

Docket: 2016-319(IT)I

BETWEEN:

2187028 ONTARIO INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on September 19, 2016, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant: Ryan L. Morris

Counsel for the Respondent: Judy Michaely

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**JUDGMENT**

The Appeals from the reassessments made under the *Income Tax Act* for the 2012 and 2013 taxation years are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant did not have unreported income of \$84,960 and \$95,770 in the respective taxation years. There will be no penalties.

Signed at Ottawa, Canada, this 28th day of September 2016.

“Campbell J. Miller”

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C. Miller J.

Citation: 2016 TCC 216

Date: 20160928

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2187028 ONTARIO INC.,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

C. Miller J.

[1] The Minister of National Revenue (the “Minister”) assessed 2187028 Ontario Inc., the Appellant, for its 2012 and 2013 taxation years by adding unreported income of \$84,966 and \$95,770 respectively to the Appellant’s immigration consulting business. The Appellant’s position was that those amounts represented financial assistance for the Appellant’s sole shareholder, Ms. Lin’s husband’s business, Calin Stone Ltd. (“Calin”). Oftentimes when I am faced with similar explanations from taxpayers of receipt of offshore funds, there is a lack of corroborative evidence. In this case, the six family members who purported to provide the financial assistance were lined up to testify from China, each having a copy of the wire transfer involved. After having heard two of such witnesses, Mr. Lin’s sister and brother-in-law, the Respondent allowed that the remaining families’ testimony would present a similar story. The Respondent’s position was that due to some brief wording on the wire transfer applications themselves, it is not plausible this was financial assistance from the family, but was in fact revenue arising from the immigration consulting business. While I appreciate the wording might raise an eyebrow, on balance I believe the family testimony, I have concluded the funds in dispute do not represent unreported income.

## FACTS

[2] The Appellant is an Ontario company. At the relevant times, it was owned and operated by Ms. Lucy Lin (“Qiong Xie”). It operated under the tradename of IVE Immigration Services (“IVE”), having commenced business in October of 2008. It arranged for student or visitor visas, temporary or permanent resident applications and renewals. The market was in Canada and in China. In Canada, the Appellant advertised through a Chinese paper in Toronto. To market in China, Ms. Lin would go to China twice a year which she did in 2010 and 2011. She described how she got some clients from China also through a Mr. Wang, a former employee who, upon returning to China, was able to put Ms. Lin in touch with potential clients. Where an agent such as Mr. Wang was involved, the agent would normally pay IVE’s invoice. Most clients, however, came through Canadian contacts rather than through Chinese contacts. Ms. Lin provided invoices and bank statements indicating payments of such invoices being deposited into the Appellant’s bank account. She testified she never instructed payment to go elsewhere. The Appellant reported revenue in the years ending in 2011, 2012 and 2013 of \$118,917, \$127,513 and \$65,434 respectively.

[3] Ms. Lin started investing less time in IVE in 2012 due to poor earnings. She also stopped seeking new business altogether. In 2013, Ms. Lin was only dealing with clients if they had been retained before 2013. The Appellant subletted its premises to a third party and in June 2013, sublet to Calin, Ms. Lin’s husband’s, Mr. Leong Lin’s, company.

[4] Due to the winding down of IVE, Ms. Lin sought other work in 2012. She got a full-time position at the Royal Bank of Canada as a mortgage specialist in June 2012. She took a stress leave from that job in June to August 2013 and left in October 2013 to work in her husband’s business at Calin. During this time, she also earned income tutoring ESL.

[5] I turn now to Mr. Lin’s business. He started Calin in 2011, which he described as seasonal work. He was in the landscaping stone business, both selling and laying of stone. He had difficulty obtaining bank financing and required financial support to get through the 2011-2012 winter months. He therefore turned to his family in China for help. The next year was similar, and he again approached the family for financial help. He admitted he had lots of problems in the first few years. The company required a large space to rent for inventory, as well as for trucks, forklifts and skids. He also needed several employees. He described the business’ expenses as huge. He sought financial assistance for several years.

