

BETWEEN:

EVA OI HAR TSE-LAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on February 1, 2016, at  
Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Aaron Tallon

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JUDGMENT

IN ACCORDANCE with the reasons for judgment attached, the appeal from the assessment for taxation year 2012 is hereby dismissed, without costs, upon the following grounds:

- (i) the appellant adduced no evidence before the Court which contests the Minister's assessment;
- (ii) the appellant was assessed for no additional taxes, interest or penalties beyond the income and taxes payable as reported by the appellant in her return of income for the 2012 taxation year; and

- (iii) the appellant has not presented any discernible argument or submission that her return of income for 2012, which was confirmed as filed by the Minister of National Revenue, was incorrect or invalid.

Signed at Ottawa, Canada, this 10th day of March 2016.

“R.S. Boccock”

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Boccock J.

Docket: 2013-2522(IT)G

BETWEEN:

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Appeal heard on February 1, 2016, at  
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Appearances:

For the Appellant:                   The Appellant herself  
Counsel for the Respondent:       Aaron Tallon

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**JUDGMENT**

IN ACCORDANCE with the reasons for judgment attached, the appeal of taxation years 2006, 2007 and 2008 is hereby dismissed with costs fixed at \$250.00 subject to the Respondent's right to make further submissions thereon within 30 days.

Signed at Ottawa, Canada, this 10th day of March 2016.

“R.S. Boccock”

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Boccock J.

Citation: 2016 TCC 61  
Date: 20160310  
Dockets: 2013-2522(IT)G  
2013-3099(IT)I

BETWEEN:

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### **COMMON REASONS FOR JUDGMENT**

Bocock J.

[1] These appeals were heard together. The two appeals involve Ms. Tse-Lam, the common appellant, but otherwise concern distinct appeals.

#### I. 2012 Taxation year

[2] Ms. Tse-Lam filed her 2012 return of income. She reported \$31,194 in income, comprised of CPP benefits, dividends, interest (\$10,799) and RRSP withdrawal (\$15,000) and a small amount of other income. She was assessed by the Minister of National Revenue (the “Minister”), as filed, on May 9, 2013. There was no additional tax liability assessed. There was however a balance owing: \$2,586.26. Although it is difficult to know beyond a calculated guess, the Court surmises the balance owing caused Ms. Tse-Lam to commence an appeal. This appears to have been prompted by the Notice of Confirmation which, although it assessed Ms. Tse-Lam for no additional tax, did reflect the balance due arising from her own calculations, report of income and corresponding accrued interest. As well, Ms. Tse-Lam’s pre-existing disputes relating to other taxation years, particularly taxation years 2006, 2007 and 2008 dealt with below may have contributed to the 2012 appeal.

[3] In any event, at the hearing, Ms. Tse-Lam presented no discernible evidence, documents or arguments concerning the basis for her 2012 tax appeal.

Respondent's counsel conjectured that the appeal may have been based upon the two largest sources of income: Canada Savings Bond (CSB) interest of \$10,799 and an RRSP withdrawal of \$15,000.

[4] The Reply contained assumptions of fact concerning both these sources of income. As mentioned, these distinct sources of income were reported by Ms. Tse-Lam herself and assessed as filed.

[5] No evidence was tendered by Ms. Tse-Lam to suggest that the Minister's assumptions were incorrect or that any reported error had been made by her.

[6] On such basis, and consistent with the discussion below concerning Ms. Tse-Lam testimony and arguments generally, the Court dismisses the 2012 taxation year appeal.

## II. 2006, 2007 and 2008 taxation years

[7] On August 10, 2010, through her accountant Ms. Tse-Lam submitted a voluntary disclosure of unreported income for the 2006, 2007 and 2008 taxation years (the "taxation years"). In doing so, Ms. Tse-Lam reported the following rental property income, distributed to her through a testamentary trust, domiciled in Hong Kong and relating to her mother's estate:

<b>Taxation year</b>	<b>Amount in Canadian dollars</b>
2006	\$58,412.00
2007	\$27,549.00
2008	\$27,386.00

[8] As a result of the disclosure, the Minister reassessed taxes and interest. Although penalties were not waived, none were ultimately assessed. No operative tax treaty existed between Hong Kong and Canada for such period. Even if one did exist, no evidence was tendered to suggest Ms. Tse-Lam had paid withholding or other taxes in Hong Kong to afford her claim for foreign income tax credits.

