

Docket: 2016-2580(IT)I

BETWEEN:

ZUGU ZUBEIRU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 5, 2017, at Toronto, Ontario

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Hye Won (Caroline) Ahn

JUDGMENT

The appeal from the reassessments dated February 20, 2009, made under the *Income Tax Act* in respect of the 2003, 2004, 2005 and 2006 taxation years is dismissed in accordance with the attached reasons for judgment.

Signed at Kingston, Ontario, this 17th day of October 2017.

“Rommel G. Masse”

Masse D.J.

Citation: 2017 TCC 199

Date: 20171017

Docket: 2016-2580(IT)I

BETWEEN:

ZUGU ZUBEIRU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

[1] The Appellant is appealing Notices of Reassessment dated February 20, 2009, made under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended (the “Act”), whereby the Minister of National Revenue (the “Minister”) disallowed charitable donations regarding the Appellant’s 2003, 2004, 2005 and 2006 taxation years.

Factual Context

[2] The Appellant currently resides in the city of Brampton, Ontario. He works at Cadbury Chocolates. Years back, he met an individual named William “Billy” Ankomah (“Ankomah”) who also worked at Cadbury’s. Ankomah also did work as a tax preparer and has prepared the Appellant’s tax returns for several years and did so, for the taxation years under consideration here. Ankomah always e-filed the Appellant’s tax returns.

[3] In computing tax payable for the 2003, 2004, 2005 and 2006 taxation years, the Appellant claimed federal charitable donation non-refundable tax credits in respect of charitable donations allegedly made by him. These claimed charitable donations are as follows:

2003	Whit-Tee Youth Shelter	\$5,200
2004	Canadian Foundation for Child Development	\$7,586
2005	Unidentified charities	\$8,500
2006	Unidentified charities	\$3,707

[4] The Appellant was initially assessed and allowed the federal charitable donation non-refundable tax credits, as claimed. He was reassessed for those taxation years by Notices of Reassessment dated February 20, 2009. As a result of these reassessments, the Minister disallowed all of the charitable donations allegedly made by the Appellant for each of those taxation years.

[5] The Appellant served a Notice of Objection to the reassessments for those years on May 1, 2009. The Minister confirmed the reassessments and issued a Notice of Confirmation dated May 2, 2016. Hence, the appeal to this Court.

[6] In his evidence, the Appellant indicated that his tax preparer, Billy Ankomah, would come to his house to prepare his tax returns. The Appellant is of African origin and he testified that he wanted to improve the lives of people in Africa. Ankomah promoted some charities supposedly associated with his church and he accepted charitable donations from the Appellant of goods and cash on behalf of these charities. The Appellant did not know anything about the charities being promoted by Ankomah. He does not know what these charities did or where they were based. He never had any contact at all with the charities. The Appellant testified that he did not know anything about Whit-Tee Youth Shelter, the charity he supposedly supported to the extent of \$5,200 in goods and cash in 2003. He also stated that he does not know anything about the Canadian Foundation for Child Development, the charity to which he donated \$7,586 worth of goods and money in 2004. For the 2005 and 2006 years, the Appellant is not able to tell us what charities he supported; only that everything went to Ankomah's church.

[7] The Appellant testified that he gave mostly goods to the charities but he also gave some cash. This was all given directly to Ankomah and not to the charities themselves. The Appellant really does not remember what property he gave to Ankomah. He states he gave more in the way of property than he did in cash but he could not tell us how much was cash and how much was property. Nor could the Appellant provide any details of the property given other than some old furniture, a vehicle, old computers and various other items. The Appellant did not have the goods appraised. The Appellant could not produce any appraisal reports regarding the property allegedly given to the charities. According to the Appellant, Ankomah looked after the valuation of the goods. The Appellant could not produce any

receipts at all for any of the taxation years here under consideration. The Appellant testified that he had asked Ankomah for receipts but Ankomah only gave him two or three receipts but that was all. The only receipt the Appellant could produce was a receipt for the 2002 taxation year (Exhibit A-1) in the amount of \$8,640 from the Canadian Foundation for Child Development. This is a significant amount. The 2002 taxation year is not the subject of the present appeal and therefore this receipt is of no help to the Appellant. The Appellant surmised that this donation could have been carried forward to the 2003 taxation year but this simply is not so.

[8] The Appellant also says that he would buy goods on-line from Kijiji and then donate those goods to Ankomah's charities. This makes no sense at all. Why buy goods to donate when it is simply more effective to give money?

