

Docket: 2007-4909(IT)I

BETWEEN:

ZEVART HOVHANNESSIAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on October 20, 2008 at Montréal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Sarom Bahk

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2001, 2002 and 2003 taxation years are dismissed.

Signed at Montréal, Quebec, this 24th day of October 2008.

"Lucie Lamarre"

Lamarre J

Translation certified true
on this 3rd day of December 2008.

Brian McCordick, Translator

Citation: 2008 TCC 584
Date : 20081024
Docket: 2007-4909(IT)I

BETWEEN:

ZEVART HOVHANNESSIAN,

Appellant,

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REASONS FOR JUDGMENT

Lamarre J

[1] This is an appeal from assessments made by the Minister of National Revenue (**Minister**) for the 2001, 2002 and 2003 taxation years. The Minister added additional amounts to the Appellant's income for those years, in rounded figures, of \$18,647 in 2001, \$19,183 in 2002 and \$26,470 in 2003.

[2] During those years, the Appellant operated a clothing manufacturing business of which she was the sole owner. In rounded figures, she reported, in 2001, gross revenue for this business of \$239,600 and a final loss of \$7,031; in 2002, gross revenue of \$510,509 and net revenue of \$1,649; and in 2003, gross revenue of \$463,953 and net revenue of \$3,762 (Exhibit I-3).

[3] The Minister audited the Appellant's income using the net worth method since the net family income seemed low.

[4] To establish the income shown in Exhibit I-4, the Minister determined the growth in family net worth between the end of 2000 and the end of 2003, to which he added the family's personal expenses. From this total, the Minister deducted refunded

taxes (Goods and Services Tax and Quebec Sales Tax), income tax refunds (including the Canada Child Tax Benefit) and a non-taxable amount of \$7,718.50 received from the Appellant's brother in November 2002. This exercise enabled the Minister to calculate a total taxable family income of \$34,671.77 in 2001, \$43,712.02 in 2002 and \$53,992.06 in 2003.

[5] The Minister then reduced this total taxable family income by the reported family income to arrive at an unreported net taxable family income of \$18,646.77 in 2001, \$19,183.02 in 2002 and \$26,470.06 in 2003.

[6] Since the Appellant's spouse received employment income, which he reported in full according to the T-4 slips issued by his employer, and there were no other sources of income reported by the family other than the Appellant's business, the Minister added the unreported family income to the Appellant's income, as she was the sole owner of the business. The Minister also imposed a penalty pursuant to subsection 163(2) of the *Income Tax Act* on these unreported amounts.

[7] Here is a summary table of what I have just explained above to establish the additional amounts included by the Minister in the Appellant's income.

	2001	2002	2003
Growth in net worth plus Personal expenses Total	3,387.98 <u>36,686.29</u> 40,074.27	7,814.91 <u>47,395.01</u> 55,209.92	(6,516.28) <u>64,645.91</u> 58,129.63
less Deductions (GST + QST received, amount received from brother (2002), tax refunds) Total taxable family income according to net worth	<u>5,402.50</u> 34,671.77	<u>11,497.90</u> 43,712.02	<u>4,137.57</u> 53,992.06
less Reported income Appellant Spouse Total taxable income unreported and assessed	(7,031.00) <u>23,056.00</u> 18,646.77	1,649.00 <u>22,880.00</u> 19,183.02	3,762.00 <u>23,760.00</u> 26,470.06

[8] In this summary table, the Appellant contests mainly the amount of personal expenses. According to two reports from the auditor (Exhibits I-5 and I-6), the amounts for personal expenses are based on credit card statements, bank statements and cost of living sheets completed and signed by the Appellant at the request of the Canada Revenue Agency (**CRA**). I reviewed with the Appellant the description of these expenses established by the Minister (Exhibits I-1 and I-2) and she indicated the personal expenses with which she disagreed. I will deal with these expenses only.

Restaurant expenses

[9] The Minister established an amount of \$1,000 per year. The Appellant states that she never goes to restaurants. According to the table of personal expenses (Exhibit I-2), there was an expenditure in September 2002, paid by TD Visa credit card, in the amount of \$138.12 at the Waltham Hotel in Maine in the United States. There are other restaurant charges paid with the American Express credit card in the amounts of \$100.38 in June 2003 and \$102.34 in October 2003.

[10] Gaétanne Rodgers, the head of the audit team at CRA, testified in the absence of the auditor, who is on maternity leave. She explained that these credit card charges showed that it was not true that the Appellant never went to restaurants with her family. The Appellant then stated that these expenses were business expenses. However, the Appellant did not claim any meal expenses on her business's revenue and expenditure statements submitted with the business's tax returns (Exhibit I-3). The auditor therefore concluded that the Appellant and her family had restaurant expenses and estimated a cost of \$1,000 per year, based on figures established by Statistics Canada for a couple with one child, who was 10 years old in 2001.

Clothing

[11] The Minister set the family expenses for this item at \$4,000 in 2001, \$4,200 in 2002 and \$4,613.35 in 2003. Ms. Rodgers explained that these amounts came from credit card expenditures and bank withdrawals related to clothing stores. These amounts were then compared with the figure established by Statistics Canada. The Appellant mentioned that she often paid for her sisters who then paid her back. None of her sisters was present to confirm this statement. Apparently at least one of them lives in Lebanon.

Gas

[12] The Minister established expenses for this item of \$1,623.44 in 2001, \$1,659.71 in 2002 and \$1,705.73 in 2003. The Appellant claimed that she did not spend more than \$1,000 annually on gas. The family car is a 1995 Sunfire. During the audit, credit card expenditures were tracked and the final amount was estimated based on Statistics Canada figures. The Appellant did not adduce any documentation in court to justify her annual figure of \$1,000.

