

Docket: 2012-1642(IT)I

BETWEEN:

WAYNE SKLODOWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
John Ashbert (2012-1609(IT)I)
on January 14, 2013, at Toronto, Ontario

Before: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Jill Chisholm

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2007 taxation year is dismissed.

Signed at Ottawa, Canada, this 31st day of January 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2012-1609(IT)I

BETWEEN:

JOHN ASHBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeal of
Wayne Sklodowski (2012-1642(IT)I)
on January 14, 2013, at Toronto, Ontario

Before: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Jill Chisholm

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2006 and 2007 taxation years are dismissed.

Signed at Ottawa, Canada, this 31st day of January 2013.

"Campbell J. Miller"

C. Miller

Citation: 2013 TCC 37
Date: 20130131
Docket: 2012-1642(IT)I

BETWEEN:

WAYNE SKLODOWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2012-1609(IT)I

BETWEEN:

JOHN ASHBERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

C. Miller J.

[1] Mr. Sklodowski and Mr. Ashbert both appeal by way of Informal Procedure the Minister of National Revenue's (the "Minister") denial of charitable donation tax credits.

[2] Mr. Sklodowski claims to have made cash donations of \$9,250 throughout 2007 to The Christ Healing Church, a registered charity in 2007. Mr. Ashbert claims that he made cash donations of \$6,000 throughout 2005 to The Redemption Power

International Ministry, a registered charity, the credits being claimed in 2006, and donations of \$8,000 throughout 2007 to The Christ Healing Church.

[3] I will review Mr. Sklodowski's evidence first. He testified that he started going to The Christ Healing Church as a result of his daughter going there with her boyfriend. He found the atmosphere supportive and helpful, given he was experiencing marital difficulties at the time and was at times suicidal. He divorced his wife in 2008 and left Canada, he believed for good, but given the economic climate in Europe he eventually returned to Canada, though is currently struggling as he is unemployed and homeless.

[4] Mr. Sklodowski described The Christ Healing Church as being in an industrial area at 1177 Finch Avenue in Toronto. He indicated that in 2007 he would go to the church sometimes three times a week and sometimes not for a couple of weeks. He suggested he did not attend services but simply went to talk. It was a place to help people, as he put it, Christian but different. He did not donate cash every time he went but if he did not donate one time he would feel obliged to give more the next time. He testified that the largest cash donation he made was approximately \$1,700. He would give the cash to the priest, and if the priest was not available then to his wife or to someone in the office named Andrew. He had no records confirming when and in what amount the cash donations were made.

[5] As Mr. Sklodowski had gone bankrupt 12 years earlier, he indicated that he did not have his own bank account in 2007, and he therefore deposited his earnings in his wife's account. He could access this account to withdraw funds when required, including for the purpose of making donations to the church.

[6] Mr. Sklodowski testified that he made other charitable donations such as Salvation Army and the Autistic Children's Fund, but the Canada Revenue Agency (the "CRA") showed no claim for charitable donation credits for the years 2002 to 2011, other than the \$9,250 in dispute and \$12,750 allowed in 2006. Mr. Sklodowski had earnings of approximately \$48,000 in 2007 and his wife had approximately \$58,000 of earnings. She also claimed a charitable donation of \$8,500 to The Christ Healing Church.

[7] The receipt that Mr. Sklodowski relies upon from The Christ Healing Church (receipt number 171) shows the church's address at 134 Norfinch Drive, #202, Toronto, while the address on record with the CRA is the 1177 Finch Avenue address. The receipt also indicates a date of February 2008 without specifying a day, nor does it indicate the place or locality where the receipt was issued.

[8] With respect to Mr. Ashbert, he claimed he also made cash donations to The Christ Healing Church in 2007, but as well made \$6,000 in cash donations to The Redemption Power International Ministry in 2005, which he claimed in 2006.

[9] Mr. Ashbert confirmed that The Christ Healing Church was indeed at 1177 Finch Avenue, an industrial area with a printer operation next door. He was first invited by a friend, Oscar, and continues to attend every other Friday or Sunday. Prior starting to go to The Christ Healing Church he attended The Redemption Power International Ministry, which he described as also being in the Finch area, though nothing more specific. He started going there on the invitation of the Pastor, as he was working at the premises on a job in 2004.