[6] According to the sister testifying from China, when the family received Mr. Lin's request, the family got together to discuss. They decided as a family that they could help, though limiting the first transfer to something less than what Mr. Lin requested. These requests were made annually for the first few years of Calin's business. I attach a schedule (Appendix 1) indicating the funds transferred from the family to Mr. Lin between December 2011 and July 2015. To be clear, only the first six transfers shown on Appendix 1 are the disputed amounts. These amounts were from Mr. Lin's two sisters, his father and a brother-in-law. The balance of the transfers shown on Appendix 1 were also from family including Mr. Lin's mother and other in-laws. Every transfer was evidenced by copies of "Applications for Funds Transfers (overseas)" (the "Transfer Forms").

[7] The Transfer Forms were in English and Chinese. Box 70 was entitled "Remittance Information" and further on the Transfer Form was a section entitled "Transaction Remark". Four of the six Transfer Forms in issue had "study abroad" (in Chinese) in the Transaction Remark Section. One of the Transfer Forms had "living expenses" and the other had "visiting relatives" (in Chinese). The latter Transfer Form also had "living expenses" (in Chinese) in the Remittance Information Section. This is all noted in Appendix 1. All funds were sent to the personal joint account of Mr. and Ms. Lin.

[8] I also note that payments continued in 2013, 2014 and 2015, the last three being after the Canada Revenue Agency ("CRA") had started its investigation. The notation on the Transfer Forms then showed "living expenses" rather than "study abroad" or "visiting relatives".

[9] The family's consistent testimony with respect to the notations on the Transfer Forms was that it was important not to have any reference to anything commercial as that could lead to more inquiries. They testified it was the bank representative who would put in these notations and that they were advised they were not important. They never paid any attention to it until the CRA raised its concerns.

[10] Mr. He, (Mr. Lin's brother-in-law) who also testified from China, indicated that he had mentioned to the bank representative that the funds were for living expenses, which was the notation in the Remittance Information Section, though the Transaction Remark Section showed "visiting relatives". Mr. He too indicated the bank advised these notations were not important and this was normal practice: what was important was the name, account and amount.

[11] The family's position was that, apart from the funds from Mr. Lin's mother and father, the funds were loans. It was part of their culture that interest would not be charged on such family arrangements. There was no loan documentation. With respect to repayment, one sister required repayment to assist with some home renovations. She was advised by her mother that if Mr. Lin could not repay then the mother would. Mr. Lin maintained although there had been no repayments to date, he still intends to do so.

[12] Finally, Ms. Lin acknowledged that on two occasions, in 2011 and 2012, she had admitted to having unreported income of \$3,500 and \$13,200 respectively, which she attributed simply to accounting mistakes. They had nothing to do with possible offshore income. Calvin also had \$36,000 in unreported income, though was unclear to me which year that related to.

### ANALYSIS

[13] The simple issue is whether \$84,960 in 2012 and \$95,770 in 2013 (the "Disputed Amounts") represent unreported income in the Appellant's immigration consulting business. Mr. and Ms. Lin and her family gave evidence that the disputed amounts were not unreported income but represented financial assistance to Mr. Lin from the family. The summary of the wire transfers evidenced transfers from Mr. Lin's sisters, mother, father, mother-in-law and brother-in-law. There was no testimony to suggest that the funds were derived from the immigration consulting business. The Government's argument is that the Lins' story is not credible for the following reasons:

[14] Four of the wire transfer application forms note in the remarks section, "study abroad". The Respondent argues that given the Appellant's business involving obtaining student visas, it is not credible that a bank representative would, on his or her own initiative, put this albeit brief explanation for the transfer reflecting the Appellant's business, if it was simply a family loan or gift. One of the other notations on a wire transfer indicated "visiting relatives", again an expression that would tie into an immigration consulting business that helped people get visitors visas.

[15] Further, the Minister argues that while all eight witnesses' evidence was consistent, they all had some self-interest in supporting a family member.

[16] Finally, the Respondent suggests that because Ms. Lin acknowledged not reporting revenue, there is a pattern of non-disclosure.

[17] This case has little to do with interpretation of complex tax laws, but everything to do with making factual determinations and assessing credibility. Were the disputed funds revenue from third parties received as part of the Appellant's immigration consulting business or were they simply family financial assistance?

