

Docket: 2018-3753(IT)I

BETWEEN:

JOHN C. CARPINO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on August 17, 2020, at Toronto, Ontario

Before: The Honourable Justice David E. Spiro

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Natanz Bergeron

JUDGMENT

The appeals from the reassessments dated August 16, 2018 made under the *Income Tax Act* for the 2013 and 2014 taxation years are dismissed, without costs.

Signed at Toronto, Ontario, this 24th day of August 2020.

“David E. Spiro”

Spiro J.

BETWEEN:

JOHN C. CARPINO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] The Appellant, Mr. John Carpino, reported total income of \$10,719 on the tax return for his 2013 taxation year and total income of \$24,829 on the tax return for his 2014 taxation year.¹

[2] Following a review of Mr. Carpino's bank statements, and pursuant to subsection 152(7) of the *Income Tax Act* (the "Act"), the Minister of National Revenue (the "Minister") reassessed tax to Mr. Carpino on the basis that he had failed to report income of \$21,392 for 2013 and \$36,770 for 2014.

[3] In Reply to Mr. Carpino's Notice of Appeal, the Attorney General of Canada identified certain deposits made to Mr. Carpino's personal bank accounts in 2013 and 2014 that the Minister assumed were income to Mr. Carpino for each of those years and that he failed to include in computing income:

¹ Exhibit R-1 at page 14 and Exhibit R-2 at page 45.

2013

2013	TD	RBC	Tender
January 3		\$720	Cash
April 5	\$200		Cheque
May 28	9,000		Cash
July 10	200		Cash
August 2		800	Cash
August 30	1,500		Cash
September 12	4,000		Cash
September 16	2,900		Cash
October 1	2,000		Cash
October 16	952		Cash
Subtotal	\$20,752	\$1,520	
Total			\$22,272
Allowed by Appeals			(\$880)
Total Unreported Income			\$21,392

2014

2014	TD	RBC	Tender
February 20	\$1,190		Cash
March 5		\$380	Cash
March 24	3,000		Cash
May 7	5,000	5,700	Cash
May 9	4,000		Cash
May 12	7,500	7,500	Cash
May 15	2,500		Cash
Subtotal	\$23,190	\$13,580	
Total			\$36,770
Total Unreported Income			\$36,770

[4] Gross negligence penalties under subsection 163(2) of the Act were not assessed for either taxation year. The only witness at trial was Mr. Carpino.

Examination-in-Chief

[5] Mr. Carpino arrived in Canada at the age of 14 as one of nine children. He began working two years later. He always kept money at home in order to show his parents how much he had saved. Mr. Carpino carried on business as a used car dealer in Orillia, Ontario until his retirement in 2008.

[6] When Mr. Carpino's father passed away in 1992, his mother was left at home without any help. She had several medical issues that worsened over time. Starting in 1993, Mr. Carpino was of great assistance to his mother including taking her to medical appointments, doing her shopping, banking, and investing. He would update her bankbook and had full access to her account.

[7] The investments that Mr. Carpino made on his mother's behalf included guaranteed income certificates and United States dollars. Mr. Carpino mentioned \$100,000 as a sum that she had asked him to invest on her behalf.

[8] Mr. Carpino testified that his mother gave him cash gifts every month in appreciation for the assistance that he gave her. He testified that she would give him at least \$1,000 each month by way of gift. Sometimes, the monthly gifts were as high as \$1,200 or \$1,400.

[9] Mr. Carpino said that these gifts were made in different forms. For example, when Mr. Carpino's mother made a profit on an investment, she would give the entire profit to Mr. Carpino. When Mr. Carpino withdrew \$1,200 in cash from her bank account, she would keep \$900 and give him \$300 as a gift.

[10] This arrangement continued until his mother passed away in 2010 at the age of 89. According to Mr. Carpino, his mother had given him total cash gifts of \$70,000 during her lifetime. He kept this bundle of cash in a freezer at home until 2014 when he testified that he began using a home safe.

