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

Agent for the Appellant: Maudood Sheikh
Counsel for the Respondent: Rita Araujo

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the assessment of the Minister of National Revenue made under the *Excise Tax Act* and dated October 4, 2007 is dismissed.

Signed at Ottawa, Canada, this 21st day of April 2011.

“G.A. Sheridan”

Sheridan J.

Docket: 2010-2690(IT)I

BETWEEN:

CATHERINE ANTWI,

Appellant,

and

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Appeal heard on common evidence with the appeal of
Catherine Antwi (2010-1458(GST)I) on April 13, 2011,
at Toronto, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

Agent for the Appellant: Maudood Sheikh
Counsel for the Respondent: Rita Araujo

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeals from the reassessments of the Minister of National Revenue under the *Income Tax Act* of the 2004 and 2005 taxation years are dismissed.

Signed at Ottawa, Canada, this 21st day of April 2011.

“G.A. Sheridan”

Sheridan J.

Citation: 2011TCC225
Date: 20110421
Docket: 2010-1458(GST)I

BETWEEN:

CATHERINE ANTWI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant, Catherine Antwi, is appealing the reassessments of the Minister of National Revenue of her 2004 and 2005 taxation years. In those years, the Appellant through her tax preparer (an individual known only as “Sam” who abandoned her at the audit stage) reported business income from a sole proprietorship engaged in selling hair care and beauty supplies. During those years, the Appellant was also employed at a pizza restaurant. Briefly stated, after an audit involving a deposit analysis of the sole proprietorship’s business account, the Minister increased the Appellant’s net business income and disallowed certain expenses under the *Income Tax Act* and under the *Excise Tax Act*, assessed for uncollected Goods and Service Tax and reduced the Input Tax Credits claimed by the Appellant. The gist of the assumptions underlying the reassessments was that the Appellant had purchased supplies from cash in the till without ever troubling to report it as income.

[2] All of the appeals were heard together on common evidence. The Appellant was the only witness to testify. She was represented by her agent who advised the Court that he was a retired Canada Revenue Agency official now working as a private tax consultant. Notwithstanding his former career and my reminders to him during the hearing, the Appellant’s agent did not seem to grasp the well-established principle that in a tax appeal, the onus is on the taxpayer to refute the assumptions

upon which the Minister had based his reassessments. As a result, on his advice, the Appellant appeared at the hearing without any documents to support her contention that the Minister's reassessments were wrong because it was simply not possible for the sole proprietorship to have generated the amount of sales assumed by the Minister. In his submissions, the Appellant's agent put it to the Court that her testimony alone was sufficient to show that the assessed amounts were in error.

[3] While documentary evidence is not always necessary to prove a taxpayer's case, here it was crucial as the Appellant herself was unable to explain how the sole proprietorship had paid for the supplies which she admitted had been purchased. The best she could do was to offer various hypothetical explanations: perhaps she had paid for some of the supplies out of her employment income (even though the value of the supplies was more than double her entire income for the year); other amounts could have been paid by her two brothers either in cash or by credit card (but no evidence of their having done so was presented); sometimes, friends and relatives helped out with payments (but no details of who they were or what amounts they might have contributed).

[4] Not surprisingly, some seven years after the fact the Appellant could not remember specifically what amounts were paid by whom for what. And not having retained the source documents or kept records of the transactions in issue, she had no way of reconstructing the sole proprietorship's business activities in 2004 and 2005. A further complication lay in the fact that while it was not reported to the tax authorities as such, the sole proprietorship was apparently intended to be the Appellant's mother's business; the Appellant and her two brothers provided the funds for its start-up and operation; their mother, the hands-on work in the store. According to the Appellant, because her mother had difficulty with English and had no previous retail experience, she made many errors entering sales into the cash register; for example, she might enter too many zeros so that a sale that was actually for \$10.00 would appear as \$1,000. Because the Appellant was busy with her own employment, she was not able to be at the store to assist her mother or to correct the mistakes that inevitably occurred. Thus, to the extent that any records did exist, it is unlikely they were very reliable. In any event, although the Appellant admitted that the invoices, cash register tapes and banking statements she had provided to the auditor and Appeals Officer had been returned to her, she was unable to say, as of the date of this hearing, where those documents might currently be found. Finally, in response to her agent's question in direct examination as to whether inventory had ever been counted for the business, the Appellant answered in the negative.

[5] I agree with counsel for the Respondent that the Appellant's situation falls squarely within the circumstances described by Bowman, CJ in *620247 Ontario Ltd. v. Canada* 1995 CarswellNat 27 at paragraphs 8 and 12:

a. The assessment is based upon the assumption that the bank deposits are about as accurate an indication of the sales as one is likely to get, -given that the appellant kept no books and its only record of sales was the sales slips, which were incomplete and essentially in an unsatisfactory state. It may be a fair surmise that some of the bank deposits came from sources other than sales but the evidence simply does not establish how much. In a case of this type, which involves an attempt by the Department of National Revenue to make a detailed reconstruction of the taxpayer's business, it is incumbent upon the taxpayer who challenges the accuracy of the Department's conclusions to do so with a reasonable degree of specificity. That was not done here. A bald assertion that the sales could not have been that high, or that some unspecified portion of the bank deposits came from other sources is insufficient. I am left with the vague suspicion that the chances are that the sales figures computed by the Minister may be somewhat high, but within a range of indeterminate magnitude. This is simply not good enough to justify the allowing of the appeal. If I sent the matter back for reconsideration and reassessment the same evidentiary impasse would result. I must therefore conclude that the appellant has failed to meet the onus of showing that the assessment is wrong.

...

12 Precisely the same problem arises [with the challenge to the Minister's GST assessment]. There may well be errors in the Minister's calculations, but given the unsatisfactory state of the appellant's records it is difficult to see how he could have made a different determination and while I may not be bound to apply the same rather rigid criteria evidently demanded by the Minister there is no evidence upon which I can arrive at a different figure.

[6] The former Chief Justice ultimately concluded that given the lack of books and records, the auditor acted on the best evidence he could find. The sole distinction between the case above and the Appellant's situation is that I am unable to find any fault with the assessing officials. A review of the schedules in the Replies and Tab 7 of the Respondent's Book of Documents¹ suggests that the officials thoroughly reviewed whatever documentation was made available to them and where supported, allowed adjustments in the Appellant's favour. After that point, however, the same sort of evidentiary deficiencies that hindered the Appellant's case at the hearing precluded any further revisions to the reassessments.

¹ Exhibit R-1.

[7] In short, there is simply is not enough evidence before me to justify interfering with the Minister's reassessments. In reaching this conclusion, I have some sympathy for the Appellant who seems to have put her faith in advisors who have not served her particularly well. On the other hand, the Appellant struck me as an intelligent young woman quite capable of foreseeing the risks of engaging in a business for two years without maintaining at least basic records with some accuracy and regularity.

[8] The appeals of the reassessments of the Appellant's 2004 and 2005 taxation years under the *Income Tax Act* and *Excise Tax Act* are dismissed.

Signed at Ottawa, Canada, this 21st day of April 2011.

“G.A. Sheridan”

Sheridan J.

CITATION: 2011TCC225

COURT FILE NO.: 2010-1458(GST)I
2010-2690(IT)I

STYLE OF CAUSE: CATHERINE ANTWI AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 13, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: April 21, 2011

APPEARANCES:

Agent for the Appellant:	Maudood Sheikh
Counsel for the Respondent:	Rita Araujo

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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