Docket: 2012-4325(IT)I

BETWEEN:

SERGEI SEVERINOV,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion and appeal heard on June 21, 2013 at Vancouver, British Columbia

By: The Honourable Justice Judith M. Woods

Appearances:

Counsel for the Appellant:	Elizabeth Junkin
Counsel for the Respondent:	Zachary Froese

JUDGMENT

With respect to an assessment made under the *Income Tax Act* for the 2010 taxation year, it is ordered that:

1. the motion brought by the appellant regarding the conduct of the respondent is dismissed;

2. the appeal is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to a child tax credit in the amount of $4,202; and

3. each party shall bear their own costs.

Signed at Toronto, Ontario this 19th day of September 2013.

"J. M. Woods"

Woods J.

Citation: 2013 TCC 292
Date: 20130919
Docket: 2012-4325(IT)I

BETWEEN:

SERGEI SEVERINOV,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Sergei Severinov, appeals in respect of an assessment made under the *Income Tax Act* for the 2010 taxation year. There are two items in dispute – a child tax credit in the amount of $4,202 and a deduction for child care expenses in the amount of $11,000.

Procedural matter

[2] The counsel for Mr. Severinov was retained a short time before the hearing. Prior to this, Mr. Severinov was self-represented and he filed a motion seeking that the appeal be allowed on the basis that he has been unfairly treated by the respondent and the Canada Revenue Agency (CRA). He testified that he thought the CRA were biased towards him because of his Russian background.

[3] Mr. Severinov asked to speak to this matter at the hearing. This was not on the advice of his counsel, but I agreed to hear his submissions.

[4] Mr. Severinov alleges that counsel for the respondent was abusive and refused

to provide him with key documents. Counsel for the respondent denied these allegations.

[5] Mr. Severinov also alleges that the Registry of this Court unfairly engaged in *ex parte* communications with the respondent. When the Court was informed of this allegation by Mr. Severinov, the Director of Court Operations wrote to him and informed him that the Registry made an error in failing to provide him with a copy of correspondence received from the respondent.

[6] The allegations of bias by Mr. Severinov are serious but they have not been established by proper evidence – they are merely unproven allegations. In addition, an allegation of bias is not a sufficient ground to allow an appeal. The motion to allow the appeal on this basis is denied.

Background

[7] Mr. Severinov and his spouse, Olga Tikhonova, have two children who were 4 and 6 years of age in 2010, which is the relevant taxation year.

[8] In 2008, the family moved from San Francisco to Vancouver when Mr. Severinov accepted a teaching position at the University of British Columbia. Ms. Tikhonova did not stay long in Vancouver, however, and soon moved back to San Francisco where she had a job.

[9] Mr. Severinov testified that, since his work hours were more flexible than his spouse's, it was decided that the children would stay with their father in Vancouver until they became old enough for school. He stated that the older child stayed in Vancouver until he began school in September 2010 and that the younger child stayed until near the end of 2010.

[10] Mr. Severinov testified that while he was looking after the children he enrolled them in a small private daycare near the university called Little Scholars Daycare.

[11] The factual issues that are central to this appeal are whether any child care expenses were incurred and whether the children actually lived with Mr. Severinov.

Analysis

[12] The relevant legislative provisions are reproduced in an appendix.

Child care expenses

[13] Pursuant to section 63 of the *Act*, Mr. Severinov must satisfy the following conditions in order to be entitled to a deduction for child care expenses:

(a) the expense must be incurred to enable Mr. Severinov to work,

(b) the expense must relate to Mr. Severinov's two children,

(c) the children must reside with Mr. Severinov at the time the expense is incurred, and

(d) the payment must be proven by filing receipts issued by the payee, that contain the payee's social insurance number if the payee is an individual.

[14] The requirement for receipts was commented on by Bowman J. in *Senger-Hammond v The Queen*, [1997] 1 CTC 2728 (TCC). He concluded that this requirement is not inviolate because it would not achieve the social policy that is behind the legislation. At paragraph 16:

> **16** To say that the failure to file receipts with the payees' social insurance numbers even where it has been established beyond a shadow of a doubt that the expenses were paid, results in non-deductibility under section 63 would be to adopt a "purely mechanical" rather than a "functional" approach.

[15] In this case, documents purporting to be receipts were entered into evidence by Mr. Severinov (Ex. A-6), but their *bona fides* has been challenged by the Crown.

[16] I find that the receipts are not sufficiently reliable to establish that child care expenses were incurred. The purported receipts were issued from generic receipt books. Mr. Severinov stated that he filled out part of the contents and that the caregiver, Victoria Milton, checked the information and signed them. It would be relatively easy to fabricate the receipts.

[17] When the evidence is viewed as a whole, I am not satisfied that the receipts are genuine or that any child care expenses were incurred by Mr. Severinov in the relevant taxation year. There is simply not sufficient reliable evidence for me to have any confidence that child care expenses were incurred.

[18] One of the main problems that I have with Mr. Severinov's position is that his

testimony was vague in several respects.

