Docket: 2019-2607(IT)I

BETWEEN:

MAVRA GOUSKOS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on August 25, 2020, at Montreal, Quebec

Before: The Honourable Justice Johanne D'Auray

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Gabriel Girouard

JUDGMENT

The appeals from the redeterminations dated August 20, 2014 made under the *Income Tax Act* for the 2011 and 2012 taxation years with respect to the Canada Child Tax Benefit are dismissed, without costs, on the basis that the Minister of National Revenue correctly determined that Ms. Gouskos was not eligible to receive the Canada Child Tax Benefit ("CCTB") since her net family income exceeded the maximum income allowable for receiving the CCTB for both taxation years, 2011 and 2012.

Signed at Ottawa, Canada, this 8th day of October 2020.

"Johanne D'Auray"

D'Auray J.

Citation: 2020 TCC 110
Date: 20201008
Docket: 2019-2607(IT)I

BETWEEN:

MAVRA GOUSKOS,

Appellant,

and

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REASONS FOR JUDGMENT

D'Auray J.

I. Overview

[1] The question under appeal is whether Ms. Gouskos was eligible to receive the Canada Child Tax Benefit (the "CCTB") in the taxation years 2011 and 2012.

[2] Following a redetermination, the Minister of National Revenue (the "Minister") denied her claim for the CCTB on the basis that in each of the two years, her income combined with that of her spouse, Mr. Nikolaos Milonakos, exceeded the maximum allowed in order to receive the CCTB.

[3] For the reasons which follow, I dismiss Ms. Gouskos' appeal.

II. Claim for the CCTB

[4] Ms. Gouskos and Mr. Milonakos have been married since June 24, 2001. At all relevant times, they cohabited.

[5] Ms. Gouskos and her spouse have two children: G., born on March 18, 2002, and P., born on September 22, 2003.

[6] During the taxation years 2011 and 2012, Ms. Gouskos and Mr. Milonakos reported the following net incomes and Ms. Gouskos claimed and received the CCTB as a result:

	2011 Net income	2012 Net income
Appellant	$0	$125
Spouse	$20,800	$16,901
Net family income	$20,800	$17,026
CCBT paid	$6,913	$7,051

[7] In 2014, following an audit, Mr. Milonakos was reassessed and his net income revised as follows:

Taxation year	Net income declared	Revised Net income	Variance
2011	$20,800	$271,743	$250,943
2012	$16,901	$115,460	$98,559

[8] In light of the reassessment of Mr. Milonakos' income, Ms. Gouskos' net family income for 2011 and 2012 was reassessed and her claim for the CCTB for those years denied. The changes to the net family income were as follows:

	Net income declared	Revised net income	Variance
Appellant	$0	$0	$0
Spouse	$20,800	$271,743	$250,943
Net family income for 2011	$20,800	$271,743	$250,943
Appellant	$125	$125	$0
Spouse	$16,901	$115,460	$98,559
Net family income for 2012	$17,026	$115,585	$98,559

III. <u>Position of the Parties and Analysis</u>

[9] Ms. Gouskos submitted that for the purpose of calculating eligibility for the CCTB, her spouse's income should not be taken into account, since she was not

involved in his business operations and did not receive any income or benefits from them.

[10] In light of the clear language of the *Income Tax Act* (the "*Act*"), this argument has no merit. Section 122.6 of the *Act* provides that in calculating eligibility for the CCTB, the income of the individual claiming the CCTB must be combined with that of the individual's spouse so long as they were cohabiting. The net family income cannot exceed a specified amount - in 2011 the limit was $47,745 and in 2012 it was $49,763 Section 122.6 states as follows:

> adjusted income, of an individual for a taxation year, means the total of all amounts each of which would be the income for the year of the individual or of the person who was the individual's cohabiting spouse or common-law partner at the end of the year if in computing that income no amount were
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> (a) included
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> (i) under paragraph 56(1)(q.1) or subsection 56(6),
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> (ii) in respect of any gain from a disposition of property to which section 79 applies, or
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> (iii) in respect of a gain described in subsection 40(3.21), or
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> (b) deductible under paragraph 60(y) or (z);

[11] There is no dispute that Ms. Gouskos and her spouse were cohabiting at all relevant times. Accordingly, her income must be combined with that of her spouse for purposes of determining her eligibility for the CCTB.