[9] The Appellant admits that he never reviewed any tax returns before Ankomah e-filed them on his behalf. The Appellant states that he always trusted Ankomah and never thought he would do anything wrong since he was a man of God and he always went to church. It is to be noted that the Appellant did not go to the same church as Ankomah since the two are of different religions.

[10] The Appellant testified that when he started to get in trouble with the Canada Revenue Agency ("CRA"), he met Ankomah either in 2008 or 2009 and he asked Ankomah for the receipts in order to prove that he had made the questionable charitable donations. The receipts were not forthcoming. After a while, Ankomah simply disappeared from the Appellant's life and was never seen by the Appellant again.

[11] Lucy Amatuzio has worked for the CRA for the last 32 years; for 12 of those years she was an appeals officer and the last 5 years she was a project coordinator.

[12] Ms. Amatuzio examined all of the electronic documents that the CRA had on file with respect to the Appellant's 2003 to 2006 taxation years. She produced to the Court hard copies of electronic documents known as "Option-C" computerized printouts for each of those years. These documents contain information pertaining to the income and deductions reported in the Appellant's personal tax return for any specific year. The information contained thereon is cross-referenced to the corresponding numbered line on the personal tax return.

[13] Option-C for 2003 (Exhibit R-1) shows that in 2003, the Appellant earned \$16,260 from T4 earnings, \$10,731 from Employment Insurance and \$417 as Registered Retirement Savings Plan ("RRSP") income for a total income of

\$27,408 (line 150). He claimed charitable donations of \$5,200 (line 340). This is a significant amount equivalent to 19% of gross income. The tax preparer code was C2934 which is assigned to Guaranteed Income Tax Services operated by Sandra Ankomah. This tax preparer is affiliated with Billy Ankomah.

[14] Option-C for 2004 (Exhibit R-3) shows that in 2004, the Appellant earned \$21,853 from T4 earnings, \$8,999 from Employment Insurance and \$417 as RRSP income for a total income of \$31,269 (line 150). He claimed charitable donations of \$7,586 (line 340). Again, this is a significant amount, equivalent to 24.25% of his gross income. The tax preparer code was E2614 which is assigned to Boulos Tax Services operated by Paul Soueidan, an associate of Billy Ankomah.

[15] Option-C for 2005 (Exhibit R-5) shows that in 2005, the Appellant earned \$30,929 from T4 earnings, \$5,757 from Employment Insurance and \$417 as RRSP income for a total income of \$37,103 (line 150). He claimed charitable donations of \$8,500 (line 340) or 23% of his gross income. The tax preparer code was E7739 which is assigned to JW Finances operated by Jezrael Fernandez, another associate of Billy Ankomah.

[16] Option-C for 2006 (Exhibit R-6) shows that in 2006 the Appellant earned \$30,647 from T4 earnings, \$6,608 from Employment Insurance and \$417 as RRSP income for a total income of \$37,672 (line 150). He claimed charitable donations of \$3,707 (line 340) or 10% of his gross income. The tax preparer code was F3427 which is assigned to Osbon Tax Services operated by Jeffrey Osei Bonsu who is also believed to be an associate of Billy Ankomah.

[17] It is readily seen that the amount of claimed charitable donations was a significant proportion of the Appellant's gross income for all of these years, ranging from a low of approximately 10% in 2006 to a high of 24.25% in 2004. I consider these to be very high percentages for a person who is a low income earner and who, for a period of time every year, was unemployed and collecting employment insurance.

[18] Ms. Amatuzio testified that in March 2007, the Royal Canadian Mounted Police ("RCMP") and the CRA were investigating a group of tax preparers who were defrauding the CRA by filing claims of fraudulent charitable donations and claiming non-refundable tax credits on behalf of their clients when, in fact, no charitable donations had been made and no charity had received any charitable donations. Billy Ankomah was one such tax preparer. Ms. Amatuzio testified that clients of Ankomah would pay him 10% of the fraudulently claimed charitable

donations, in return for filing the fraudulent tax returns. This would result in the taxpayers receiving significant non-refundable tax credits to which they were not entitled in respect of these so-called charitable donations.

[19] In May 2007, the RCMP raided the offices of Ankamah and seized computers and papers as well as receipt books that were blank but signed. The RCMP found documents that related to the Appellant among those that were seized at Ankamah's business premises.

