

Docket: 2012-266(IT)I

BETWEEN:

SUZANNE ASHTON

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 3, 2012, at Vancouver, British Columbia

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Amandeep K. Sandhu

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the Appellant's 2007 and 2008 taxation years is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia this 10th day of October 2012.

"Patrick Boyle"

Boyle J.

Citation: 2012 TCC 353
Date: 20121010
Docket: 2012-266(IT)I

BETWEEN:

SUZANNE ASHTON

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] The question to be decided in this informal appeal is whether Ms. Ashton received excess refunds for 2007 and 2008 based upon falsified T4 slips. It is Ms. Ashton's position that the e-filed returns were not filed by her and the amounts in question were not refunded to her. She maintains that a third party must have been responsible for the returns and received the refunds.

[2] Prior to this hearing the Crown brought a preliminary motion to quash the appeal on the basis that the reassessments of Ms. Ashton by Canada Revenue Agency ("CRA") after it determined the T4s were falsified were nil assessments. That motion was decided earlier by a fellow judge who dismissed it on the basis that Ms. Ashton was appealing from assessments under section 160.1 of the *Income Tax Act* (the "Act") for excess amounts refunded to her. I have proceeded on that basis as that judge's decision was not appealed by the Crown.

[3] At the hearing of the appeal, the Crown argued that this Court lacked jurisdiction over collection matters. Notwithstanding that section 160.1 of the *Act* appears to clearly give this Court jurisdiction with respect to excess amounts refunded to a taxpayer, the Crown's position is that this Court only has jurisdiction if the amount of the excess refund itself is disputed, not whether it was, in fact, refunded to the taxpayer. The Crown maintains that the Federal Court has jurisdiction to decide whether the taxpayer received the refund as that is a collection matter.

Given my factual finding below, my decision that this Court does have jurisdiction to determine whether, in the words of section 160.1 “an amount has been refunded to a taxpayer in excess” is largely moot. That wording in section 160.1, and the express conferral of appeal jurisdiction on this Court in subsection 160.1(3), indicates Parliament intended this Court to have jurisdiction to decide if excess amounts were refunded to a taxpayer.

[4] In 2008, Money Mart e-filed a 2007 tax return in Ms. Ashton’s name and discounted the refund in cash. While Ms. Ashton had been a Money Mart customer for ten years, documented in considerable detail in Money Mart’s electronic customer profile, she had never previously had them prepare her tax return. Money Mart was given a T4 that was handwritten and with the taxpayer’s name misspelled. In fact, on each copy her name was misspelled differently and on each it was “corrected” by hand but left two differently spelled names each of which remained incorrect and did not accord with Money Mart’s client name on file nor with the name on the ID they said they reviewed. Money Mart made no attempt to verify the T4 with the employer before e-filing. For customer identification, Money Mart required a copy of a driver’s licence and pulled up their digital photo on her customer profile, which may have been ten years old at that time (and remains the only one in use).

[5] In 2009, H&R Block e-filed a tax return in Ms. Ashton’s name and discounted her refund by H&R Block cheque. No evidence was tendered to support that Ms. Ashton cashed that cheque or deposited it to her account other than a poor quality copy of the back of the cheque approximately one and a half inches by three inches which appeared to include a signature which resembled the taxpayer’s. It is clear from the Money Mart records that this cheque was not cashed in Ms. Ashton’s name at Money Mart, even though from the records she continued to be and continues to be a regular Money Mart customer.

[6] The T4 given to H&R Block was from the same employer. The 2008 T4 was typed. The H&R Block witness testified that H&R Block would always contact an employer in the event of a handwritten T4 to confirm its validity. H&R Block’s policy in 2009 did not require photo ID. It required one piece of photo ID with a signature or two pieces of non-photo ID with signatures. The ID policy was new at that time and, as volunteered by the H&R Block witness, not well-complied with in any event. It did not even require that any record be noted in the file that ID was presented much less which ID was presented. H&R Block was unable to tell from its files which of its employees was responsible for preparing and filing the return, nor could it say that the “required” second level review happened in this case as this was another policy that was not always complied with.

[7] This state of affairs at tax discounters such as Money Mart and H&R Block, combined with the fact that it is the CRA and the Canadian government and public, not the discounters, who take much of the financial risk, is fraught with risk of false T4s and identity theft. This was acknowledged by the CRA witness's experience.

[8] The taxpayer gave evidence that she had had her purse stolen in Manitoba in 2002 and had lost her wallet in early 2010. In each case she had thereafter been the subject of identity theft and unauthorized financial transactions occurring in her name. She put these forward as possible opportunities for identity theft in this case. The taxpayer's stolen purse in 2002 would not have given another person her 2007 and 2008 addresses or phone number. When her wallet was lost in 2010, that was after these two returns in question had been filed. If the returns were e-filed by another person, they did not get her personal information or her driver's licence from her stolen purse or lost wallet.

[9] I do not have to decide whether, based upon the statutory requirement the CRA must determine that an excess amount was refunded to a taxpayer, the Minister has the onus or burden of proof that the refunds were, in fact, paid to Ms. Ashton. It seems reasonable in the circumstances that it might. It is similarly not clear that the Minister should have the benefit of the assumptions being *prima facie* assumed correct since, in the case of identity theft, the information of who pretended to be a taxpayer is not within her particular knowledge – CRA may well be better situated to investigate. In any event, even if the taxpayer bears the usual burden of proof in this case, once she has denied her involvement, as a practical matter, the burden of persuasion shifts to the Crown if her evidence that it was not her appears credible. It would be difficult for a taxpayer in the situation to have much greater evidence to offer if it was not her.

[10] I would not be able in this day and age to conclude that a refund was paid to a taxpayer simply because someone presented themselves to a tax return preparer, was able to make a signature that resembled hers, had a driver's licence in her name, and knew her address and phone number.

[11] However, those factors, combined with the following aspects of the evidence allow me to find that on a balance of probabilities it was the taxpayer who went to Money Mart and H&R Block with falsified T4s to have her returns prepared:

1. The taxpayer's address changed from 2008 when the 2007 return was filed, to 2009 when the 2008 return was filed. The person attending at Money Mart and H&R Block knew both of her correct addresses.
2. A GST rebate cheque in the taxpayer's name was cashed at Money Mart on the same day her 2007 return file was opened. The same Money Mart employee attended to both transactions that day. If the taxpayer cashed her GST cheque and an impostor presented the 2007 tax slip, it would be surprising that the Money Mart employee did not identify the problem. If both were presented by the same person, and if that was not the taxpayer, the impostor would have to be someone with ready access to the taxpayer's mail.
3. The person who presented the falsified 2008 T4 return to H&R Block also presented a legitimate tax information slip issued to the taxpayer in respect of provincial social assistance payments. The taxpayer acknowledges she received the social assistance payments. It appears odd that an impostor would bring the legitimate slip. It would also mean the impostor still had ready access to her mail a year and a move later.

[12] While the taxpayer's position that it was not her who authorized the filing of the returns is possible and even plausible in the circumstances, based on the totality of the evidence I am unable to conclude that it is the most likely version of the events applying a balance of probability standards.

[13] For these reasons, the appeal is dismissed.

Signed at Vancouver, British Columbia this 10th day of October 2012.

"Patrick Boyle"

Boyle J.

CITATION: 2012 TCC 353

COURT FILE NO.: 2012-266(IT)I

STYLE OF CAUSE: SUZANNE ASHTON AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: October 3, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: October 10, 2012

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Amandeep K. Sandhu

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
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For the Respondent:

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