[12] Ms. Gouskos also questioned the Minister's reassessment of Mr. Milonakos' income for the 2011 and 2012 taxation years.[1] She argued that her spouse had correctly reported his income in both years and that the Minister had erred by including the amount of $250,943 in his income for the taxation year 2011 and $98,559 for the taxation year 2012.

[13] Mr. Milonakos testified on behalf of the Appellant. He explained that he and his brother, Niktario Milonakos, were the only shareholders and directors of

[1] Ms. Gouskos is contesting the underlying reassessments, namely her spouse's reassessments.

Les Entreprises Gary Makris Inc. The latter company owned all the shares of Masson Hot Dog Inc. which operated a restaurant under the name Masson Hot Dog.

[14] The restaurant had a seating capacity of approximately thirty people. The restaurant serves breakfast, lunch, dinner and take-out meals. However, it did not have a permit to serve alcohol. In 2012, to boost sales, it introduced delivery service.

[15] Mr. Milonakos is a chef. At the restaurant, he was responsible for the preparation of the menu, cooking and the overall day-to-day operations. His brother was responsible for the administrative side of the restaurant’s operations.

[16] At the end of 2011, Niktario left for Greece leaving Mr. Milonakos as the only shareholder and director of the restaurant. In addition to his duties as chef, Mr. Milonakos had to take over the administrative duties of his brother. Mr. Milonakos explained that this was a difficult period for the restaurant. A lack of cash flow made the restaurant difficult to operate. In addition, the banks would not extend loans to either him or the restaurant.

[17] Mr. Milonakos testified that his aim was for the restaurant to produce enough income to pay suppliers and the salaries of the employees. He stated that he worked long hours with almost no salary. However, he admitted that he took money from the restaurant to replenish a joint bank account he held with his spouse and to pay personal expenses.

[18] When the audit started on October 9, 2012, the restaurant and Les Entreprises Gary Makris Inc. had not filed its income tax returns and GST and QST returns for the taxation years ending April 30, 2010, April 30, 2011 and April 30, 2012. The books and records were not properly maintained either. Matters reached a point where Mr. Milonakos realized that he had to hire an accountant to assist him. He therefore hired Mr. Andrй Lemelin. From the evidence, it is not clear as to when Mr. Lemelin was hired by Mr. Milonakos.

[19] At the time of the audit, Masson Hot Dog had been in operation for approximately twenty years.

[20] Ms. Catherine Massey testified on behalf of the Respondent. She has been employed at the Quebec Revenue Agency (“QRA”) since 2003 and is presently a manager there. She works in a group dedicated to auditing restaurants. She was the auditor responsible for the audits of Les Entreprises Gary Makris Inc., Masson Hot Dog Inc. and Mr. Milonakos.

[21] Ms. Massey testified that the QRA selected the restaurant Masson Hot Dog for an audit since it had reported losses from 1999 to 2012 and had not filed either its GST/QST returns or income tax returns for its 2010, 2011 and 2012 taxation years. Mr. Milonakos was selected for an audit as his reported income was low, taking into account that he was supporting a spouse and two young children.

[22] On October 3, 2012, during an unannounced visit to the restaurant, Ms. Massey and another QRA auditor met the head waitress, Ms. Delima Basque.

[23] On that visit, Ms. Massey examined daily cash count documents for the years 2011 and 2012. The documents included a daily account of the cash and Interac sales as well as the invoices paid to the suppliers. Ms. Massey took a picture of all the daily cash count documents for the month of September 2012. During this visit, Ms. Massey also noticed boxes of order pads used by waiters and waitresses to take down orders of customers.

