

Docket: 2012-1331(IT)I

BETWEEN:

MIRON GORFAIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 10, 2013 at Montréal, Québec

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: The Appellant himself

Agent for the Respondent: Julien Wohlhuter (Student-At-Law)

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* with respect to the Appellant's 2009 taxation year is allowed, with costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached reasons delivered orally at the hearing.

Signed at Ottawa, Canada this 1st day of May 2013.

"Patrick Boyle"

Boyle J.

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**EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR JUDGMENT**

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Montréal, Québec on April 10, 2013 be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Canada this 1st day of May 2013.

"Patrick Boyle"

Boyle J.

Citation: 2013 TCC 136

Date: 20130501

Docket: 2012-1331(IT)I

BETWEEN:

MIRON GORFAIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Appeal heard and decision rendered orally from the Bench
on April 10, 2013 at Montréal, Québec)

Boyle J.

[1] These are my reasons in the informal appeal of Mr. Gorfain's 2009 year who has represented himself this morning, in Montréal.

[2] In fairness to Mr. Gorfain, I should begin by saying I'm allowing the appeal and these are my reasons for allowing the appeal. Hopefully, that will make things easier to follow.

[3] Following a payroll audit of a group of related companies involved in the packaging and distribution of newspaper flyers in Montréal, an amount of approximately \$28,000 was added to Mr. Gorfain's income by the CRA. Mr. Gorfain's name (misspelled) and address was typed on a list of subcontractors prepared by the audited companies for purposes of the CRA audit.

[4] Apart from confirming that the taxpayer lived at the address provided, CRA did no other verification that the taxpayer had worked for or received any amounts from the audited group of companies.

[5] Mr. Gorfain speaks Russian and needed to participate and testify through an interpreter.

[6] He has maintained consistently in his objection, in his Notice of Appeal and in his sworn testimony that he has never heard of any of these companies or their principals and shareholders, that he never worked for any of them, and that he never received any money from any of them.

[7] Mr. Gorfain's position is plausible *prima facie* evidence contrary to the CRA's assessing position. Therefore, it was incumbent upon the Respondent to provide evidence to support its position.

[8] The Government's position has not been upheld with credible evidence and I am allowing Mr. Gorfain's appeal. It is simply insufficient to tax a person solely because another person under audit points to them and provides their name and address. Names and addresses are readily available publicly and the companies could just as easily have given CRA almost any Canadian's name, this would include mine.

[9] No reconciliation of the taxpayer's banking records was conducted and no net worth assessment or similar verification of the taxpayer was completed.

[10] The audited companies did not provide CRA with social insurance numbers or with any further evidence of the amounts they said they gave to those named on the list. That is clearly insufficient.

[11] In addition to the testimony of the CRA payroll auditor, the Crown called two former accountants to the group of companies and one principal of two of the audited companies.

[12] One of the accountants simply passed on to CRA the list of persons and amounts prepared by one of the principals of at least one of the companies in the group. That did little to supplement the testimony of the CRA auditor and the introduction of the list. This accountant recognized only one name on the list, not the taxpayer's. He was only briefly retained for purposes of the audit and did not confirm any information on the list against any records of the companies. His testimony doesn't help place Mr. Gorfain working for or receiving money from the companies.

[13] The other accountant acted for the audited companies prior to the audit. He was also the accountant used by Mr. Gorfain to prepare his taxes. The companies switched accountants once the audit commenced.

[14] This accountant continued to act for Mr. Gorfain in challenging CRA's assessment through the objection process. He did not tell Mr. Gorfain he also acted for the group of companies and one of its principals, even though he wrote the English version of the objection in which Mr. Gorfain states he doesn't even know how to contact these companies.

[15] The principal of one company and shareholder of another testified that Mr. Gorfain was hired by her as a driver for that company. She said she hired him based upon a referral from someone whom she can no longer recall.

[16] She testified that the company she was president of and which hired Mr. Gorfain did not pay Mr. Gorfain. She suggested that perhaps one of the other companies in the group might have paid him, but she stated she did not know.

[17] In short, it is unfortunately entirely possible that Mr. Gorfain did work for and get paid by these companies. However, the evidence of that, such as it is, falls very short of allowing me to conclude that, on a balance of probabilities, he did.

Boyle J.

CITATION: 2013 TCC 136

COURT FILE NO.: 2012-1331(IT)I

STYLE OF CAUSE: MIRON GORFAIN v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Québec

DATE OF HEARING: April 10, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: May 1, 2013

DATE OF ORAL REASONS FOR JUDGMENT: April 10, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Agent for the Respondent: Julien Wohlhuter (Student-At-Law)

COUNSEL OF RECORD:

For the Appellant: N/A

Name:

Firm:

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