[11] In 1994, Mr. Carpino married for the second time, a woman fifteen years his junior. Mr. Carpino and his second wife separated in 2009 and divorced in 2012.

[12] In late 2012, the Ontario Superior Court of Justice ordered Mr. Carpino to make an equalization payment of \$425,000 to his former spouse.² Mr. Carpino testified that he has paid \$375,000 of that amount but has withheld the final \$50,000 payment.

[13] In this regard, I reproduce below paragraphs 17 and 18 of the Order of the Ontario Superior Court of Justice dated December 19, 2012 (Exhibit R-4):

PROPERTY

17. The Respondent Father shall pay to the Applicant Mother an equalization payment of \$425,000.00 inclusive of pre-judgment interest, costs, arrears of support and all other claims between the parties in law, equity or as a joint family venture;
18. The Respondent Father shall pay to the Applicant Mother the equalization payment as follows:
 - (a) \$150,000.00 on or before December 14, 2012 (by mortgaging the matrimonial home);
 - (b) \$90,000.00 cash on or before December 14, 2012;
 - (c) by transfer/assignment of the Orillia Alignment mortgage in the amount of \$90,000 from the Respondent Father to the Applicant Mother as soon as practicable on or before December 14, 2012;
 - (d) \$45,000.00 to be transferred/assigned by way of the Ketchin mortgage or the proceeds of this mortgage or cash on or before January 31, 2013;
 - (e) \$50,000.00 on or before November 1, 2014.

[14] Mr. Carpino testified that he did not make the \$50,000 payment required by paragraph 18(e) of the Order because his former spouse did not deserve to receive that amount.³

² Exhibit R-4, page 4 at paragraph 17.

³ Mr. Carpino explained that his former spouse did not deserve to receive the \$50,000 payment as she had been remitting some or all of her earnings to her parents during the marriage.

[15] Mr. Carpino testified that he used a line of credit, secured by his home, to pay his bills and expenses. He also said that he rented out his parents' home after his mother passed away.

[16] In late 2013, a friend suggested to Mr. Carpino that they go into business together selling recreational vehicles. Mr. Carpino provided the funds for the business which was carried on by a corporation of which he was sole shareholder. He testified that his business partner used the business to enrich himself at Mr. Carpino's expense by selling recreational vehicles in the United States and appropriating the profits.

[17] Mr. Carpino maintained that the source of all of the deposits at issue was the \$70,000 in cash gifts that his mother had given him over the last 18 years of her life.

[18] Mr. Carpino produced a Net Family Property Statement from a brief filed by his former spouse in late 2009 indicating that his savings included cash of \$70,000.⁴ He referred to another portion of the brief to support his contention that his former spouse had taken a photograph of the \$70,000 in cash at the matrimonial home earlier that year.⁵

[19] At various points in his testimony, and in his communications with the Canada Revenue Agency (the "CRA"), Mr. Carpino offered several explanations as to why he kept the \$70,000 in cash at home. These explanations included:

- A. To have sufficient funds on hand to take a vacation with his second wife;⁶
- B. To keep the money for his former spouse in the event that the Ontario Superior Court ordered him to give one-half of the \$70,000 *in specie* to her; and
- C. To keep the \$70,000 away from his former spouse.

⁴ Exhibit A-1, page 2.

⁵ Exhibit A-1, page 3.

⁶ This was the only explanation offered by Mr. Carpino for keeping the \$70,000 at home when he wrote to the CRA auditor (at the fifth paragraph of a letter written by Mr. Carpino to the CRA auditor dated September 6, 2016 at page 116 of Exhibit R-3).

[20] Mr. Carpino testified that once his divorce was settled in late 2012, and he had not been ordered by the Ontario Superior Court of Justice to give one-half of the \$70,000 *in specie* to his former spouse, he began a process of depositing the \$70,000 into his personal bank accounts at the Toronto-Dominion Bank (“TD”) and Royal Bank of Canada (“RBC”).