[10] Mr. Ashbert described his donations, which he said he made on most church visits, were not for any particular purpose: in effect everyone donated, "so I did too". He claimed the money came from his earnings or out of something he referred to as su su, his community's collective gathering of funds, ultimately to be shared. This was a vaguely defined concept. He said he would give \$250 or more at a time, either by going to an usher or the Pastor. He had no records of these cash donations, other than the two receipts he is relying upon.

[11] The Redemption Power International Ministry receipt shows no address for Mr. Ashbert, shows no location of the donation nor CRA's website address. It does show a breakdown of the \$6,000 donation amongst:

Tithes	\$4,016
Offering	\$ 500
Building fund	\$ 500
Thanksgiving	\$ 250
Pledge	\$ 250
Donation	\$ 484

[12] Mr. Ashbert was unable to explain the significance of this breakdown. He certainly did not earmark anything, but simply "just gave money".

[13] Mr. Ashbert also did not have any history of charitable donations other than the two years in issue. In those years he earned income of approximately \$42,000 and \$46,000 respectively.

[14] Mr. Huenemoeder, a charities auditor with the CRA, testified regarding the audit of The Christ Healing Church, of which he had firsthand knowledge. He testified that the books and records of The Christ Healing Church were inadequate. The registration was revoked in 2008. Little cash went through the church's books, minimal deposits were accounted for (approximately \$70,000 to \$90,000); receipts reported by the church indicated approximately \$60,000, though the auditors found individual receipts totalling well over \$200,000. A CRA worksheet identified those receipts, one of which was to Mr. Ashbert, though also showed receipts numbered 81 to 160 signed in blank by Pastor Ankrah. Receipts 160 to 200 were missing (recall Mr. Sklodowski's was numbered 171). There was no concrete evidence of cash receipts from either Mr. Sklodowski or Mr. Ashbert.

[15] The audit of The Redemption Power International Ministry was for the 2001 and 2002 years though the registration was not revoked until 2007.

Issue

[16] Are Mr. Sklodowski and Mr. Ashbert entitled to tax credits based on charitable cash donations of \$6,000 and \$8,000 by Mr. Ashbert in 2006 and 2007 to The Redemption Power International Ministry and The Christ Healing Church respectively and of \$9,250 by Mr. Sklodowski in 2007 to The Christ Healing Church?

[17] The Respondent argues that they are not entitled to such credits for two reasons:

- a) first, the receipts provided by Mr. Sklodowski and Mr. Ashbert to support the credits do not contain the requisite prescribed information;
- b) second, Mr. Sklodowski and Mr. Ashbert have not proven they made the cash donations.

Analysis

[18] Section 118.1(2)(a) of the *Income Tax Act* (the "Act") reads:

- 118.1(2) A gift shall not be included in the total charitable gifts, total Crown gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is proven by filing with the Minister

- (a) a receipt for the gift that contains prescribed information;

...

[19] *Income Tax Regulation 3501(1)* (the "*Regulation*") sets out the requirements for the charitable donation receipt as follows:

3501(1) Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

- (a) the name and address in Canada of the organization as recorded with the Minister;
- (b) the registration number assigned by the Minister to the organization;
- (c) the serial number of the receipt;
- (d) the place or locality where the receipt was issued;
- (e) where the donation is a cash donation, the day on which or the year during which the donation was received;
- (e.1) where the donation is a gift of property other than cash
 - (i) the day on which the donation was received,
 - (ii) a brief description of the property, and
 - (iii) the name and address of the appraiser of the property if an appraisal is done;
- (f) the day on which the receipt was issued where that day differs from the day referred to in paragraph (e) or (e.1);
- (g) the name and address of the donor including, in the case of an individual, his first name and initial;
- (h) the amount that is
 - (i) the amount of a cash donation, or
 - (ii) where the donation is a gift of property other than cash, the amount that is the fair market value of the property at the time that the gift was made;
- (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge donations; and
- (j) the name and Internet website of the Canada Revenue Agency.

[20] Read together these provisions require there be:

- a) a gift;
- b) a receipt proving it is a charitable gift.

