

Docket: 2018-4204(IT)G

BETWEEN:

JASBIR RAI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 30, 2022, at Vancouver, British Columbia

Before: The Honourable Justice F.J. Pizzitelli

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Karen A. Truscott

JUDGMENT

UPON hearing from the parties;

NOW THEREFORE it is hereby ordered that the appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2013, 2014 and 2015 taxation years are allowed only to the extent that the gross negligence penalties assessed pursuant to subsection 163(2) of the *Act* are cancelled, as conceded by the Respondent. The Respondent is entitled to costs in this matter.

Signed at Ottawa, ON, this 13th day of June 2022.

“F.J. Pizzitelli”

Pizzitelli J.

Citation: 2022 TCC 59
Date: June 13, 2022
Docket: 2018-4204(IT)G

BETWEEN:

JASBIR RAI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Pizzitelli J.

[1] The Appellant appeals from the Minister’s Notices of Reassessment for the 2013 taxation year, an otherwise statute barred year, and for the 2014 and 2015 taxation years pursuant to which the Minister reassessed the Appellant, on a net worth basis pursuant to subsection 152(7) of the *Income Tax Act* (the “Act”), for unreported income of \$960,805.00, \$113,556.00 and \$112,133.00 respectively as well as imposed gross negligence penalties pursuant to Subsection 163(2) of the Act.

[2] As preliminary matters at the start of the trial the Respondent brought a motion to file an amended Reply that simply corrected the former Reply filed after the initial appeal to include reference to the 2015 years and drop a few numbers from listed credit card numbers for privacy reasons. The Appellant had filed an amended Notice of Appeal to write in the 2015 year after the initial reply had been served. There was no change to the schedules of net worth calculation which included the 2015 year and information relative to it. This was granted over the objection of the Appellant as there was simply no prejudice to the Appellant and is more in keeping with a house keeping measure.

[3] The Respondent also sought leave to file a Supplementary list of documents she notified the Court of on May 24, 2022 which listed numerous new and expanded documents over the initial list. The Appellant strongly opposed the filing, notice of which she received only a few days before the trial, and I agreed with the Appellant that such filing at such a late time would not allow the Appellant to have properly prepared for her case. No explanation was given why such list was not filed much

earlier. While such filing may have made the trial proceed more efficiently, the Appellant was not prepared to accept an adjournment for a sufficient time to review these documents and prepare for trial and the Respondent herself advised she would rather proceed with her original list rather than have an adjournment so leave was denied and the parties proceeded to trial.

[4] The Respondent conceded at the beginning of the trial that no gross negligence penalties are applicable hence the only two issues to be decided by this Court are whether the reassessments for unreported income above referenced are correct and whether the Appellant made a misrepresentation attributable to neglect, carelessness or wilful default, or fraud that would enable the Minister to reassess the Appellant's 2013 taxation year beyond the normal assessment period pursuant to subsection 152(4) of the Act.

[5] During the years under appeal the Appellant was the sole director and shareholder of Tantra Trading Ltd. ("Tantra") that operated a retail gift shop under the tradename of Bobby Dazzler at a retail shopping centre. The Appellant was also a shareholder of Kabbalah Trading Ltd ("Kabbalah") and Sharper Advancement Resources Inc. ("Sharper") which she testified ceased to operate in 2005 and 2012 respectively and which she dissolved in 2015 and 2013 respectively. The Appellant also ceased to operate her aforesaid retail gift shop in 2017 for the stated reasons of stiff competition from Amazon and due to increases in rent and Tantra was dissolved in July of 2017. The Appellant admitted Tantra had been reassessed for the years in issue to include the same amounts as reassessed against the Appellant as unreported income but she withdrew the appeals for Tantra due to its dissolution.

[6] The Minister's net worth Reassessments for the years in question were based primarily on a bank deposit and personal expenditure analysis for which unexplained bank deposits and withdrawals from accounts in her name or in trust for two children or credit card expenditures were treated as unreported income appropriated from Tantra and/or Kaballah and Sharper.

