

Docket: 2007-4355(IT)G

BETWEEN:

WAI SUM TAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 11, 2010, at Ottawa, Canada.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the appellant: Matthew Mostyn

Counsel for the respondent: Andrew Miller

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the appellant's 2002 and 2003 taxation years is allowed in part, with costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the Reasons for Judgment attached hereto.

Signed at Ottawa, Canada, this 18th day of March 2010.

"Patrick Boyle"

Boyle J.

CITATION: 2010 TCC 157

2007-4355(IT)G

BETWEEN:

WAI SUM TAM,

Appellant,

and

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Respondent.

**EDITED VERSION OF TRANSCRIPT
OF REASONS FOR JUDGMENT**

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Ottawa, Canada, on February 11, 2010, be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive change.

Signed at Ottawa, Canada, this 18th day of March 2010.

"Patrick Boyle"

Boyle J.

Citation: 2010 TCC 157
Date: 20100318
Docket: 2007-4355(IT)G

BETWEEN:

WAI SUM TAM,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

EDITED VERSION OF TRANSCRIPT
OF REASONS FOR JUDGMENT

[delivered orally from the Bench at Ottawa, Canada, on February 11, 2010]

Boyle J.

[1] These are my Reasons in the Tam decision heard today in Ottawa.

[2] The appellant, Mr. Tam, is appealing from so-called net worth assessments of his 2002 and 2003 income. In the years in question, Mr. Tam carried on a Chinese restaurant as a sole proprietor. Penalties were also assessed for each year.

[3] It is trite that in tax litigation the general rule is that a taxpayer has the onus of proof to satisfy the Court with credible evidence on a balance of probabilities standard that the appealed assessments are incorrect. Unless the taxpayer makes out a coherent, credible, *prima facie* case, it is not required that the Crown satisfy the Court the assessments are correct.

[4] In appealing a net worth assessment, it is open to a taxpayer to challenge whether a net worth approach to estimating his income was needed or was the most appropriate method. This could be done by satisfying the Court, with what evidence there is, what the amount of the taxpayer's income is from the source or sources in question. In this case, the taxpayer has not tried to do that.

[5] The alternative way to challenge a net worth assessment is for the taxpayer to challenge specific aspects of the net worth calculations.

[6] In this case, there are four challenged items: (i) the amount of business assets in 2002 and the related business liabilities shown on the assets and liabilities schedules; (ii) the cost of the taxpayer's interest in the Inverkip townhome and the extent of his interest in the home as shown on the assets and liabilities schedules; (iii) whether the fact that the taxpayer's gain on the sale of his Malibu Terrace home was a tax-exempt principal residence was properly accounted for, and whether the Bellingham home purchased with the proceeds is properly shown on the asset schedule; and (iv) whether goods and services tax was properly accounted for on the withdrawal analysis.

[7] The taxpayer's counsel raised a fifth item relating to whether the proceeds of the sale of the Honda were properly accounted for, but was able to satisfy himself during the course of the trial such that it was no longer in dispute.

[8] The taxpayer did not dispute the penalties assessed.

[9] At the commencement of the trial, the Crown conceded that an unrelated amount of \$20,250 should be included in Schedule 3 of the net worth computations as a gift for 2003 relating to an Acura.

[10] The taxpayer did not testify. On consent, the taxpayer filed one book of exhibits and the respondent filed two. The taxpayer called one of the Canada Revenue Agency (the "CRA") officers involved with the reassessments to testify. The taxpayer also called a self-described friend of a friend who had helped him with his tax dispute but who could not provide any direct evidence of the taxpayer's activities in the years in question.

[11] With respect to the first item in issue, the business assets and liabilities listed in 2002, the taxpayer has been unable to satisfy me that any change to the reassessments is needed. I am satisfied from what evidence there is that the taxpayer commenced to carry on his business in 2002, even though his restaurant did not open its doors to customers until January 2003.

[12] There is therefore every reason to expect to see business assets and liabilities in 2002. The schedule of assets was prepared by the taxpayer in the course of the audit and the CRA auditor said she was told they were purchased in late 2002, with a \$50,000 bank loan and cash. No other evidence was proffered.

[13] With respect to the second issue, the Inverkip townhome, I have not been satisfied by the taxpayer with credible and persuasive evidence that any change is needed to the reassessments. There is evidence that he bought the property as a joint tenant with a relative. There is also evidence that he paid all of the down payment and closing costs.

[14] The CRA auditor said she was told by the taxpayer that the joint tenant was to make the payments needed to carry the mortgage. There is no evidence that payments were made otherwise by the taxpayer. There was no evidence of the terms of the joint tenancy investment venture between the two parties as to how profits would be shared or whether there would be reimbursements or other accounting between them for the down payment paid by the taxpayer or the mortgage payments made by the other joint tenant.

[15] The taxpayer has not satisfied me that the net worth computations are incorrect in showing the cost of the taxpayer's interest in the townhouse as the amount of the down payment he paid for it.

[16] With respect to the third issue, the principal residence exemption on the sale of the Malibu Terrace home, I am satisfied on the evidence that the tax-free nature of the proceeds was properly accounted for in the net worth assessments and that the net worth computations did not indirectly tax that gain.

[17] I am also satisfied that the cost of the Bellingham home was properly shown on the asset schedule and that its cost need not be reduced to reflect that it was purchased with the proceeds of sale of a tax-exempt gain on the sale of the prior principal residence.

[18] With respect to the fourth issue, the GST collected and remitted, I am not satisfied by the taxpayer on a balance of probabilities that any specific adjustment should be made. I note that there are significant input tax credits and GST-paid amounts shown on the withdrawal analysis. I recognize that those amounts differed and were less than the amounts of GST shown as collected on the tax return as filed by the taxpayer.

[19] However, there was no evidence called to explain the reason for the discrepancy or to establish that there should not be a discrepancy and that the higher amount deducted by the taxpayer from gross revenues in his tax return should be the number used in the withdrawal analysis.

[20] I should note that there are several published decisions of this Court which seek to explain and demystify CRA's net worth income computation methodology. I sense that much of this trial might have been unnecessary if the taxpayer and his advisers acquainted themselves with the methodology.

[21] More importantly, net worth assessments are resorted to when a taxpayer has not kept adequate books and records to verify the amount of income and expenses reported. It is not an exact method of arriving at a correct amount of income for a year. It is a reasonable method of estimation if properly understood and followed. Any injustices a taxpayer may feel at the end of the process result from the taxpayer's decision not to keep books and records and to inaccurately report his income.

[22] The appeal is allowed in part, only with respect to the conceded amount of the \$20,250 gift. The appeal will be dismissed in all other respects. Costs are awarded in favour of the Crown.

[23] Court is adjourned. Thank you, counsel, Mr. Mostyn and Mr. Miller. Thank you, Madam Registrar and Court Reporter.

Signed at Ottawa, Canada, this 18th day of March 2010.

"Patrick Boyle"

Boyle J.

CITATION: 2010 TCC 157

COURT FILE NO.: 2007-4355(IT)G

STYLE OF CAUSE: WAI SUM TAM v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: February 11, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: March 18, 2010

APPEARANCES:

 Counsel for the appellant: Matthew Mostyn

 Counsel for the respondent: Andrew Miller

ALSO PRESENT:

 Court Registrar: Stephanie Duffy

 Court Reporter: Robert Lee

COUNSEL OF RECORD:

 For the appellant:

 Name: Matthew Mostyn

 Firm: Radnoff Pearl LLP
 Ottawa, Canada

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