[19] First, Mr. Severinov testified that Little Scholars moved from an apartment to a stand alone building in 2010. However, he did not provide an address for the new location so that this could be verified. The purported owner of Little Scholars did not testify.

[20] Further, Mr. Severinov could not remember the exact address of his own two-bedroom apartment and it was not listed on any of the contemporaneous documents, including his income tax return. He said that the address on the T4 slip was actually a one-bedroom apartment that he maintained for his mother. He said that he may have used this apartment but that it was not his primary residence. As for his current address, Mr. Severinov testified that he currently lives in a hotel while he looks for a home to purchase.

[21] I would also note that Mr. Severinov and his spouse own a four bedroom home in San Francisco. Mr. Severinov testified that it was purchased in 2010 but there is no support for this statement.

[22] In addition, Mr. Severinov was asked by the CRA whether the children resided with him throughout the year. He replied that they did, which is contrary to his evidence at the hearing that the oldest boy started school in San Francisco in September 2010.

[23] Mr. Severinov testified that he paid Ms. Milton mostly in cash which she asked for. This is plausible in itself, but no evidence was provided as to withdrawals from bank accounts to support this.

[24] Mr. Severinov's testimony as to the amounts paid with respect to the older child was very vague. He testified that the payments were reduced because he taught tennis to Ms. Milton's son. There was no detailed explanation as to how the amounts were calculated.

[25] Mr. Severinov provided evidence in the form of photographs of the children taken in Vancouver. This evidence does not support the payment of child care expenses. The photographs could be taken on visits to Vancouver.

[26] When the evidence is viewed as a whole, I am not satisfied that the receipts are genuine or that any daycare expenses were incurred.

[27] This conclusion also has some support in the testimony of Carol Schurmann, a CRA appeals officer, who attempted to obtain evidence of the existence of Little Scholars. The inquiry was done at the request of counsel for the respondent because Mr. Severinov filed this appeal before the CRA had considered the notice of objection. After making some inquiries, Ms. Schurmann could not find any evidence of the existence of Little Scholars.

[28] Counsel for Mr. Severinov objected to this evidence on grounds of hearsay and questioned its reliability. The appropriate approach in this case is to take the frailty of the evidence to weight.

[29] Since Ms. Schurmann undertook this investigation after the litigation process had started, Mr. Severinov may not have had an opportunity to adequately respond to it. However, Mr. Severinov may have contributed to this because he filed an appeal before his objection was considered.

[30] I accept that Ms. Schurmann's investigation was quite thorough, but I am not satisfied that her hearsay testimony supports a conclusion, by itself, that Little Scholars did not exist.

[31] Ultimately, the main problem that I have with Mr. Severinov's position is that he has not been able to provide sufficient support that the daycare expenses were incurred. The denial of the deduction for child care expenses by the Minister will be upheld.

Child tax credit

[32] Mr. Severinov claimed a child tax credit for each of the children in the aggregate amount of $4,202 pursuant to clause (b.1) of paragraph 118(1) of the *Act*.

[33] Clause (b.1) has two parts. Subclause (b.1)(i) provides for a credit in the amount of $2,000, plus indexation, for each child where both parents live with the child throughout the year. This provision does not apply in this case because Mr. Severinov's spouse did not live with him throughout the year.

[34] Subclause (b.1)(ii) provides for a credit in the amount of $2,000, plus indexation, for each child under the age of 18 pursuant to clause (b). This provision appears to provide a credit in addition to the basic credit in clause (b) for children under the age of 18.

[35] The question in dispute is whether Mr. Severinov satisfies the requirements in clause (b) in order to be entitled to the additional credit in clause (b.1). There was some discussion at the hearing as to whether Mr. Severinov could also have claimed the basic credit under clause (b) but this issue is not before me.

[36] The part of the legislation that is at issue between the parties is the following requirement set out in clause (b):

> (b) **wholly dependent person ["equivalent to spouse" credit]** - in the case of an individual who does not claim a deduction for the year because of paragraph (a) and who, at any time in the year,
>
> […]
>
> (ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is
>
> (A) except in the case of a child of the individual, resident in Canada,
>
> (B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,
>
> (C) related to the individual, and
>
> (D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,
>
> (Emphasis added)

[37] The question raised by the provision above is whether the children were at any time in the year maintained by Mr. Severinov in his home and wholly dependent on him for support at that time. The key phrase is "at any time."

[38] I am concerned about procedural aspects of this issue because the reply did not clearly identify the above requirement. The reply identified the issue as whether the children resided with Mr. Severinov throughout the 2010 taxation year (Reply, para. 11(a)).

[39] The failure to identify the proper test may well have been prejudicial to Mr. Severinov. I also note that counsel for the respondent did not clarify what the proper test was until his closing argument. I have no idea whether Mr. Severinov, or

his counsel who was retained shortly before the hearing, understood what position the Crown was taking before counsel made it clear during closing argument. This is simply too late.