Cross-Examination

[21] In cross-examination, Mr. Carpino was shown a copy of a letter he had written to the CRA auditor during the course of the audit. After reviewing the letter, Mr. Carpino admitted that one of the unexplained deposits for 2014 could have been the proceeds received from a garage sale that he conducted that year.⁷ Mr. Carpino had written “Cash from Garage Sale” next to one entry on an attachment to that letter – the amount of \$2,500 deposited on May 15, 2014.⁸

[22] In reviewing the attachments to that letter, it is worth noting that three of the unexplained deposits made in 2013 (\$4,000 on September 12, \$2,900 on September 16, and \$2,000 on October 1) were also marked “Cash from Garage Sale” by Mr. Carpino.⁹

[23] When asked by counsel for the Minister what exactly he sold at those garage sales, Mr. Carpino stated that the goods consisted exclusively of antique furniture, such as a couch, and other furnishings from his own home such as oil lamps, etc.

[24] Mr. Carpino was then shown a copy of a letter he had written to the CRA auditor in which he said that he had purchased more than \$1,000 worth of items at “Liquidation World” and more than \$1,100 worth of items at “Goodwill” in 2013 and 2014 for his garage sales. Once again, Mr. Carpino’s testimony in chief was shown to have been incorrect or incomplete.

Analysis

⁷ Exhibit R-3, attachment to letter to the CRA auditor dated September 6, 2016 at page 118.

⁸ See paragraph 3 above.

⁹ Those amounts are reflected in paragraph 3 above. See Exhibit R-3, attachment to letter to the CRA auditor dated September 6, 2016 at page 117.

[25] In argument, counsel for the Minister, Ms. Bergeron, described Mr. Carpino's testimony on critical points as "implausible". I agree with Ms. Bergeron's characterization of Mr. Carpino's evidence.

[26] Based on the evidence as a whole, I find that Mr. Carpino's testimony was neither credible nor reliable. On a number of important points his evidence was missing vital elements, made little or no sense, or was internally inconsistent:

- a) If Mr. Carpino had received at least \$1,000 in cash gifts from his mother each month for 18 years, the total amount of cash gifts received would have been at least \$216,000, not \$70,000. No explanation was offered by Mr. Carpino for this discrepancy.
- b) Mr. Carpino failed to produce any record of when he removed various amounts from the \$70,000 cash bundle over the course of 2013 or 2014 for deposit to his personal bank accounts.
- c) Mr. Carpino failed to produce any record of bank deposits amounting to \$70,000 over the course of 2013 and 2014. He did not establish any connection between the total amount of the alleged gifts and the total amount of deposits to his personal bank accounts in 2013 and 2014.
- d) Mr. Carpino's various explanations as to why he kept the \$70,000 at home make no sense. Why keep it at home where it gathers no interest and is at risk of theft, fire and flood? He already had personal accounts at the TD and RBC. Why not deposit the cash safely and securely at one of those financial institutions and earn interest?
- e) Why would Mr. Carpino use a home equity line of credit to pay for his personal expenses, thereby incurring considerable non-deductible interest charges, if he had \$70,000 in cash available at home?
- f) Mr. Carpino's explanation of why he kept the \$70,000 at home varied throughout his testimony. His first explanation was in order to pay for an anticipated vacation with his second wife. On its face, this explanation makes little sense. Few vacations, other than the most extravagant, would cost anywhere close to \$70,000.

- g) Mr. Carpino's concern that the Ontario Superior Court of Justice could order him to give one-half of the \$70,000 *in specie* to his former spouse also makes no sense.
- h) The Order of the Ontario Superior Court of Justice provided that \$90,000 of the equalization payment was to be paid by Mr. Carpino in cash on or before December 14, 2012.¹⁰ If Mr. Carpino had \$70,000 in cash at home, why wouldn't he have used that cash to fund most of that payment instead of borrowing the \$90,000 from the bank using his home equity line of credit?¹¹
- i) Mr. Carpino's explanation of the source of the unexplained deposits varied between examination-in-chief and cross-examination. First, he testified in chief that all of the unexplained deposits came from the \$70,000 gift. In cross-examination, however, he admitted that he had a garage sale in 2014 and that one of the unexplained deposits could have been the proceeds from that sale. His own correspondence with the CRA discloses that he had garage sales in 2013 where the proceeds match precisely three of the unexplained deposits for that year.¹²
- j) Mr. Carpino testified that his former spouse had taken a photograph of the \$70,000 in cash. He failed to produce such a photograph nor did he call his former spouse as a witness. In any event, it is difficult to imagine what such a photograph would depict. Would it show the interior of a freezer with stacks of \$100 bills spread across the shelves? It is unfortunate that the photographer was not in the courtroom to answer questions about the alleged photo of \$70,000 in cold, hard cash.