Leisure

[13] The Minister established total expenses of \$974.95 in 2001, \$996.72 in 2002 and \$1,024.36 in 2003. Amounts paid by credit card for sports activities were tracked and the final figure was established using a Statistics Canada estimate. The Appellant stated that her son has worked since the age of 13 to pay for his personal and sports activities. However, during the years in issue, her son was not yet 13 years old.

Alcohol and tobacco

[14] The Minister set an amount of \$200 per year for this item. The Appellant stated that no one smokes or drinks alcohol in the family. However, a credit card charge (American Express) of \$136.95 was found for the Société des alcools du Québec in December 2003. The auditor therefore estimated the annual expense at \$200 for this item.

Life insurance premiums

[15] The Minister established an annual expense of \$840, while the Appellant told the Court it was \$720. However, she did not provide any corroborating documentation.

Cash gifts

[16] The Minister established a figure of \$758.41 in 2001, \$775.35 in 2002 and \$796.86 in 2003. The auditor apparently relied on estimated figures from Statistics Canada. The Appellant stated that she did not make any gifts.

Licence and registration

[17] The Minister included an annual amount of \$682 for this item. It appears under the heading "Other" and Ms. Rodgers explained that the amounts under this heading are not estimates but tracked expenditures actually paid. The Appellant did not provide any related documentation.

Vidéotron

[18] The Minister set an amount of \$480 in 2001 only. The Appellant stated that she was never a Vidéotron subscriber. However, expenditures made to Vidéotron were found on the BMO (Bank of Montreal) bank statement in the amount of \$502.64 in 2001 (Exhibit I-2, p.7/7).

[19] Other than the issue of the personal expenses, the Appellant claimed that the discrepancies established by net worth assessment were the result of gifts she allegedly received in cash from her family in Lebanon. She produced a letter she had given to the auditor, signed by her sister but not dated, in which the sister states that she gave the Appellant US\$5,000 in July 2001 (Exhibit I-7). According to this letter, the Appellant's sister has worked for the "Social Welfare Agency" since 1971. We do not know if this is in Canada or Lebanon. The auditor did not accept this document as evidence because she was unable to find entries for equivalent amounts in the Appellant's bank account. The Appellant stated that her sister was in Lebanon and was unable to come to testify. However, if I understand correctly, her sister was in Canada in August 2008 with her own bankbooks, but the Appellant said that she did not think to ask her to make copies. She also stated that she received cash from other people in Lebanon, but she did not deposit these amounts in the bank.

[20] Under cross-examination, the Appellant acknowledged that she herself had provided the auditor with the information used to establish her cost of living. She also responded that she is not in the habit of asking for written acknowledgments of the cash she claims to have received.

[21] In her arguments, the Appellant stated that the auditor established her personal expenses in part from expenditures found on her credit cards. However, she pointed out that the outstanding balances on those credit cards should also be taken into account. In response to this argument, it can be seen that this was accounted for in the net worth liabilities under loans (Exhibit I-4).

[22] The Appellant also stated that she received non-taxable Canadian Child Tax Benefits. This also was taken into account in the deductions under the CTB heading (Exhibit I-4).

[23] Counsel for the Respondent relied on the recent decision of the Federal Court of Appeal (FCA) in *Lacroix v. Canada*, [2008] F.C.J. No. 1092 (QL), in which the Court stated that, to the extent that the Minister assumes that the income determined by net worth assessment is taxable, the onus is on the taxpayer to prove this assumption wrong. If there is no credible evidence adduced by the latter, the Minister is not required to adduce evidence of the existence of this income (paragraph 20).

[24] The Court goes on to say that if the taxpayer does not provide such credible evidence, it must inevitably be concluded that the taxpayer knowingly filed a false return under circumstances amounting to gross negligence (paragraph 30).

[25] Counsel for the Respondent also cited another FCA decision, *Hsu v. Canada*, [2001] F.C.J. No. 1174 (QL), in which it states:

[30] By its very nature, a net worth assessment is an arbitrary and imprecise approximation of a taxpayer's income. Any perceived unfairness relating to this type of assessment is resolved by recognizing that the taxpayer is in the best position to know his or her own taxable income. Where the factual basis of the Minister's estimation is inaccurate, it should be a simple matter for the taxpayer to correct the Minister's error to the satisfaction of the Court.

[26] The Appellant contests the amount of personal expenses established by the Minister. However, this amount was first established from amounts provided by the Appellant on cost-of-living forms, which she signed and submitted to the auditor. It is true that some of these amounts appear to have been established using values estimated by Statistics Canada. However, these amounts appear reasonable to me for a family of three, with a child between 10 and 12 years of age in the years in issue. The Appellant's testimony was contradicted on several occasions by documents adduced in evidence, which brings the credibility of her testimony into question. In the circumstances, she should have brought with her documents showing more explicitly the grounds on which she based her opposition. This was not done. The same reasoning applies to the gifts that the Appellant says she received from her family in Lebanon and which were not accepted by the Minister. She did not establish conclusively the existence of such gifts.

[27] In light of the evidence before me and the case law cited, I must dismiss the appeals in whole, thus confirming the assessments under appeal, including the penalties.

Signed at Montréal, Quebec, this 24th day of October 2008.

"Lucie Lamarre"

Lamarre J

Translation certified true
on this 3rd day of December 2008.

Brian McCordick, Translator

CITATION: 2008 TCC 584

COURT FILE NO.: 2007-4909(IT)I

STYLE OF CAUSE: ZEVART HOVHANNESSIAN v.
HER MAJESTY THE QUEEN,

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 20, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: October 24, 2008

APPEARANCES:

For the Appellant:	The Appellant herself
For the Respondent:	Sarom Bahk

COUNSEL OF RECORD :

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada
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