[9] Both Ms. Tse-Lam and the Canada Revenue Agency auditor testified at the hearing. It was clear from the testimony that Ms. Tse-Lam struggles with the requirement, amount and logic of tax systems, both in Canada and abroad. It was also clear that Ms. Tse-Lam believes she has been the target of conspiracy,

corruption and theft. As well, Ms. Tse-Lam believes that the appeal process will continue indefinitely: she re-submitted many documents (mostly correspondence) several weeks after the hearing. However, the Court is required to base its findings on the evidence at the hearing. From such evidence and testimony, the Court makes the following findings of fact:

1. Ms. Tse-Lam admitted she was a Canadian resident during the taxation years;
2. Ms. Tse-Lam admitted her accountant filed the disclosure, but alleges she had been “forced” to request it;
3. The rental property income arose and was sent from Hong Kong and Ms. Tse-Lam did not dispute its receipt; and,
4. After firing the accountant who made the disclosure, Ms. Tse-Lam filed her Notice of Objection.

[10] The arguments submitted by Ms. Tse-Lam to the Court in support of her appeal may be summarized, with generous amplification, as follows:

1. The *Income Tax Act* requires a Canadian taxpayer to disclose annually all foreign income in respect of property held in excess of \$100,000.00. Ms. Tse-Lam never possessed such amounts of property because of the Hong Kong testamentary trust. Therefore, Ms. Tse-Lam asserts she was never required to file a T-1142 disclosing foreign property holdings. Similarly, she was and is not required to report such rental property income because the sum remains less than the \$100,000.00 threshold annually;
2. A “Trustee Ordinance” does not require a beneficiary to report income received through, or by virtue of, a foreign trust;
3. The moneys within the testamentary trust have been taxed in Hong Kong and should not be taxed in Canada as well; and,
4. Ms. Tse-Lam is not able to pay the taxes and interest.

[11] For the reasons which follow the appeal regarding the 2006, 2007 and 2008 taxation years is dismissed.

[12] The evidence is clear, by virtue of her own authorized (at the time at least) voluntary disclosure, that Ms. Tse-Lam received the rental property income during the taxation years.

[13] There was no tax treaty in place between Canada and Hong Kong during the taxation years. In any event, there was no evidence of any tax having been paid in Hong Kong on the rental property income.

[14] In calculating a taxpayer's income for any year, the *Income Tax Act* provides in subsection 3(a) that a taxpayer must:

- a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property. [underscoring added]

[15] In light of the fact Ms. Tse-Lam provided no documentary evidence or other records to displace the assumptions of the Minister (those assumptions based themselves upon Ms. Tse-Lam's own voluntary disclosure), the appeal cannot succeed. The taxpayer bears the burden of disproving that the Minister's assumptions are, on balance, untrue, irrelevant or misapplied. Ms. Tse-Lam must have available sufficient records and information to afford this Court some facility to compare such evidence with the assumptions of the Minister. She had no such information; in the absence of such evidence, the appeal must fail.

[16] While there were no submissions on the issue of costs, this was a General Procedure appeal and the Respondent is otherwise entitled to costs. In the circumstances, costs are fixed at \$250.00, which is well below the tariff applicable. These fixed costs are subject to the Respondent's right to make further submissions in writing within 30 days of the date of these reasons and corresponding judgment.

Signed at Ottawa, Canada, this 10th day of March 2016.

“R.S. Boccock”

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Boccock J.

CITATION: 2016 TCC 61

COURT FILE NOs.: 2013-2522(IT)G, 2013-3099(IT)I

STYLE OF CAUSE: EVA OI HAR TSE-LAM AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 1, 2016

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.  
Bocock

DATE OF JUDGMENT: March 10, 2016

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Aaron Tallon

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

For the Respondent: William F. Pentney  
Deputy Attorney General of Canada  
Ottawa, Canada