[24] Ms. Massey stated that the sales recorded in the daily cash count documents exceeded the sales recorded in the Sales Recorded Module ("SRM"). The SRM is compulsory in the province of Quebec. All sales have to be recorded using the SRM. Ms. Massey was therefore of the view that she could not rely on the SRM.

[25] During her second visit to the restaurant, Ms. Massey met with Mr. Milonakos and asked him to provide her with the documents establishing the restaurant's sales that she had seen during her first visit. Mr. Milonakos told Ms. Massey that he no longer had the documents, as Ms. Basque had mistakenly thrown them away when cleaning the garage next to the restaurant. Mr. Milonakos invited Ms. Massey to work with his accountant, Mr. Lemelin, which she did.

[26] Ms. Massey testified that the restaurant did not keep proper books and records. She stated that the restaurant had never undertaken an inventory of its stock. Beside the SRM, there were no supporting documents establishing the sales for 2011 and 2012. From July 2011 to September 2012, the invoices for the purchases were available but they were not all available for the rest of the period. At times, the sales reported for GST purposes were not in the same amount as those reported for income tax purposes.

[27] Ms. Massey described how the restaurant's employees were paid. All employees were paid in cash though on different days and for different periods. Some employees were paid on a daily basis in one month but the following month they were paid at the end of four or five days.

[28] Mr. Milonakos did not deposit the cash earned by the restaurant. The only bank deposits were the customers' Interac payments. Mr. Milonakos told Ms. Massey that he paid suppliers and the employees in cash. In addition, as already mentioned, when money was required for Mr. Milonakos' personal or family expenses, he took money from the cash of the restaurant.

[29] In light of the restaurant's incomplete and missing financial documents, Ms. Massey stated that she had to use an alternative audit method in order to establish the income earned by the restaurant.

[30] The method chosen involved the reconstitution of the restaurant's food purchases and sales. Ms. Massey analysed how many hot dog and hamburger buns the restaurant was buying from its suppliers. These purchases were then compared to the sales recorded in the SRM in order to determine if there was a gap between the purchases and the sales taking into account spoilage, personal consumption and gratuities.

[31] Ms. Massey concluded that for the period of November 1, 2011 to September 30, 2012, there was a gap of 40.4% between the sold items recorded in the SRM and the items available for sales. She applied that gap to all the other items of the menu and concluded that the restaurant under-reported its sales by $202,510 for the period ending April 30, 2011 and by $223,459 for the period ending April 30, 2012.

[32] Ms. Massey used other methods to verify her analysis. First, she analysed the restaurant's rent/sales ratio to determine if it fell within the standard ratio for the restaurant industry. Generally, the ratio for restaurants with a dining room is 6.3%. Before adding the unreported income, the ratio for the Masson Hot Dog restaurant was at 14.1%. After the inclusion of the unreported income, the rent/sales ratio for the restaurant fell to 6.3%, which is closer to the standard ratio.

[33] Next, Ms. Massey analysed the restaurant's gas consumption. She stated that the gas consumption by the restaurant was in line with the income that she had added.

[34] Finally, using the only daily cash count documents that she had, namely those for the month of September 2012, Ms. Massey calculated the restaurant's income as recorded in those documents. She then extrapolated the income for that month to an annual amount. Ms. Massey stated that the result was similar to the amount of under-reported income that she had calculated using the alternative method of audit, namely the reconstitution of food purchases and sales.

[35] Ms. Massey concluded that the under-reported income of the restaurant was appropriated by Mr. Milonakos and assessed him accordingly. The QRA reassessed Mr. Milonakos for appropriation in the amount of $250,943 for 2011 and $98 559 for 2012.[2]

[36] The restaurant and Mr. Milonakos did not file an objection to the reassessments. At trial, Mr. Milonakos did not file any evidence to establish that his reassessments and the reassessments with respect to the restaurant were incorrect. He stated that the evidence was no longer available.