[7] As examples, the Minister's witness alleges she withdrew a total of \$429,500.00 from her Coast Capital bank account in 2013 via a series of 18 smaller withdrawals under \$10,000.00 each, which the Minister alleges were sourced from Kabbalah and Sharper, as well as \$87,133.00 from her CIBC bank account in 2013 and \$51,242.00 from her children's bank accounts with BMO she controlled supposedly sourced from Tantra. Further, the evidence is also that the Appellant purchased a luxury vehicle by paying for it in full by credit card and cheques, without

obtaining a loan, for about \$117,000.00 in 2013, which the Appellant admitted as part of her cross examination of the Respondent's witness.

[8] The Appellant's entire case was premised on her allegations that her former business partner committed fraud and is guilty of business racketeering and was the man responsible for the questionable bank deposits and withdrawals from the bank accounts in question such that this is a case of mistaken identity and fraud. She testified she had filed criminal complaints with the Coquitlam Police Force, the RCMP and the CFSEU (an RCMP joint task force on financial crimes) that were not acted upon. She also alleges that the reassessments occurred right after the filing of complaints suggesting they were somehow in response to the filing of these criminal allegations in some way because of their proximity in timing as well as the suggestion the CRA sent correspondence proposing to reassess her on September 13, 2017 to the address for Tantra, a PO Box number, instead of to her home address which she testified raised her concerns as to the legitimacy of the process. It is clear in her correspondence with the auditor on numerous occasions that she re-characterized the audit as an "investigation" and strongly refused, in writing on several occasions, to provide any documents, information or material facts pertaining to the audit notwithstanding the clear notation on the correspondence that this was an audit. She declined the invitation to do so by both the CRA auditor and later the appeals officer who offered to delay their decision for 30 days each time to give her an opportunity to make submissions or contact them via provided direct phone numbers, which the Appellant suggests were not real numbers or somehow connected to her former business partner. She even denied an offer by the auditor to meet with him at the CRA offices in Burnaby to alleviate her concerns that the auditor was a legitimate auditor with the CRA.

[9] The evidence is clear from the Respondent's exhibits entered into evidence that the proposal letter and all correspondence with respect to her personal audit was sent to the Appellant's personal address in West Vancouver and that the proposal letter in respect of Tantra's audit was the one sent to the PO Box number. The Appellant seems to confuse the correspondence and mix the two audits together.

[10] The Appellant has also admitted the Coquitlam police force and the RCMP had closed their investigations and that she had not heard from the joint task force since 2014 so it is clear there is no pending criminal investigation into any alleged fraud or mistaken identity issue. She has provided absolutely no evidence that there were any findings of criminal activity perpetrated from her former business partner or anyone else connected to her audit and reassessments. While she did enter evidence of correspondence with an officer of the CFSEU in 2010 nothing therein

ties these to the complaints she made in 2017, notwithstanding her allegations that the crimes have continued and investigations continue. In fact, the Appellant's letter of November 7, 2017 attached to her Notice of Objection refers to these criminal complaints as including an array of allegations against her former landlord, business partner, his son in law and house keeper and others for the commission of crimes ranging from fraud, theft, attempted kidnapping to even the suggestion of attempted murder by drowning, none of which are remotely related to the issue of deposits or withdrawals from her accounts or her personal expenditures, or even to Tantra, Sharper and Kaballah in any way. They don't even reference any of the activities she complained of in 2010 that she alleges continued. She also suggested during her cross-examination of the auditor that the auditor was conducting a tax evasion investigation, albeit it with alleged comments that she attributed to the auditor at a meeting related to the Tantra audit. There is absolutely no evidence of the CRA auditor involved in a tax evasion investigation nor mention of any in any correspondence in evidence and same was categorically denied by the auditor, whom I found credible.

[11] Likewise, the Appellant has brought forth no evidence pertaining to her bank accounts, including any bank statements, deposit slips or any other documentation of any kind including any correspondence pertaining to her complaints from any other party. Instead, the Appellant testified that while she did have some bank accounts, there were not the same as the bank account numbers referenced in the Respondent's schedules of net worth calculation and in fact tendered into evidence an Equifax report dated December 2020 that lists bank accounts and credit cards with numerous entities, including Amex, CIBC, BMO and others with "alleged" account numbers that do not match the account numbers of the bank accounts referenced by the Minister in its net worth schedules, testifying that she would have no reason to change accounts a full three years later after the reassessment. Again, she provided no evidence as to her actual bank account and credit card accounts during the years in issue or even at the time of audit and reassessment notwithstanding the Ministers assumption that the accounts involved in the net worth assessment were hers or in trust for her children. Moreover, the auditor testified that an original credit report was ordered by him at the start of his audit to identify what institutions the Appellant dealt with so he could and did serve on them Requests for Information from which he drew his information in preparing the net worth calculations; directly from the bank account and credit card accounts those financial institutions identified as belonging to the Appellant, with same name, same social insurance number, same birthdate.

[12] During the auditor's examination-in-chief by Respondent's counsel and verified in cross-examination by the Appellant, the auditor testified that a net worth assessment is only used when a taxpayer does not provide sufficient necessary documentation to allow him to review for a normal factual audit. The evidence is clear that the Appellant refused to cooperate with the auditor and the CRA in general throughout the entire audit and appeals process, refusing to provide any documentation requested to the auditor, appeals officer after filing of the Notice of Objection, and even at trial since the Appellant tendered none of the requested documents into evidence. The Minister has legal authority under S.232.1 of the Act to issue Requests for Information to third parties to obtain such information and as earlier stated did so, notwithstanding the Appellant's suggestion he needed her permission. The auditor testified that he reviewed the details of every bank and credit card information obtained and created a Net Worth calculation setting out the Appellant's personal assets and liabilities to determine her net worth for the years 2012-2015 and calculating the change in net worth over the previous year for each of 2013, 2014 and 2015, all of which showed the Appellant's reported income could not have funded such changes in net worth. The auditor then proceeded to add personal expenditures and other payments the Appellant would have had to fund in each of such years to the net worth change and then subtracted income reported and other sources of income like tax refunds, tax credits and social benefits that are not taxable. The results are the basis for the reassessment amounts in each of the years aforementioned. It is clear from the detail in the analyses that the auditor was thorough and transparent and the Appellant did not challenge any of the information other than to suggest the bank accounts listed in the Assets may not have been hers due to her earlier alleged inconsistency of bank account numbers and/or bank accounts per se to a Equifax report which listed her accounts, without full numbers, three years later and which has no merit. The bank accounts used by the auditor in his calculation belong to the Appellant and were matched to her name, birthdate and social insurance number as earlier stated. Even the Appellant implicitly acknowledged they belong to her by arguing they were illegally manipulated by her former business partner in the first place.

[13] The Appellant also tendered into evidence the T2 returns for Tantra for the years in issue that clearly demonstrate that cash balances as at December 31 year ends were about \$10,000.00 and that the corporation had small net incomes or losses in those years, hence could not have been the source of such withdrawals, but brought no evidence to show what deposits and withdrawals occurred and did not address any such withdrawal specifically in presenting her case. Year end cash balances are hardly determinative of the activity in a company bank account throughout the year nor are financial statements assumed to automatically be

accurate in a reassessment alleging appropriation of funds. Moreover no information was provided by the Appellant for Kabbalah and Sharper, the evident source of funds for the major withdrawal from her Coast Capital account, notwithstanding that the Appellant suggested they were no longer in business at the time. They obviously had funds.

[14] The Appellant argued that the Respondent's position in its audit of Tantra, that the funds appropriated by the Appellant result in unreported income of Tantra, is inconsistent with the proposal letters sent to both the Appellant and Tantra dated September 13, 2017 that contained a Note to the Schedule III of the Net Worth Calculation enclosed that stated Kabbalah and Sharper were the source of funds withdrawn from the Coast Capital Account. While appearing to be true, it is also clear that the auditor obtained the bank statements for such Coast Capital account that show that 18 withdrawals totalling the sum in question were made from that account belonging to the Appellant regardless of which company or companies was the source of funds. The companies being the source of funds might well argue in any reassessment that they should not have income attributed to them as unreported income if they were not the source of funds, as Tantra no doubt could have done if it had not withdrawn its appeal, but the Minister's evidence is that the Appellant withdrew those funds regardless of source and the Appellant provided no evidence the source of such funds was a non-taxable event to the Appellant.

[15] Frankly, the Appellants evidence does not rebut the assumptions made by the Minister and amount to no more than allegations of fraud by a third party with absolutely no proof thereof, not even proof the Police were investigating such actions. These complaints are also dated after the letter proposing the reassessments sent by the Minister on September 13, 2017, more particularly as part of the Appellants Notice of Objection on November 7, 2017, with no evidence of any continuing correspondence with law enforcement after 2010 up to the time of the proposal letter dated September 13, 2017. Her case amounts to no more than a plethora of unsubstantiated and somewhat nonsensical allegations she attempts to attribute to supposed criminal activity of a third person to manipulate her bank accounts or supposed wrongful conduct of the CRA. In presenting her case she seemed focused on processes like whether it was practice to send correspondence by registered mail rather than regular mail and attempting to conflate the delivery of Tantra's correspondence to a different address as being her personal correspondence sent to the wrong address which the evidence shows is untrue, rather than the details of addressing the alleged withdrawals and personal expenditures that resulted in the reassessment using the net worth method. Not one expenditure attributed to her was mentioned or challenged. As for the withdrawals from her bank accounts, not only

were no bank statements, deposit slips or any other documentary evidence tendered by her into evidence, she refused to take up the auditor's offer during cross examination to show her that information he had obtained from his inquiries. Moreover, to argue that other third parties were having their way with her bank accounts is not credible when one considers that if they misappropriated funds in 2013 then why did the Appellant not ever allege theft of her funds from these accounts to the authorities prior to her audit and reassessment in 2017. As stated, she made no mention of this alleged theft in her letter attached to her Notice of Objection above referred to and it stretches credibility to suggest that as the owner and controller of those accounts for which she would have received monthly statements that she would not have been aware of any improper activity affecting them for over 3 years. It is only around the time of the reassessments that letters appear to have been sent to her banks warning of possible criminal activity.

[16] I simply do not find the Appellant credible on any of her positions, allegations or testimony and find she has not met the onus of rebutting the Minister's assumptions, particularly that she earned and failed to report income from the Businesses in the amounts reassessed by the Minister. Accordingly, the Ministers reassessments for the years in question stand.

[17] It follows, that as she filed her own tax returns by paper filing and admitted to signing the returns, that her omission of the unreported income as reassessment by the Minister in 2013 amounts to a misrepresentation contemplated by Subsection 152(4). In light of the fact the Appellant admitted to preparing both her own personal and company tax returns, filed them by paper copy and signed them to certify they were correct, complete and fully disclosed her income suggests she was not only experienced in tax matters but was aware of the degree of care required to file tax returns and knew she was not reporting the appropriated income from her businesses. The Appellant is clearly an experienced business person who owned at least 3 corporations over the years and should know the obligation to file complete and accurate tax returns notwithstanding that such obligation is made clear on the aforesaid certification provision on each of her returns filed. She even testified she had her cousin review and check her personal tax returns suggesting she understood the need for accuracy. She was clearly well spoken at trial and intelligent and had control of and prepared any books and records of her businesses as well as controlled their bank accounts so would have known the income earned by the businesses. She controlled her bank accounts and credit cards and would know what deposits and withdrawals were being made and what her personal expenditures were. The unreported income amounts were very material relative to her reported income; being over 10 times her reported income in 2013 and over 100% of her reported

income in each of 2014 and 2015, the later years suggesting a propensity to misrepresent her income. Moreover, her conduct throughout was one of total non-cooperation with the CRA, including questioning the legitimacy of the auditor's employment with the CRA and refusing to provide any documentation whatsoever that could have assisted the resolution of this matter, all of which suggest to me she intentionally wished to avoid disclosure of such material. Having regard to all the above factors and circumstances I find that her misrepresentation of reported income was attributable to more than just carelessness or negligence. It was attributable to wilful default. Accordingly, the Respondent has met the onus of establishing it is entitled to reassess the 2013 taxation year of the Appellant.

[18] In conclusion the Appellant's appeal from the Minister's reassessment of her 2013, 2014 and 2015 taxation years are allowed only to the extent that the gross negligence penalties assessed pursuant to subsection 163(2) of the Act are cancelled as conceded by the Respondent. The Respondent is entitled to costs in this matter.

Signed at Ottawa, ON, this 13th day of June 2022.

"F.J. Pizzitelli"
Pizzitelli J.

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| CITATION | 2022 TCC 59 |
| COURT FILE NO.: | 2018-4204(IT)G |
| STYLE OF CAUSE: | JASBIR RAI AND HER MAJESTY THE QUEEN |
| PLACE OF HEARING: | Vancouver, British Columbia |

DATE OF HEARING: May 30, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice F.J. Pizzitelli

DATE OF JUDGMENT: June 13, 2022

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Karen A. Truscott

COUNSEL OF RECORD:

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