The Crown maintains the Appellants have not provided sufficient evidence of either.

i) Validity of receipt

[21] In the recent case of *Afovia v. Her Majesty the Queen*,¹ Justice Paris dealt with both these issues. He had this to say about the receipt requirements:

9. The question that must be decided by this Court is whether it is mandatory that a charitable donation receipt contain all of the information listed in subsection 3501(1) of the Regulations, including a serial number and the name and Internet website of the Canada Revenue Agency. On the basis of the clear wording of that provision, I find that all of the information listed there is mandatory. The material portion of the section states that “every official receipt issued by a registered organization . . . shall show clearly in such a manner that it cannot be readily altered . . .” the information listed in paragraphs (a) to (j).

...

14. The fact that the appellants were unaware of what information was required on a charitable receipt cannot relieve them of the obligation to support their claim for the charitable donation tax credits with official receipts that contain the prescribed information. This Court is bound by subsection 118.1(2) of the Act.

[22] Do Mr. Ashbert’s and Mr. Sklodowski’s receipts conform to the mandatory *Regulation* 3501 requirements? First, looking at Mr. Ashbert’s receipt from The Redemption Power International Ministry, it clearly does not provide all the prescribed information. It is missing:

- the place where the receipt was issued;
- Mr. Ashbert’s address;
- the name and internet website of the CRA.

Next looking at the Mr. Ashbert’s and Mr. Sklodowski’s receipts from The Christ Healing Church, these receipts are missing:

¹ 2012 TCC 391.

- the correct address of the church as recorded with the Ministry;
- the place where the receipt was issued;
- the date including the day, not just the month and year in which the receipt was issued.

[23] These cases can be dismissed on this basis alone: the Appellants have simply not provided the necessary receipts with the prescribed information. I do, however, also want to address the second element of the argument.

ii) Were the cash donations made?

[24] It is clear that I have not heard the full picture of what was really going on with these charitable organizations and the purported donations. While there could be a number of possibilities there are three primary alternatives: first, Mr. Sklodowski and Mr. Ashbert did make the cash donations which for reasons of mismanagement or misappropriation were not properly accounted for by the church's filing of the required information return T3010. Second, Mr. Sklodowski and Mr. Ashbert never made the cash donations claimed. Third, there is a middle ground that Mr. Sklodowski and Mr. Ashbert did make some cash donations but not nearly as much as the amount indicated on the receipts. Frankly, this is what makes the most sense to me given Mr. Sklodowski's and Mr. Ashbert's somewhat vague testimony as to the amounts donated. Their evidence regarding their attendance at the church was credible. I was not left with the impression that this whole thing was a sham, that they simply bought into some scheme of fictitious donations for fictitious receipts. However, the lack of any detailed accounting of cash donations actually made, the large amount of the donations in comparison to their income, their lack of donation history and the vagueness of their testimony generally all suggest to me that the amount of the charitable receipts is simply not accurate. Unfortunately for Mr. Sklodowski and Mr. Ashbert they not only were unable to verify the amounts claimed, they also provided nothing upon which I could possibly find there was a legitimate lower amount, not that that could have helped. The only evidence of the amounts donated were the receipts themselves, receipts emanating from organizations where audits concluded books and records were inadequate. The Pastor was not called, no bank records were presented and there was simply nothing to verify the amounts. I can only conclude that Mr. Sklodowski and Mr. Ashbert did not make the cash donations in the amounts receipted. Perhaps they did make some cash donations to The Redemption Power International Ministry and The Christ Healing

Church, but they have fallen far short of proving on balance the amounts of \$6,000, \$8,000 and \$9,250.

[25] Something is rotten in the state of Denmark, but I have insufficient evidence to pinpoint exactly what. I do, however, have enough evidence to find both that the receipts are deficient and also that Mr. Sklodowski and Mr. Ashbert did not make the cash donations claimed. The Appeals are therefore dismissed.

Signed at Ottawa, Canada, this 31st day of January 2013.

"Campbell J. Miller"

C. Miller J.

CITATION: 2013 TCC 37

COURT FILE NO.: 2012-1642(IT)I and 2012-1609(IT)I

STYLE OF CAUSE: WAYNE SKLODOWSKI AND HER
MAJESTY THE QUEEN and
JOHN ASHBERT AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 14, 2013

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

DATE OF JUDGMENT: January 31, 2013

APPEARANCES:

For the Appellants:	The Appellants themselves
Counsel for the Respondent:	Jill Chisholm

COUNSEL OF RECORD:

For the Appellant:	
Name:	n/a
Firm:	
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada