

Docket: 2012-2556(IT)I

BETWEEN:

CHRISTIANAH ASHAOLU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 24, 2013, at Toronto, Ontario

Before: The Honourable Justice François Angers

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Jill Chisholm

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* in respect of the 2006 taxation year is allowed in part in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 3rd day of June 2013.

“François Angers”

Angers J.

Citation: 2013 TCC 138
Date: 20130603
Docket: 2012-2556(IT)I

BETWEEN:

CHRISTIANAH ASHAOLU,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers J.

[1] The appellant's 2006 taxation year was reassessed by the Minister of National Revenue (Minister) who disallowed a claim for charitable donations for an amount of \$5,950. The appellant duly objected and referred in her notice of objection to a charitable organization known as the Centre for Multicultural Training and Documentation (Multicultural) but did not disclose the actual amount in dispute. In her notice of appeal, she relied on her notice of objection which was attached as her reasons for the appeal.

[2] In the respondent's reply, the assumption of facts relied upon by the Minister refers only to Multicultural as the charity at issue. The amount claimed is \$5,950 to which the appellant agreed. It is the Minister's position that no donation was made by the appellant to Multicultural in cash or in kind and if in kind, the fair market value of non-cash properties was nominal. The final assumption is that the appellant failed to provide to the Minister a receipt for the charitable donation claimed for the 2006 taxation year that contained the information prescribed by section 3501 of the *Income Tax Regulations*.

[3] It became clear during the hearing of this appeal that the \$5,950 donation to Multicultural was in the amount of \$3,450 for the 2006 taxation year of the appellant and that the difference, namely \$2,500, was for another donation to the Islington Evangel Centre, another charitable organization. There were also two other small donations of \$50 and \$40 respectively for a total of \$6,040. Only the two small donations were allowed.

[4] Given the pleadings, the notice of objection, the notice of confirmation and the letter from the Canada Revenue Agency to the appellant of February 16, 2012, it becomes clear that it refers to a donation of \$5,950 to Multicultural. Both parties was under the impression that the donation to Multicultural was for \$5,950 and it was that particular donation that was under appeal. The auditor testified that she saw the receipts for the first time on the morning of the trial but she did have a copy of the Multicultural receipt of the appellant. It was obtained when she audited Multicultural in 2008. The assumptions relied upon were incorrect and the pleadings should have been amended to reflect the correct amount or the correct donations that were disallowed.

[5] In my opinion, the only issue before this Court is the charitable donation to Multicultural and for the amount specified on the receipt, namely \$3,450. The pleadings were not amended and although the appellant should have known better as far as the amount is concerned, I do not find that the validity of the charitable donation to the Islington Evangel Centre to be an issue properly plead in this appeal.

[6] In 2001, the appellant bought various pieces of furniture for her home in Brampton. It consisted of tables, beds, sofas and blinds. In 2004, she decided to sell her home and some of her furniture was put in storage. In January 2005, she moved in her new home and some pieces of her furniture did not match and her sons did not want their bunk beds back. The furniture remained in storage.

[7] On a visit to the African supermarket in 2004, she saw an advertisement from Multicultural asking people to make donations. In 2006, she communicated with Multicultural to offer her furniture for sale. She informed the representative that she had paid between \$7,000 and \$8,000 for her furniture. The representative verified their value on E-Bay and informed the appellant it was worth around \$5,900. She agreed to that amount and she testified that half that amount was paid to her in cash and the other half with a cheque. She later testified that instead of a cheque, she got the receipt for \$3,450.

[8] The appellant provided the Court with the original receipt she received from Multicultural which is the same one the auditor obtained through her audit of Multicultural in 2008. It reads that it is an official receipt for tax purposes; it has the charitable organization's registration number but contains an error. The letters are RP but should be RR. The appellant's name is written but without her initial. The donation type reads clothing, furniture and office desks. The date of the donation reads Jan. Dec. 2006 and the amount is \$3,450. The receipt is dated December 23, 2006. The address for Multicultural is different from the address of its registration.