[18] Regrettably, neither side produced any independent testimony. The Appellant's family having provided an explanation, the Respondent produced no officer to perhaps answer questions as to any inconsistencies arising from family interviews (indeed if there were any family interviews), questions as to whether any inquiries were made through Canada/Chinese competent authorities as to Chinese banking practices pertaining to the wiring of funds, requests for Chinese records, extent of investigation with respect to customers of the immigration consulting business (if indeed there was any contact with customers by CRA): I could ask many more questions.

[19] I ask, though, if Ms. Lin was attempting to hide immigration consulting revenue through an elaborate payment scheme funneling funds through several family members, why would she let the Transfer Forms indirectly identify "study abroad" and "visiting relatives"? If Ms. Lin was attempting to hide immigration consulting revenue, why would this scheme continue well after she ceased that business and, indeed, given other work responsibilities, would have had no time for such business? If Ms. Lin was attempting to hide significant immigration consulting revenue, indicating a valuable source of income, why would she abandon that business when she did? The answers to me are that, on balance, it is unlikely she would have behaved as she did had she been hiding revenue.

[20] I recognize there are some stumbling blocks that caused me some concern in reaching this conclusion, but they do not outweigh the consistent family story. The major stumbling block is the notations on the Transfer Forms. The family had an explanation for this that a non-businesslike remark was preferred, that the personal reason was not that significant and that it was left to the bank employee. It is not implausible that there are only a handful of personal like notations that are part of these forms. It is simply not as unfathomable as the Respondent suggests. Again, it is a matter of weighing the probabilities.

[21] Likewise, the Respondent's concern that there is a family tradition of unreported income. Can I accept Ms. Lin's explanation (and apology)? I can and I do. These were mistakes.

[22] I allow the Appeals and refer the Appeals back to the Minister for reassessment and reconsideration on the basis the Appellant did not have unreported income of \$84,960 and \$95,770 in 2012 and 2013. There likewise will of course be no penalties.

[23] While I have ultimately fallen off the fence in favour of the Appellant, it should be clear to Ms. Lin that I fully understand why the Respondent questioned these transfers. The truth has not been crystal clear in surfacing and I have ruled based on a balance of probabilities that just tilt in her company's favour.

Signed at Ottawa, Canada, this 28th day of September 2016.

“Campbell J. Miller”

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C. Miller J.

## APPENDIX 1

SUMMARY OF WIRE TRANSFER FORMS

Date	Transferor	Transferee	Amount	Remittance Information Section	Trans. Remark Section (Translated)
2011/12/14	Xiuping Lin	Qiong Xie	\$30,000	-	Study abroad
2012/01/18	Xiuping Lin	Qiong Xie	\$40,000	-	Study abroad
2012/04/10	Mingguang Lin	Qiong Xie	\$15,000	-	Study abroad
2012/11/17	Li Lin	Qiong Xie	\$31,900	-	Living expenses
2012/11/20	Zhengjie He	Qiong Xie	\$32,130	Living expenses	Visiting relatives
2012/11/30	Mingguang Lin	Qiong Xie	\$31,800	-	Study abroad
2013/01/16	Xiuping Lin	Qiong Xie	\$31,510	-	Study abroad
2013/05/28	Feng Chen	Qiong Xie	\$45,000	-	-
2014/01/10	Mingguang Lin	Qiong Xie	\$53,105.27		Study abroad
2014/01/10	Aiqiong Chen	Qiong Xie	\$53,101.3		Study abroad
2014/01/10	Xiuping Lin	Qiong Xie	\$53,100	Training fee	Study abroad
2014/02/14	Feng Chen	Qiong Xie	\$23,321.43	Training fee	Study abroad
2014/03/11	Feng Chen	Qiong Xie	\$17,999.82		Study abroad, Living expenses
2014/10/28	Meiyin Wang	Qiong Xie	\$25,010.27		Living expenses
2015/04/01	Mingguang Lin	Hong Lin	\$22,734.88	Family fee	Living expenses
2015/07/03	Aiqiong Chen	Hong Lin	\$31,121.52	Family fee	Living expenses



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