

Docket: 2016-251(IT)I

BETWEEN:

JANET AMOAKO-BOATEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard together with the appeal of Kwaku Amoako-Boatey (2016-886(IT)I) on November 14, 2016, at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Kaylee Silver

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2004, 2005 and 2006 taxation years is allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is allowed an additional \$440 in charitable donations in her 2004 taxation year and that the gross negligence penalties assessed in respect of the Appellant's 2005 and 2006 taxation years are to be deleted.

Signed at Ottawa, Canada, this 1st day of December 2016.

“David E.Graham”

Graham J.

Docket: 2016-886(IT)I

BETWEEN:

KWAKU AMOAKO-BOATEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard together with the appeal of Janet Amoako-Boatey
(2016-251(IT)I) on November 14, 2016, at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Kaylee Silver

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2003, 2004, 2005 and 2006 taxation years is dismissed.

Signed at Ottawa, Canada, this 1st day of December 2016.

“David E. Graham”

Graham J.

Citation: 2016 TCC 282
Date: 20161201
Dockets: 2016-251(IT)I
2016-886(IT)I

BETWEEN:

JANET AMOAKO-BOATEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

AND BETWEEN:

KWAKU AMOAKO-BOATEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Graham J.

[1] Kwaku Amoako-Boatey and Janet Amoako-Boatey are married. Their appeals were heard together on common evidence.

[2] When Mr. Amoako-Boatey filed his tax returns for his 2003, 2004, 2005 and 2006 taxation years, he claimed to have made charitable donations that included donations of \$6,400, \$7,200, \$6,000 and \$2,650 respectively. The Minister of National Revenue denied those donations on the basis that they were not made.

[3] When Ms. Amoako-Boatey filed her tax return for her 2004 tax year, she claimed to have made \$1,640 in charitable donations. The Minister denied those donations on the basis that they were not made. When Ms. Amoako-Boatey filed her tax returns for her 2005 and 2006 tax years, she claimed to have paid \$9,900

and \$12,000 respectively in child care expenses. The Minister denied those expenses on the basis that they were not incurred.

[4] The Minister applied gross negligence penalties to all of the adjustments to Mr. and Ms. Amoako-Boatey's incomes. During the trial, the Minister conceded that the penalties should be removed with regard to Ms. Amoako-Boatey's 2005 and 2006 tax years.

[5] I will first examine the child care expenses and then move on to the donations.

Child Care Expenses

[6] As set out above, Ms. Amoako-Boatey claimed child care expenses of \$9,900 and \$12,000 on her 2005 and 2006 tax returns.

[7] Ms. Amoako-Boatey testified that she was separated from her husband in 2005 and 2006. Mr. Amoako-Boatey lived in a different municipality. They had three children who were 2, 8 and 10 years old in 2005. The children lived with Ms. Amoako-Boatey and went to school near her home. Ms. Amoako-Boatey was employed full time. These facts were not in dispute. Based on the foregoing, I find that Ms. Amoako-Boatey must have used some form of child care in 2005 and 2006. The question remains whether she paid for that child care.

[8] Ms. Amoako-Boatey testified that she hired a neighbour, who lived in the building across the street, to look after her children. The neighbour's name was Mary Dansowaah. Ms. Dansowaah did not testify. Ms. Amoako-Boatey testified that she had sought out Ms. Dansowaah when her problems with the CRA arose and that she had learned that Ms. Dansowaah had moved back to Ghana about six years previously and had since passed away.

[9] Other than her own testimony and that of Mr. Amoako-Boatey, Ms. Amoako-Boatey had no evidence supporting the existence of her agreement with Ms. Dansowaah. Ms. Amoako-Boatey testified that they did not have a written contract. She paid Ms. Dansowaah in cash. Ms. Amoako-Boatey did not provide copies of her bank statements showing the withdrawal of that cash. The amounts that Ms. Amoako-Boatey paid Ms. Dansowaah were large and represented approximately one-third of her income so I would have expected her to be able to at least attempt to trace those amounts through her bank statements. Ms. Amoako-Boatey testified that she had had receipts at one time but that she had

given those receipts to her tax preparer and no longer had access to them. Ms. Amoako-Boatey filed a paper copy of her 2006 tax return. I note that those receipts should have been attached to that return, particularly because she had given them to her tax preparer. They were not. Ms. Amoako-Boatey did not call any witnesses who might have been able to confirm that Ms. Dansowaah had looked after the children.

[10] Ms. Amoako-Boatey's only evidence in support of her child care expenses was her own testimony and, to a very limited extent, Mr. Amoako-Boatey's testimony. Both Mr. and Ms. Amoako-Boatey's testimony in respect of their purported charitable donations sufficiently undermined their credibility that I am not prepared to rely on that testimony alone to support Ms. Amoako-Boatey's claim for child care expenses.

[11] Ms. Amoako-Boatey's 2006 tax year is not statute barred. Thus the Minister may rely on her assumptions of fact for that year. The Minister assumed that Ms. Amoako-Boatey did not incur any child care expenses in 2006. Based on all of the foregoing, I find that Ms. Amoako-Boatey has failed to demolish that assumption. Thus her appeal of her 2006 tax year cannot succeed.

[12] Ms. Amoako-Boatey's 2005 tax year is statute barred. For the Minister to raise an assessment after the normal reassessment period, the Minister must prove both that the taxpayer made a misrepresentation and that the misrepresentation was attributable to neglect, carelessness or wilful default. In proving the misrepresentation, the Minister may not rely on her assumptions of fact. In Ms. Amoako-Boatey's case, the misrepresentation that the Minister must prove is that Ms. Amoako-Boatey did not incur child care expenses or did not incur those expenses in the amount she claimed.

[13] Had the foregoing been the only evidence before me, I would have found that the Minister had not proven that Ms. Amoako-Boatey made a misrepresentation in her 2005 tax return. The fact that Ms. Amoako-Boatey could not support her claim for child care expenses does not necessarily mean that the Minister has proven a misrepresentation. If all that were required in order to prove a misrepresentation in respect of a deduction was that a taxpayer be unable to prove an entitlement to the deduction, then the burden would effectively remain on the taxpayer. That would defeat the entire purpose of a year being statute barred. The burden is on the Minister to prove that Ms. Amoako-Boatey did not incur the child care expenses in question. To meet that burden, the Minister needs to do something more than simply point to a lack of evidence from Ms. Amoako-Boatey.

At the very least, the Minister needs to be able to convince me that the reason Ms. Amoako-Boatey does not have any evidence of the child care expenses is that those expenses were never incurred. To do that, the Minister needs to do something more.

[14] The extra evidence that the Minister needs came from Ms. Amoako-Boatey's explanation of her payment arrangement with Ms. Dansowaah. Her explanation did not ring true. It sounded like a poorly thought through explanation that Ms. Amoako-Boatey had developed after the fact to justify the amounts she had claimed in her returns.

[15] To explain the \$9,900 amount claimed in 2005 she testified that she had paid Ms. Dansowaah \$40 per day, which was \$200 per week, which was \$800 per month, which was \$9,600 per year. She then explained that she paid an additional \$25 per month to cover times when she ran late. To explain the \$12,000 claimed in 2006, Ms. Amoako-Boatey said that she had paid Ms. Dansowaah \$50 per day, which was \$250 per week, which was \$1,000 per month, which was \$12,000 per year. Neither of these supposed systems of payment makes mathematical sense. Both systems assume that there are four weeks in each month when, in fact, there are more than four weeks in all months other than February. Ms. Amoako-Boatey did not explain how Ms. Dansowaah was compensated for the remaining work days in those months. The result of those extra days each month is that there are 52, not 48, weeks in a year. Ms. Amoako-Boatey did not explain how Ms. Dansowaah was compensated for the other four weeks in the year. She made no mention of statutory holidays or of what happened when she did not have to go to work. Either Ms. Dansowaah was compensated by the day, in which case I would expect her compensation over the course of the year to be less of a round figure, or she was compensated by the week regardless of the number of days worked in the week, in which case I would have expected an explanation of what happened to the other four weeks in the year, or she was compensated by the month regardless of the number of days worked in the month, in which case I do not understand why Ms. Amoako-Boatey described her as having a daily rate of pay. In view of the foregoing, I conclude that Ms. Amoako-Boatey either did not pay Ms. Dansowaah at all or did not pay her in the manner described.

[16] Ms. Amoako-Boatey should not have had to make up an explanation if she had actually paid Ms. Dansowaah the amounts that she claims to have paid her. The truth should have been enough. Her apparently fabricated explanation is enough to convince me that the reason she does not have documents and witnesses

to support her story is that those documents do not exist and those witnesses would not have supported her.