[27] In *Bachmann v The Queen*,¹³ Justice Woods, as a member of this Court, found that the testimony offered by the individual Appellants was, on its face, "far-fetched and defies common sense."¹⁴ Those words aptly describe Mr. Carpino's evidence.

¹⁰ Exhibit R-4, subparagraph 18(b) at page 4, reproduced at paragraph 13 above.

¹¹ See Exhibit R-5, at page 185 for evidence of the \$90,000 borrowing.

¹² At paragraph 10 of his Notice of Appeal, Mr. Carpino refers to the 2014 garage sale as his "first ever garage sale" which, by his own admission, was incorrect.

¹³ *Bachmann v The Queen*, 2015 TCC 511.

¹⁴ *Bachmann*, *supra* note 13 at para 27.

The Law

[28] The Minister may not be satisfied that a taxpayer's return of income for a taxation year accurately reflects the taxpayer's income from all sources for the year. In that case, the Minister may conduct, among other things, a bank deposit analysis with a view to determining the taxpayer's income from all sources for the year. Such an analysis is performed under the authority of subsection 152(7) of the Act:

Assessment not dependent on return or information

152(7) The Minister is not bound by a return or information supplied by or on behalf of a taxpayer and, in making an assessment, may, notwithstanding a return or information so supplied or if no return has been filed, assess the tax payable under this Part.

[29] In this case, the Minister has performed a bank deposit analysis with a view to determining whether any or all of the unexplained deposits in 2013 and 2014 were deposits of unreported income for those years. The process was described well by Justice Graham in *Bonhomme v The Queen*:¹⁵

[5] . . . A bank deposit analysis is an alternative method of determining income that is sometimes used by the Minister when the Minister believes that a taxpayer's records are an inadequate means of verifying the taxpayer's income. A bank deposit analysis generally involves reviewing each deposit that a taxpayer has made to his or her bank account in excess of a certain amount. The Minister asks the taxpayer to explain the source of each of those deposits. To the extent that the taxpayer either cannot explain the source, provides an explanation that the Minister does not accept or admits that the source is taxable and was not reported, the Minister includes the deposit in the taxpayer's income. If the taxpayer is able to satisfy the Minister that a given deposit comes from a non-taxable source or has already been reported in the taxpayer's income, the Minister ignores the deposit.

Conclusion

[30] It is unlikely that a taxpayer who was in a position to make an equalization payment of \$425,000 between 2012 and 2014 would have earned less than \$11,000 in 2013 and less than \$25,000 in 2014.

¹⁵ *Bonhomme v The Queen*, 2016 TCC 152.

[31] In this connection, it is worth recalling why Mr. Carpino did not pay \$50,000 of the equalization payment he owed to his former spouse. He failed to do so not because he was unable to pay that amount, but because he believed that his former spouse did not deserve to receive it.

[32] For all the reasons described above, Mr. Carpino has failed to prove, on a balance of probabilities, that the unexplained deposits in 2013 and 2014 came from a gift of \$70,000 bestowed on him by his mother. Accordingly, his appeals of the reassessments for his 2013 and 2014 taxation years are dismissed, without costs.

Signed at Toronto, Ontario, this 24th day of August 2020.

“David E. Spiro”

Spiro J.

CITATION: 2020 TCC 88

COURT FILE NO.: 2018-3753(IT)I

STYLE OF CAUSE: JOHN C. CARPINO AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 17, 2020

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: August 24, 2020

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Natanz Bergeron

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

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