

Docket: 2006-1820(IT)I

BETWEEN:

HASSAN IDRIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard together on common evidence with the Appeal of *Hassan Idris* (2006-1822(GST)I) on August 23, 2007 at Hamilton, Ontario

Before: The Honourable Justice T. O'Connor

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Josh Hunter

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* (“Act”) for the 1997 and 1998 taxation years is allowed because the reassessments for those years are statute barred and the Appellant has not made any misrepresentation attributable to neglect, carelessness or wilful default nor committed any fraud. It follows that there shall be no penalties under the *Act* in respect of the taxation years 1997 and 1998.

The appeal from the reassessments made under the *Act* for the 1999 and 2000 taxation years is dismissed, provided however that the rent expenses to be allowed to the Appellant shall be \$9,736.58 in 1999 and \$12,570.36 in 2000 and provided that there shall be no penalties.

There shall be no costs.

The whole in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 27th day of September, 2007.

"T. O'Connor"

O'Connor, J.

Docket: 2006-1822(GST)I

BETWEEN:

HASSAN IDRIS,

Appellant,

and

HER MAJESTY THE QUEEN,

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Appeal heard together on common evidence with the Appeal of
Hassan Idris (2006-1820(IT)I) on August 23, 2007 at Hamilton, Ontario

Before: The Honourable Justice T. O'Connor

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Josh Hunter

JUDGMENT

The appeal from the assessment made under the *Excise Tax Act* (“ETA”), notice of which is dated December 18, 2003 for the period from January 1, 1999 to December 31, 2002 is dismissed in accordance with the attached Reasons for Judgment, provided however that there shall be no gross negligence penalty.

For greater certainty, the assessment for the underreported Goods and Services Tax in the amount of \$8,042 plus the penalty of \$1,464.11 imposed for late filing under section 280 of the ETA plus interest of \$852.25 have been properly assessed and are maintained.

There shall be no costs.

The whole in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada this 27th day of September, 2007.

"T. O'Connor"

O'Connor, J.

Citation: 2007TCC575
Date: 20070927
Docket: 2006-1820(IT)I
2006-1822(GST)I

BETWEEN:

HASSAN IDRIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

O'Connor, J.

[1] The Minister of National Revenue (“Minister”) has reassessed the Appellant under the *Income Tax Act* (“Act”) in respect of the taxation years 1997, 1998, 1999 and 2000 principally on the basis that the Appellant has failed to declare all of his income in those years. The Minister has also, in respect of the taxation years 1999 and 2000, disallowed certain expenses.

[2] Further, the Minister has assessed Goods and Services Tax under the *Excise Tax Act* (“ETA”) for the period from January 1, 1999 to December 31, 2002 in respect of the unreported income and the related supplies.

[3] During all the years in question and prior thereto the Appellant carried on the business of computer sales as a sole proprietorship.

[4] It is acknowledged by the Respondent that the reassessments under the *Act* in respect of the years 1997 and 1998 were beyond the normal reassessment period. The question, therefore, is whether the Minister was entitled to re-open those statute barred years under subparagraph 152(4)(a)(i) which allows the Minister to assess beyond the normal reassessment period if 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, or ...

[5] In my opinion, the Respondent has not established the necessary misrepresentation by the Appellant and/or his wife, Anne Idris, who was his bookkeeper for the business. They may have been unaware of the precise requirements of the *Act* and may have made innocent mistakes but in my opinion, the necessary misrepresentation required to re-open statute-barred years has not been established. Amongst the reasons I have arrived at that opinion of no misrepresentation is the difficulties the Appellant and his wife must have encountered in properly preparing the Appellant's returns. One need only examine the complex calculations of the auditor and the appeals officer to appreciate those difficulties. Another reason for that opinion is that some of the mistakes the Appellant made were adverse to his interests. As examples, he understated costs of goods sold in both 1999 and 2000 by fairly substantial amounts and in those years only three expenses out of several were understated and because of my conclusion (later) on the rental expenses claim being allowed, that number reduces to two.

[6] The issue under subparagraph 152(4)(a)(i) is also related to the issue of penalties. If there is a misrepresentation that was attributable to simple neglect or carelessness not amounting to gross negligence, the gross negligence penalties under subsection 163(2) cannot be supported. In my opinion, in all of the years in question, namely 1997, 1998, 1999 and 2000, gross negligence and the conditions of subsection 163(2) have not been established. Consequently, there shall be no penalties under the *Act* in any of those years.

[7] With respect to the expenses disallowed in the 1999 and 2000 years, the Minister, in the Reply to the Notice of Appeal, made the following assumptions of fact:

Telephone and utility

(j) the Appellant did not incur telephone and utility expenses in excess of the amounts of \$1,711.51 and \$3,227.14 for the years 1999 and 2000 with respect to his business;

Rent expenses

- (k) the Appellant did not incur the rent expenses in excess of the amounts of \$8,932 and \$11,748 during the 1999 and 2000 taxation years; and

Vehicle expenses

- (l) the Appellant did not incur the vehicle expenses in excess of the amounts of \$489.63 and \$500.64 during the 1999 and 2000 taxation years.