[40] I would also comment that the assumptions made by the Minister as set out in the Reply are not sufficient to identify the proper test. Below are the relevant excerpts from the reply:

> b) the Children were not dependent on the Appellant for support in the 2010 taxation year;
>
> c) none of the Children resided with the Appellant throughout 2010;
>
> d) in 2010, none of the Children resided in Canada;

[41] The purpose of the assumptions is to inform the taxpayer of the case that he has to meet. The assumptions above do not clearly do this.

[42] The "at any time" test is a much easier test to satisfy than a "throughout the year" test. In order to claim the credit, all that needs to be established is that the children were with their father in Vancouver, and supported by him, for some part of the year. It is not even necessary that the children reside in Canada.

[43] I have concluded that the child tax credit should be allowed on the basis that the Crown failed to properly state the issue in the Reply. Even if this is not sufficient to allow the appeal, the child tax credit should also be allowed because the Crown cannot rely on faulty assumptions to shift the burden to the taxpayer. The Crown had the burden to establish the "at any time" requirement and it failed to satisfy this burden.

Conclusion

[44] For the reasons above, the appeal will be allowed on the basis that the child tax credit will be allowed and the deduction for child care expenses will be disallowed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 19th day of September 2013.

"J. M. Woods"

APPENDIX

Relevant Legislative Provisions

Child care expenses

63. (1) Child care expenses - Subject to subsection (2), where a prescribed form containing prescribed information is filed with a taxpayer's return of income (other than a return filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) under this Part for a taxation year, there may be deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer,

(a) by the taxpayer, where the taxpayer is described in subsection (2) and the supporting person of the child for the year is a person described in clause (i)(D) of the description of C in the formula in that subsection, or

(b) by the taxpayer or a supporting person of the child for the year, in any other case,

to the extent that

(c) the amount is not included in computing the amount deductible under this subsection by an individual (other than the taxpayer), and

(d) the amount is not an amount (other than an amount that is included in computing a taxpayer's income and that is not deductible in computing the taxpayer's taxable income) in respect of which any taxpayer is or was entitled to a reimbursement or any other form of assistance,

and the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number, but not exceeding the amount, if any, by which

(e) the lesser of

(i) 2/3 of the taxpayer's earned income for the year, and

(ii) the total of all amounts each of which is the annual child care expense amount in respect of an eligible child of the taxpayer for the year

exceeds

(f) the total of all amounts each of which is an amount that is deducted, in respect of the taxpayer's eligible children for the year, under this section in computing the income for the year of an individual (other than the taxpayer) to whom subsection (2) applies for the year.

(3) Definitions - In this section,

"annual child care expense amount", in respect of an eligible child of a taxpayer for a taxation year, means

(a) $10,000, where the child is a person in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year, and

(b) where the child is not a person referred to in paragraph (a),

(i) $7,000, where the child is under 7 years of age at the end of the year, and

(ii) $4,000, in any other case;

"child care expense" means an expense incurred in a taxation year for the purpose of providing in Canada, for an eligible child of a taxpayer, child care services including baby sitting services, day nursery services or services provided at a boarding school or camp if the services were provided

(a) to enable the taxpayer, or the supporting person of the child for the year, who resided with the child at the time the expense was incurred,

(i) to perform the duties of an office or employment,

[…]

Child tax credit

118. (1) Personal credits - For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A is the appropriate percentage for the year, and

B is the total of,

[…]

(b) **wholly dependent person ["equivalent to spouse" credit]** - in the case of an individual who does not claim a deduction for the year because of paragraph (a) and who, at any time in the year,

(i) is

(A) a person who is unmarried and who does not live in a common-law partnership, or

(B) a person who is married or in a common-law partnership, who neither supported nor lived with their spouse or common law-partner and who is not supported by that spouse or common-law partner, and

(ii) whether alone or jointly with one or more other persons, maintains a self-contained domestic establishment (in which the individual lives) and actually supports in that establishment a person who, at that time, is

(A) except in the case of a child of the individual, resident in Canada,

(B) wholly dependent for support on the individual, or the individual and the other person or persons, as the case may be,

(C) related to the individual, and

(D) except in the case of a parent or grandparent of the individual, either under 18 years of age or so dependent by reason of mental or physical infirmity,

an amount equal to the total of

(iii) $10,320, and

(iv) the amount determined by the formula

$$\$10,320 - D$$

where

D is the dependent person's income for the year,

(b.1) **child amount [Child Tax Credit]** – where

(i) a child of the individual ordinarily resides throughout the taxation year with the individual together with another parent of the child, $2,000 for each such child who is under the age of 18 years at the end of the taxation year, or

(ii) except where subparagraph (i) applies, the individual may deduct an amount under paragraph (b) in respect of the individual's child who is under the age of 18 years at the end of the taxation year, or could deduct such an amount in respect of that child if paragraph 118(4)(a) did not apply to the individual for the taxation year and if the child had no income for the year, $2,000 for each such child.

Note: The amounts above are subject to indexation pursuant to section 117.1.

CITATION:	2013 TCC 292
COURT FILE NO.:	2012-4325(IT)I
STYLE OF CAUSE:	SERGEI SEVERINOV and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	June 21, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice J.M. Woods
DATE OF JUDGMENT:	September 19, 2013

APPEARANCES:

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