[20] Exhibit R-2 is a document titled "Tax Summary 2003" with respect to the Appellant. This document, found on the business premises of Ankamah, contains information that is consistent with Option-C for 2003 (Exhibit R-1) in terms of employment income, employment insurance benefits and charitable donations. The third page of Exhibit R-2 also shows that the Appellant supposedly made charitable donations in the amount of \$5,200 to Whit-Tee Youth Shelter. Exhibit R-4 is a document titled "Tax Summary 2004" with respect to the Appellant. Again, this document found on the business premises of Ankamah, contains information that is consistent with Option-C for 2004 (Exhibit R-3) in terms of employment income, employment insurance benefits and charitable donations. The third page of Exhibit R-4 indicates that the Appellant supposedly made charitable donations of \$7,585.50 to the Canadian Foundation for Child Development. The fourth page of Exhibit R-4 is an invoice for services rendered to the Appellant. The fees are for services described as preparation of 2004 tax return and e-filing in the amount of \$70 and "Advanced payment due" in the amount of \$758.55. This amount is exactly 10% of the claimed charitable donations for that year. The full payment for these services was due upon refund. This is consistent with the scheme operated by Ankamah as described by Ms. Amatuzio. The Appellant says he has no knowledge of any of this and he denies ever having paid any more than \$40 for the preparation of his tax returns. Specifically, he denies having paid Ankamah \$758.55 on account of "Advanced Payment Due". He surmises that Ankamah made all this up and fabricated this invoice. I do not accept this explanation.

[21] The charitable registration number of Whit-Tee Shelter Inc. was revoked and gazetted on November 3, 2007. The charitable registration number of Canadian Foundation for Child Development was revoked and gazetted on June 21, 2008. These revocations are pursuant to s. 168(2) of the *Act*.

[22] On October 16, 2009, Ankamah pleaded guilty before the Honourable Justice Durno of the Ontario Superior Court of Justice to one count of fraud over

\$5,000 for having prepared income tax returns for his clients and claiming therein false charitable donations on behalf of his clients. Ankomah received a jail sentence of two years less a day to be served conditionally in the community, followed by probation for 24 months and an order of forfeiture of crime-related property. Even though the indictment to which Ankomah pled guilty was within the time frame of March 1, 2007 to May 31, 2007, the facts read into the record in support of the guilty plea indicated that the fraudulent activities attributable to Ankomah extended from 2003 to the 2007 taxation years. It cannot be disputed that during this time period, the tax preparer for the Appellant was Ankomah.

Position of the Parties

[23] The Appellant argues that he did not know that what Ankomah was doing was wrong. He is a naïve individual and he trusted Ankomah because Ankomah was a man of God. The first time Ankomah asked for donations, the Appellant was concerned and he asked if he would get in trouble. The Appellant claims that he, in fact, made the charitable donations claimed within the meaning of s. 118.1(1) and 118.1(3) of the *Act*. The Appellant also argues that the Minister has not made out a case for reassessing the Appellant for the 2003 and 2004 taxation years that are beyond the normal reassessment period.

[24] The Respondent admits that the 2003 and 2004 taxation years of the Appellant were reassessed beyond the normal reassessment period of three years and the burden is on the Minister to justify this reassessment. The Respondent submits that there has been a misrepresentation in the filing of the Appellant's 2003 and 2004 tax returns that is attributable to neglect, carelessness or wilful default thus justifying the reassessment of those two years beyond the normal reassessment period. The Respondent also takes the position that the Appellant did not make any charitable donations in the taxation years under consideration here and if he did, then the Respondent claims that the charitable donations do not comply with subsection 118.1(2) of the *Act* and Regulations 3500 and 3501 of the *Income Tax Regulations*. The Respondent therefore submits that the appeal be dismissed.

Analysis

[25] There are two issues to be determined in this appeal:

- a. whether the appellant made a misrepresentation attributable to neglect, carelessness or wilful default in filing his 2003 and 2004 tax returns,

allowing the Minister to reassess those years beyond the normal limitation period of three years; and

- b. whether the Appellant made charitable donations in the amounts claimed, and if he did, whether he is entitled to claim a charitable donation non-refundable tax credit for the 2003, 2004, 2005 and 2006 taxation years.

[26] Subsection 152(4) of the *Act* reads in part as follows:

152(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

- (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act, . . .

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and

. . .

(b.2) the assessment, reassessment or additional assessment is made before the day that is three years after the end of the normal reassessment period for the taxpayer in respect of the year and if

. . .

