

Docket: 2013-4695(IT)I

BETWEEN:

SABITA AMYAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 14, 2014, at Toronto, Ontario and decision
delivered orally from the Bench on May 16, 2014

Before: The Honourable Justice Valerie Miller

Appearances:

Agent for the Appellant: Kenneth Amyan
Counsel for the Respondent: Alisa Apostle

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2007 and 2008 taxation years is dismissed.

Costs of \$625 are awarded to the Respondent.

Signed at Ottawa, Canada, this 26th day of May, 2014.

“V.A. Miller”

V.A. Miller J.

Citation: 2014TCC175
Date: 20140526
Docket: 2013-4695(IT)I

BETWEEN:

SABITA AMYAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Delivered orally from the bench on May 16, 2014

V.A. Miller J.

[1] The issue in this appeal is whether the Appellant is entitled to deduct child care expenses of \$12,795 and \$13,000 in her 2007 and 2008 taxation years respectively.

[2] The Appellant did not appear at the hearing of her appeal as she had to care for her newborn child. However, her spouse, Kenneth Amyan, appeared and testified on her behalf.

[3] During the relevant period, the Appellant had two children – M who was born in September 2004 and H who was born in April 2006. Mr. Amyan testified that, in 2007 and 2008, he paid \$260 in cash every two weeks to the person who was babysitting his children. (I note that the maximum this would have been was \$6, 760.) According to Mr. Amyan, the babysitter was either his mother or his mother-in-law or his sister, depending on who was available. However, none of these individuals came to Court to corroborate Mr. Amyan's testimony.

[4] Mr. Amyan stated that he had no receipts to show that he paid any amount for child care because it was only when he was having his income tax returns prepared that he learned that he could deduct child care expenses.

[5] When Mr. Amyan was being audited with respect to the child care expenses, he returned to his tax preparer, Nathan Vaira, to ask for assistance. According to Mr. Amyan, Mr. Vaira prepared a letter in which Thadshayini S. attested that she had babysat for the Appellant in 2008 for \$6,500. Mr. Amyan paid \$800 for this letter and he gave it to the auditor from the Canada Revenue Agency (“CRA”) to support his claim for child care expenses.

[6] Mr. Amyan’s story started to unravel even further after he admitted that he had bought the letter from Thadshayini S. He stated that he and the Appellant would not have required a babysitter for the entire of 2007 or the entire of 2008. The Appellant was on maternity leave for part of 2007 – there was no evidence with respect to the number of months she would have been on leave – and Mr. Amyan did not work for 4 or 5 months in 2008 as he was unemployed and received employment insurance benefits. He admitted that he did not pay \$12,795 in 2007 and \$13,000 in 2008 for child care. He was not sure how much he paid for child care but he did pay some amount as he had two small children during this time.

[7] I agree with Mr. Amyan that he would have needed someone to care for his two small children in 2007 and 2008 when both he and the Appellant were working. However, he was not able to give me any evidence to prove that he had in fact paid for child care or the amount that he paid in 2007 and 2008. He already admitted that the amounts he claimed in each year were incorrect but he did not even suggest what the correct amounts ought to have been. I cannot just guess at an amount. He did not have his mother or mother-in-law or sister attend the hearing to give evidence on the Appellant’s behalf. He stated that he did not ask them to attend because he did not want to get them in trouble.

[8] This is not a case where the Appellant had given insufficient evidence to prove her claim as in *Bijai v Canada*, [1998] TCJ No.1051. The Appellant has given no evidence to establish her claim for child care expenses.

[9] Counsel for the Respondent made arguments with respect to the fact that the Appellant did not have receipts to support her claim for child care expenses and whether this was a mandatory condition of subsection 63(1) of the *Income Tax Act*. However, based on the admissions made by Mr. Amyan, I do not have to address this issue.

[10] The Respondent has requested costs of \$1,000 in this appeal on the basis that there was an abuse of process because the Appellant was not honest in her pleadings and this hearing was a waste of the Court’s time.

[11] Mr. Amyan stated that he had helped the Appellant to prepare the Notice of Appeal. He admitted that several of the statements made in it were not true. Those statements related to (1) receipts for child care expenses for 2007 and 2008 which the Appellant alleged she gave to the accountant and (2) the letter from Thadshayini S. who the Appellant alleged was her baby sitter.

[12] It is my view that the false statements in the Notice of Appeal constituted an abuse of this Court's process. In accordance with section 11 of the *Tax Court or Canada Rules (Informal Procedure)*, the Respondent is awarded costs of \$625.

[13] The appeal is dismissed with costs of \$625 to the Respondent.

Signed at Ottawa, Canada, this 26th day of May, 2014.

"V.A. Miller"

V.A. Miller J.

CITATION: 2014TCC175
COURT FILE NO.: 2013-4695(IT)I
STYLE OF CAUSE: SABITA AMYAN AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: May 14, 2014
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller
DATE OF JUDGMENT: May 26, 2014

APPEARANCES:

Agent for the Appellant: Kenneth Amyan
Counsel for the Respondent: Alisa Apostle

COUNSEL OF RECORD:

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