[9] Multicultural was audited in 2008. The audit has revealed that Multicultural was not engaged in any of the activities under which it had obtained a registration certificate. In 2006, it issued 71 receipts for charitable donations, 68 of which were for clothing, furniture and office desks. Multicultural did not keep proper books or records of their activities and most of the goods in kind were shipped to Cameroun. The auditor found that all receipts issued for donations in kind were deficient in that they did not contain the prescribed information under subsection 3501(1) of the *Income Tax Regulations* including the appellant's receipt.

[10] The issues here are whether there was a gift of property in kind to Multicultural by the appellant in 2006 and if there was, what is its value and if a gift was in fact made, was the receipt made in accordance with the *Income Tax Regulations*?

[11] The appellant's version of the facts with regard to the sale of her furniture to Multicultural is difficult to reconcile with the amount shown on the receipt she obtained from Multicultural. She testified that she had sold her furniture to Multicultural for \$5,900 and was paid half that amount in cash and the other half by cheque. She later said that the other half turned out to be the receipt she obtained from Multicultural which turned out to be more than half of the \$5,900 agreed price.

[12] In addition to this inconsistency, the appellant was unable, throughout her testimony, to establish with certainty what she actually paid for the furniture when purchased. She testified that it was between \$7,000 and \$8,000 but provided no corroborative evidence to support it. She was also unable to establish the fair market value of her furniture when she sold them to Multicultural. The only evidence on that topic is what she was told by the Multicultural representative who was not called to testify. It is a strange coincidence that the value of \$5,900 given by the representative for the furniture is the same amount that was originally thought to be the value of the donation. In any event, I find the evidence on the value of the furniture to be unreliable for the purpose of establishing a fair market value for the donated

furniture. There was no appraisal made as to the value of the donated furniture by an independent person. I therefore agree with the respondent that it can only be of a nominal value.

[13] The tax credit for a donation by a taxpayer to a charitable organization is provided in subsection 118.1(3) of the *Income Tax Act*. It is based on the taxpayer's total charitable gifts which term is defined in subsection 118.1(1) as follows:

Definitions – In this section,

"total charitable gifts", of an individual for a taxation year, means the total of all amounts each of which is the fair market value of a gift (other than a gift the fair market value of which is included in the total Crown gifts, the total cultural gifts or the total ecological gifts of the individual for the year) made by the individual in the year or in any of the five preceding taxation years (other than in a year for which a deduction under subsection 110(2) was claimed in computing the individual's taxable income) to a qualified donee, to the extent that the amount was not included in determining an amount that was deducted under this section in computing the individual's tax payable under this Part for a preceding taxation year;

[14] That definition therefore provides that it is based on the fair market value of the gift. The absence of evidence in the form of an appraisal report means that the appellant's appeal cannot succeed. I subscribe to Justice Webb's, formerly of our Court, decision in *Le v. Canada*, [2011] T.C.J. No. 233 where he said at paragraph 15:

In any event, the Appellant's appeal was based on his story that he "donated" \$46,500 (\$3,000 in cash and \$43,500 in goods) in 2005 to strangers who appeared at his door and who represented charities about which the Appellant apparently knew very little. Even if I were to accept that the Appellant made this gift (which I do not accept), the absence of an appraisal report would mean that the Appellant could not succeed in relation to the amount claimed for the goods. The tax credit for a donation by an individual to a charitable organization is provided in subsection 118.1(3) of the *Income Tax Act* and is based on the individual's total gifts. The definition of "total gifts" in subsection 118.1(1) of the *Act* provides that one of the limiting amounts is the individual's total charitable gifts. The definition of "total charitable gifts" also in subsection 118.1(1) of the *Act* provides that it is based on the *fair market value* of the gift (or gifts). Without any evidence with respect to the fair market value of the items, the Appellant cannot succeed in any event in relation to the \$43,500 claimed for the goods.

[15] The assessment is referred back to the Minister for reassessment in that the amount disallowed as a claim for charitable donations with regard to Multicultural should be in the amount of \$3,450 instead of \$5,950. The appeal is therefore allowed in part.

Signed at Ottawa, Canada, this 3rd day of June 2013.

“François Angers”

Angers J.

CITATION: 2013 TCC 138

COURT FILE NO.: 2012-2556(IT)I

STYLE OF CAUSE: Christianah Ashaolu v. Her Majesty the Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 24, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice François Angers

DATE OF JUDGMENT: June 3, 2013

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jill Chisholm

COUNSEL OF RECORD:

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