[37] Mr. Milonakos nevertheless challenged the QRA's calculations. He argued that he always reported every sale made by the restaurant. In any event, he submitted that it was impossible that so many sales had gone unreported. He also argued that there was more spoilage of hot dog and hamburger buns than had been taken into account by the QRA. He did not mention, however, the amount of spoilage that the QRA should have taken into account. He stated that the restaurant was not able to remit the GST and the QST because it was experiencing financial difficulties. A restaurant facing financial problems could not have made the sales established by Ms. Massey.

[38] In order for Ms. Gouskos to be eligible to receive the CCTB, the net family income could not exceed $47,745 in 2011 and $49,763 in 2012. The net family income before the restaurant and Mr. Miokanos were audited, was reported as $20,800 in 2011 and $17,026 in 2012. Therefore, if Mr. Milonakos under-reported his income by at least the amount of $26,946[3] in 2011 and $32,737[4] in 2012, Ms. Gouskos would not be eligible to receive the CCTB.

[39] For the purposes of this appeal, I do not have to determine the precise accuracy of the restaurant's income calculated by Ms. Massey which was appropriated to Mr. Milonakos. I am satisfied that Mr. Milonakos significantly under-reported his

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2 The numbers are different since the restaurant year-end is April 30th and Mr. Milonakos' year-end is December 31st.

3 For 2011, the family net income cannot exceed $47,745 for an individual to qualify for the CCTB. The net family income reported is $20,800. Therefore, if Mr. Milonakos' net income was correctly increased by the Minister by $26,946. Ms. Gouskos does not qualify for the CCTB.

4 For the 2012, the family net income cannot exceed $49,763 for an individual to qualify for the CCTB. The net family income reported is $17,026. Therefore, if Mr. Milonakos' net income was correctly increased by the Minister by $32,737. Ms. Gouskos does not qualify for the CCTB.

income for the years in issue and that the net family income of Ms. Gouskos exceeded the statutory limit for receiving the CCTB**.**

[40] Mr. Milonakos was the sole financial support for his family of four in 2011 and 2012 (Ms. Gouskos reported no income in 2011 and $125 in 2012). Both he and Ms. Gouskos admitted that they made renovations to the family house. The money for the family expenses had to come from somewhere and the only source of income mentioned in his testimony was the restaurant. He admitted that he took money from the restaurant to pay both personal and family expenses as well as to replenish the family's joint bank account.

[41] Ms. Gouskos filed before the Court copies of the statements of the joint personal banking account for 2011 and 2012. The amount of the expenses reflected in these statements exceeds the net family income reported by Mr. Milonakos and Ms. Gouskos. This further supports my conclusion that Mr. Milonakos under-reported his income. Mr. Milonakos' income may not have been exactly what Ms. Massey calculated. An alternative method of auditing is far away from beeing perfect. The latter is a method of last resort when the actual books and records of a business are lacking. I am quite confident based on Ms. Massey's audit and the evidence regarding the use of restaurant money for family expenses, that the net family income of the Gouskos-Milonakos family was at least $47,746 in 2011 and $49,764 in 2012.

[42] The burden was on Ms. Gouskos to establish that her net family income was less than $47,746 in 2011 and $49,764 in 2012. She has failed to disprove, on a balance of probabilities, that the Minister's reassessments were incorrect. Accordingly, Ms. Gouskos was not eligible to claim the CCTB during for her 2011 and 2012 taxation years.

[43] The appeals are dismissed, without costs.

Signed at Ottawa, Canada, this 8th day of October 2020.

"Johanne D'Auray"

D'Auray J.

CITATION:	2020 TCC 110
COURT FILE NO.:	2019-2607(IT)I
STYLE OF CAUSE:	MAVRA GOUSKOS v HER MAJESTY THE QUEEN
PLACE OF HEARING:	Montreal, Quebec
DATE OF HEARING:	August 25, 2020
REASONS FOR JUDGMENT BY:	The Honourable Justice Johanne D'Auray
DATE OF JUDGMENT:	October 8, 2020

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Gabriel Girouard

COUNSEL OF RECORD:

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Firm:	N/A

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