[8] These disallowed expenses were determined on the basis of an extensive and penetrating audit conducted by Amulya Dave, the Canada Revenue Agency (“CRA”) auditor and as reviewed by Evelyn Gail Clancey, the appeals officer of the CRA.

[9] The Appellant has the burden of proof to establish that these assumptions were not correct and, in my opinion, the Appellant, with the exception mentioned hereafter, has not met that burden. Moreover, in any event, I accept the testimony of the auditor and the appeals officer in regard to the disallowed expenses. The only exception I make is that the Appellant has satisfied me that the rent expenses he claimed of \$9,736.58 and \$12,570.36 were correct principally because of his explanation of having to pay additional rent in respect of common areas.

[10] With respect to the 1999 and 2000 taxation years the amounts of business income understated by the Appellant and as detailed and calculated in the Reply to the Notice of Appeal for the income tax appeal were \$37,321 in 1999 and \$50,764 in the year 2000.

[11] In my opinion, based on the detailed and extensive testimony of the auditor and of the appeals officer, the Respondent has established that these amounts were correct. As more fully detailed in the said Reply, the unreported income amounts were discovered as a result of unexplained deposits in the business bank account of the Appellant. The Appellant sought to explain the excess deposits in that account by producing Exhibits A-1, A-2, A-3 and A-4, which purport to indicate certain gifts made by the Appellant’s daughter and son. The difficulty is that the amounts of the alleged gifts have not been proven to have been deposited in that account. The Appellant also referred to other amounts related to a credit granted by the Royal Bank and an amount related to American Express and also a line of credit granted by the bank. In my opinion, based on all of the evidence the Appellant simply has not been able to establish that the possible source of the increased amounts in the bank account were explained by these suggestions. In other words,

he has not proved that the increased amounts in the bank account were not business income. The assumptions have not been rebutted.

[12] The audit was extensive and penetrating and its conclusion was that in the absence of proof to the contrary the Appellant's unexplained bank deposits must have been business income and, in my opinion, that conclusion was logical and has not been refuted or rebutted by the testimony of the Appellant. This situation is not unlike situations involving net worth assessments, where increases in the value of assets from year to year cannot be explained by the taxpayer and the Minister therefore concludes that those increases represent under claimed income. The absence of an alternative explanation leaves the Minister with no other choice.

[13] For all of the above reasons, the appeal from the reassessments made under the *Act* for the 1999 and 2000 taxation years is dismissed, provided however that the rent expenses to be allowed to the Appellant shall be \$9,736.58 in 1999 and \$12,570.36 in 2000 and provided that there shall be no penalties.

[14] As noted above, the appeal in respect of the 1997 and 1998 years in respect of the *Act* is allowed.

[15] Also, as mentioned above, there shall be no penalties under the *Act* in respect of any of the years 1997, 1998, 1999 and 2000.

[16] The Appellant also appeals against the assessment ("assessment"), notice of which is dated December 18, 2003 under the *Excise Tax Act* ("ETA"), for the period from January 1, 1999 to December 31, 2002 the ("period").

[17] The assessment is for underreported GST in the amount of \$8,042 plus interest, a late filing penalty under section 280 of the ETA in the amount of \$1,464.11 and a gross negligence penalty in the amount of \$2,010.50.

[18] The assessment is in relation to the unexplained bank deposits which the Minister has assumed represented unreported business income and accordingly, unreported supplies. At the hearing of these appeals, counsel for the Respondent acknowledged that the outcome of this ETA appeal would follow and accord with the outcome of the appeal in the income tax appeal.

[19] As indicated above, the said Income Tax appeal in respect of the years 1999 and 2000 has been dismissed with the result that the Minister's position with respect to the unreported income and therefore supplies was maintained. Also in

the Income Tax appeal, the gross negligence penalties for the years 1999 and 2000 were not allowed. Accordingly, the gross negligence penalty imposed in this ETA appeal is not allowed.

[20] Consequently, the appeal from the assessment made under the *Excise Tax Act*, notice of which is dated December 18, 2003, for the period from January 1, 1999 to December 31, 2002 is dismissed provided however that there shall be no gross negligence penalty. For greater certainty, the assessment for the underreported GST in the amount of \$8,042 plus the penalty of \$1,464.11 imposed for late filing under section 280 of the ETA plus interest of \$852.25 have been properly assessed and are maintained.

[21] There shall be no costs.

Signed at Ottawa, Canada this 27th day of September, 2007.

"T. O'Connor"

O'Connor, J.

CITATION: 2007TCC575
COURT FILE NO.: 2006-1820(IT)I and 2006-1822
STYLE OF CAUSE: Hassan Idris v. The Queen
PLACE OF HEARING: Hamilton, Ontario
DATE OF HEARING: August 23, 2007
REASONS FOR JUDGMENT BY: The Honourable Justice T. O'Connor
DATE OF JUDGMENT: September 27, 2007

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Josh Hunter

COUNSEL OF RECORD:

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