(4.01) Notwithstanding subsections (4) and (5), an assessment, reassessment or additional assessment to which paragraph (4)(a), [...] applies in respect of a taxpayer for a taxation year may be made after the taxpayer's normal reassessment period in respect of the year to the extent that, but only to the extent that, it can reasonably be regarded as relating to,

(a) where paragraph 152(4)(a) applies to the assessment, reassessment or additional assessment,

- (i) has made any misrepresentation made by the taxpayer or a person who filed the taxpayer's return of income for the year that is attributable to neglect, carelessness or wilful default or any fraud committed by the taxpayer or that person in filing the return or supplying any information under this Act, . . .

[27] The normal reassessment period is three years from the date of assessment. If the Minister wishes to reassess a taxpayer outside of this normal reassessment period, the Minister must satisfy a two-part test as set out in *Boucher v. Canada*, [2004] F.C.J. No.169 (Fed. C.A.), at para. 5. There must be (1) a misrepresentation in the tax returns of the year sought to be reassessed, and (2) such misrepresentation is attributable to neglect, careless or wilful default in supplying the incorrect information.

[28] It has been held that any erroneous statement in a return is a misrepresentation. In *Nesbitt v. Canada*, [1996] F.C.J No. 1470 (Fed. C.A.), Justice Strayer observed at paragraph 8:

[8] . . . It appears to me that one purpose of subsection 152(4) is to promote careful and accurate completion of income tax returns. Whether or not there is a misrepresentation through neglect or carelessness in the completion of a return is determinable at the time the return is filed. A misrepresentation has occurred if there is an incorrect statement on the return form, at least one that is material to the purposes of the return and to any future reassessment. It remains a misrepresentation even if the Minister could or does, by a careful analysis of the supporting material, perceive the error on the return form. . . .

[29] The neglect, carelessness or wilful default need not be that of the taxpayer. The taxpayer will still be subject to having his/her tax returns reassessed beyond the normal period if the misrepresentation resulted from the conduct of the taxpayer's agent such as an accountant or tax preparer. In the matter of *College Park Motors Ltd. v. Canada*, [2009] T.C.J. No. 316, Justice Bowie of this Court observed at para. 13:

. . . Negligence in the preparation of an income tax return retains its consequences under subparagraph 152(4)(a)(i) whether it is the negligence of the taxpayer personally or that of the accountant or other tax preparer who is his or her agent. In *Nesbitt v. The Queen*, 96 DTC 6045, Heald J. held that a taxpayer could not shield himself from the effect of subparagraph 152(4)(a)(i) by blaming his accountant. The same considerations apply here.

[30] This same theme was affirmed by the Federal Court of Appeal in *Vine Estate v. Canada*, [2015] F.C.J. No. 651, where Justice Webb observed at para. 43 that “. .

. a misrepresentation could be ‘attributable to neglect, carelessness or wilful default’ regardless of whether the person filing the return or someone else was negligent, careless or wilfully in default in making the misrepresentation”. In determining whether the person filing a return that has been prepared by someone else is careless or negligent, the degree of care that must be exercised is “that of a wise and prudent person”. I refer to the decision of *Angus v. The Queen*, [1996] T.C.J. No. 883, at para. 29. In *Venne v. M.N.R.*, [1984] F.C.J. No. 314 (F.C.T.D.), neglect within the meaning of subsection 152(4)(a)(i) of the *Act* is established if it is shown that the taxpayer has not exercised reasonable care in filing his/her return. If a taxpayer entrusts another to prepare his/her tax returns and does not bother to review the return before filing it with the CRA, then that amounts to neglect.

[31] Has there been a misrepresentation made in the Appellant’s tax returns for 2003 and 2004? Based on the evidence before me, I am satisfied on the totality of the evidence presented in this case that it has been established on a preponderance of probabilities that the Appellant through his tax preparer, Ankomah, made misrepresentations in his tax returns for 2003 and 2004. I conclude that it is more likely than not, that there were no charitable donations made in 2003 and 2004 and if there were, then the amounts reported were likely inflated and inaccurate. I so conclude for the following reasons:

- a. The Appellant was suspicious right from the very beginning, of the legitimacy of what Ankomah was doing and asked him if this scheme would get him in trouble. The Appellant certainly was prescient because this scheme did get him in trouble. The Appellant, having had his curiosity peaked by Ankomah’s scheme, should have investigated further into what his tax preparer was doing.
- b. The Appellant claimed that his 2003 charitable donations were carried forward from 2002 – this is simply not true.
- c. The ratio of the alleged donations compared to the Appellant’s gross income for the 2003 and 2004 years is very high. In 2003, the charitable donations amounted to 19% of his gross income and in 2004 the charitable donations amounted to 24% of his gross income. The Appellant was a low-income earner who was unemployed for a period of time each year and collected employment insurance. It is highly unusual for a taxpayer of his means to donate goods and/or cash of one-fifth to one-quarter of his gross income to charity. This, among other factors, leads to a finding that the charitable donations were at the very least inflated, if not, non-existent.