[17] Based on the foregoing, I am satisfied on a balance of probabilities that Ms. Amoako-Boatey made a misrepresentation in claiming child care expenses on her 2005 tax return. I am also satisfied that that misrepresentation was at least due to carelessness. The Minister is therefore able to reassess the otherwise statute barred year to deny the child care expenses.

[18] In view of all of the foregoing, I find that Ms. Amoako-Boatey is not entitled to deduct child care expenses in either 2005 or 2006.

Donations

[19] Ms. Amoako-Boatey claimed charitable donations of \$1,640 on her 2004 tax return. The Minister denied all of those donations. During the trial, the Respondent conceded that a \$60 donation carried forward from 2003 and a \$380 donation to Ms. Amoako-Boatey's church should be allowed. The only donation in dispute is therefore a \$1,200 amount that Ms. Amoako-Boatey claims to have donated to a charity named Holy Alpha and Omega Church of Toronto ("Holy Alpha").

[20] Mr. Amoako-Boatey claimed charitable donations of \$6,400, \$7,200, \$6,000 and \$2,650 in 2003, 2004, 2005 and 2006 respectively. At trial Mr. Amoako-Boatey claimed that all of those donations had been made to a charity named New Hope for Africa ("New Hope").

[21] Mr. and Ms. Amoako-Boatey both had their tax returns prepared by a man named William ("Billy") Ankomah. In 2009, Mr. Ankomah pled guilty to criminal charges of fraud over \$5,000 for claiming false charitable donations on behalf of his clients in exchange for a portion of those clients' tax refunds.

[22] Sergeant Roy Steinebach of the RCMP testified on behalf of the Respondent. Sgt. Steinebach worked in the RCMP's financial crime unit. He was the lead investigator in the investigation of Mr. Ankomah. I found Sgt. Steinebach to be a credible witness. He explained that the investigation had found that Mr. Ankomah was issuing false receipts for a number of charities. Those charities included Holy Alpha and New Hope.

[23] A CRA Appeals Officer named Lucy Amatuzio also testified on behalf of the Respondent. Ms. Amatuzio is the coordinator of what is called the "Billy

Project”. In that role she oversees all of the objections filed by former clients of Mr. Ankomah. I found Ms. Amatuzio to be a credible witness. Ms. Amatuzio explained that Mr. Ankomah had charged his clients a fee equal to 10% of the amount of the false donation claim he provided.

[24] An invoice from Mr. Ankomah to Ms. Amoako-Boatey was entered into evidence. The invoice had been seized by the RCMP during the execution of a search warrant at Mr. Ankomah’s office. The invoice showed that, in addition to a \$70 fee for tax return preparation, Mr. Ankomah had charged Ms. Amoako-Boatey \$120 for something called an “advanced payment due”. That \$120 amount would be exactly 10% of the \$1,200 donation that Ms. Amoako-Boatey claims to have made to Holy Alpha in 2004. A similar invoice to Mr. Amoako-Boatey was entered into evidence. The invoice showed that, in addition to a \$70 fee for tax return preparation, Mr. Ankomah had charged Mr. Amoako-Boatey \$720 as an “advanced payment due”. That \$720 would be exactly 10% of the \$7,200 donation that Mr. Amoako-Boatey claims to have made to New Hope in 2004. These two invoices very strongly suggest that Mr. and Ms. Amoako-Boatey participated in Mr. Ankomah’s fraudulent scheme.

[25] Mr. and Ms. Amoako-Boatey claim that they never received the above mentioned invoices and that they never purchased false donations from Mr. Ankomah. I do not believe them.

[26] Documents called tax summaries were entered into evidence for all of Mr. and Ms. Amoako-Boatey’s years in issue. Sgt. Steinebach testified that documents of that nature were seized from Mr. Ankomah’s office and were provided to the CRA. Ms. Amatuzio testified that the specific documents for Mr. and Ms. Amoako-Boatey were obtained from the RCMP. These documents show a number of inconsistencies. Mr. Amoako-Boatey’s tax summary for 2003 indicates that he donated \$6,400 to the Canadian Foundation for Child Development rather than, as he testified, to New Hope. The Canadian Foundation for Child Development was another charity used by Mr. Ankomah in his fraudulent scheme. Mr. Amoako-Boatey’s tax summaries for 2005 and 2006 state the amounts of his donations but do not state the name of the charity. The place where the name would be is simply left blank. Only the tax summary for 2004 indicates that Mr. Amoako-Boatey donated money to New Hope. Collectively this evidence suggests that it did not matter which charity was recorded on the tax summaries because no donation had actually occurred.

[27] No donation receipts were entered into evidence for any of the donations in question. Mr. and Ms. Amoako-Boatey testified that they were never given donation receipts. They stated that they gave Mr. Ankomah cash throughout the year, that he recorded that cash in a book and that, at the end of the year, he told them the total that they had donated. They explained that Mr. Ankomah recorded that total as a donation on their tax returns and that he told them he was going to hold on to the donation receipt in case the CRA required him to produce it. I find it difficult to believe that Mr. and Ms. Amoako-Boatey would have given Mr. Ankomah sizeable amounts of cash throughout the year without receiving receipts let alone that they would not have received a donation receipt at the end of the year. They stated that, because the CRA seized all of Mr. Ankomah's documents and Mr. Ankomah had gone out of business, it was no longer possible for them to obtain their receipts. I do not believe that story. On the contrary, it appears that the seizure of documents from Mr. Ankomah's office is a convenient excuse for their not having donation receipts.

[28] Mr. and Ms. Amoako-Boatey did not enter into evidence any bank statements showing the withdrawal of the cash that they had purportedly donated. In Mr. Amoako-Boatey's 2003, 2004 and 2005 tax years his donations amounted to approximately one-fifth of his income, so I would have expected him to be able to trace at least some of the withdrawals to his bank statements.

[29] Mr. and Ms. Amoako-Boatey both described the good work supposedly done by New Hope and Holy Alpha. However, neither of them had had any contact with anyone from either charity other than Mr. Ankomah and neither of them knew of their respective charity prior to meeting Mr. Ankomah. Both placed a great deal of emphasis on the fact that Mr. Ankomah had framed copies of the charities' registrations on his wall. I cannot believe that Mr. and Ms. Amoako-Boatey went to see their accountant, that he told them about those charities, that he pointed to the charities' registrations on the wall and that, despite their never having heard of the charities before, that was enough for Mr. and Ms. Amoako-Boatey to decide to donate significant sums of money to them. It seems far more likely to me that Mr. Ankomah met with Mr. and Ms. Amoako-Boatey, told them that he could obtain sizeable tax refunds for them using false charitable donations, told them that the price for those refunds was 10% of the face value of the donations, assured them that they would not be caught because the charities were real and showed them copies of the charities' registrations to prove his point.

[30] Mr. Amoako-Boatey's 2003, 2004 and 2005 tax years are statute barred. Ms. Amoako-Boatey's 2004 tax year is statute barred. I find that the Respondent has

produced sufficient evidence to prove that Mr. and Ms. Amoako-Boatey made misrepresentations in claiming charitable donations on their tax returns in those years. I further find that Mr. and Ms. Amoako-Boatey made those misrepresentations knowingly. I conclude that, in an effort to obtain greater tax refunds, they paid Mr. Ankomah 10% of the face value of false charitable donations that they were buying from him. On that basis, I find that the Minister can reassess the otherwise statute barred years to deny the donations in issue. Furthermore, having concluded that Mr. and Ms. Amoako-Boatey knowingly claimed false donations, I have no difficulty in concluding that the gross negligence penalties assessed against them should be upheld.

Conclusion

[31] Based on all of the foregoing, Mr. Amoako-Boatey's appeal is dismissed and Ms. Amoako-Boatey's appeal is allowed and the matter referred back to the Minister for reassessment to give effect to the Respondent's concessions.

Signed at Ottawa, Canada, this 1st day of December 2016.

“David E. Graham”

Graham J.

CITATION: 2016 TCC 282

COURT FILE NOS.: 2016-251(IT)I and 2016-886(IT)I

STYLES OF CAUSE: JANET AMOAKO-BOATEY v. HER
MAJESTY THE QUEEN

KWAKU AMOAKO-BOATEY v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: November 14, 2016

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

DATE OF JUDGMENT: December 1, 2016

APPEARANCES:

For the Appellants: The Appellants themselves
Counsel for the Respondent: Kaylee Silver

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