- d. The Appellant claims that he wanted the people in Africa to benefit but yet, he did not know anything about the charities, Whit-Tee Youth Shelter Inc. or the Canadian Foundation for Child Development. The Appellant could not provide any information concerning the causes or programmes supported by these charities and he did not know where they were based. He had no contact whatsoever, with any of these charities; he only had contact with Ankomah.
- e. The Appellant never gave anything to the charities in question; if he gave anything, he gave it to Ankomah or to his church. He never verified if any of the charities actually received the goods and cash supposedly donated.
- f. The Appellant had no particulars of what he actually donated. He was unable to produce any records concerning any of his charitable gifts. He has no bank records, no receipts, no cancelled cheques, no itemized lists of goods donated, no appraisal reports regarding the goods donated, no records regarding the dates and the amounts of cash that he would have donated. He is unable to tell us how the goods donated were evaluated and he is unable to tell us what goods he donated other than some old furniture, old computers, a walker and an old car. Any prudent taxpayer would have kept some documentation. I draw a negative inference from his lack of records.
- g. The Appellant claims that he purchased used goods on Kijiji, an on-line marketing site, and donated those same goods to charity. We do not know what those goods were that he purchased on Kijiji, or how much he paid for them or what valuation those goods were given for charitable purposes. Purchasing used goods from Kijiji just to give them to charity makes no sense. Why not just give cash and let the charity decide for itself what items to purchase to best meet its benevolent goals? Purchasing used goods on Kijiji leads me to believe that the valuation of the goods may not have been the same as the purchase price.
- h. Ankomah, who prepared the Appellant's tax returns, was clearly a very dishonest tax preparer who engaged in a scheme to defraud the CRA by falsely claiming non-existent or inflated charitable donations on behalf of his clients. At his guilty plea, it was revealed that this fraudulent scheme extended back to 2003. Thus, there is a high likelihood that Ankomah submitted fraudulent claims of charitable donations on behalf of the Appellant, one of his clients, for 2003 and 2004.

- i. Documents that were seized from the business premises of Ankomah indicate that the Appellant was invoiced the amount of \$758, or 10% of the charitable donations that the Appellant claimed he made in 2004. This supports the contention of the Respondent that Ankomah was charging his clients 10% of the face amount of the fraudulently claimed charitable donations. I reject the Appellant's evidence that he was unaware of this and that he did not pay this amount to Ankomah.

[32] The Appellant through the agency of Ankomah has certainly made a misrepresentation in his tax returns. He knew or ought to have known that the amounts of \$5,200 and \$7,586 were far in excess of any donations actually made by him in 2003 and 2004 respectively. He was at the very least neglectful in not reviewing his tax returns for 2003 and 2004 before Ankomah e-filed them on his behalf. In the circumstances, the Minister was justified to reassess beyond the normal reassessment period pursuant to subsection 152(4) of the *Act*.

[33] Having determined that the Minister was justified in reassessing beyond the normal reassessment period, it is now incumbent on the Appellant to satisfy this Court that he, in fact, made the charitable donations he allegedly made during the taxation years under consideration here. The burden of proof is now on the Appellant to demolish the case for the Crown. I refer to the decision of *Hickman Motors v. R.*, [1997] 2 SCR 336.

[34] The first step in doing so would be to obtain and produce receipts issued by the registered charitable organizations. Subsection 118.1(2)(a) of the *Act* provides:

118.1(2) An eligible amount of a gift is not to be included in the total charitable gifts, total cultural gifts or total ecological gifts of an individual unless the making of the gift is evidenced by filling with the Minister

(a) a receipt for the gift that contains prescribed information;

...

[35] The Appellant was not able to produce a single receipt supporting his claim of charitable donations during the taxation years 2003 through to 2006. Subsection 118.1(2) is mandatory and the failure to comply with this subsection is fatal to any claim.

Conclusion

[36] For all of the foregoing reasons, this appeal is dismissed.

Signed at Kingston, Ontario, this 17th day of October 2017.

“Rommel G. Masse”

Masse D.J.

CITATION: 2017 TCC 199

COURT FILE NO.: 2016-2580(IT)I

STYLE OF CAUSE: Zugu Zubeiru and Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 5, 2017

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse, Deputy Judge

DATE OF JUDGMENT: October 17, 2017

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Hye Won (Caroline) Ahn

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada