

Docket: 2012-3976(IT)I

BETWEEN:

ANDREW STRIMAITIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 5, 2013, at Toronto, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Ricky Y. M. Tang

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2010 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montreal, Quebec, this 5th day of September 2013.

“Paul Bédard”

Bédard J.

Citation: 2013 TCC 274
Date: 20130905
Docket: 2012-3976(IT)I

BETWEEN:

ANDREW STRIMAITIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

[1] The appellant is appealing a penalty in the amount of \$5,570.20 for the 2010 taxation year assessed by the Minister of National Revenue (the “Minister”) under subsection 163(1) of the *Income Tax Act* (the “Act”).

[2] Subsection 163(1) imposes penalties for a taxpayer’s repeated failure to report income:

(1) Repeated failures. Every person who

(a) fails to report an amount required to be included in computing the person’s income in a return filed under section 150 for a taxation year, and

(b) had failed to report an amount required to be so included in any return filed under section 150 for any of the three preceding taxation years

is liable to a penalty equal to 10% of the amount described in paragraph (a), except where the person is liable to a penalty under subsection (2) in respect of that amount.

[3] In *Maltais v. The Queen*, 91 DTC 1385, Judge Bowman (as he then was) held that the failure described in subsection 163(1) was one of “strict liability”. To justify the imposition of penalties under subsection 163(1), the Minister has only to show “that the taxpayer ... failed to report an amount of income in one year and that he or she ... failed to report an amount in a return for any of the three preceding taxation years” at page 1387. Once this has been established, the onus shifts to the taxpayer to prove that he exercised sufficient “due diligence” in reporting his income so as to avoid liability under subsection 163(1).

[4] In the present case, the appellant admits that in 2010, 2009 and 2008 he failed to report certain amounts received in respect of his employment. He also acknowledges that he was obliged to pay the tax and interest owing in respect of those amounts, but asks the court to relieve him from having to pay the penalty assessed. In support of his argument, he essentially testified that he had simply made a mistake. Since, in his testimony, the appellant reiterated the reasons stated in his notice of appeal for not having declared all his income, I will reproduce the pertinent parts of his notice of appeal:

Relevant Facts:

I'm being penalized for my tax claim not matching up with my income for the tax year 2010. This was due to a missing T4 which happened to be the bulk of my earnings that year.

I've never spoken to or signed anything from the accountant that did my taxes. She's the accountant my parents use so I just hand them my necessary forms and I usually get a return. I was never asked to verify or sign anything that confirmed that I agreed with the amount claimed before it was processed. My taxes were e-filed by the accountant so I had no “sign off” or confirmation of any kind that the claim was correct.

Reasons for Objection:

I did not knowingly do anything wrong, it was just a simple mistake. In 2010 I worked for two animation studios; Cuppa Coffee Studios for the bulk of the year on one project, then at Guru Studio for two smaller projects. Guru treated each small project separately and issued two separate T4's for my work there. I received each one separately in the mail and thought since I worked for two different companies that one was from Cuppa Coffee and the other from Guru Studios. Tax time was nearing so I submitted those forms to my family's accountant. At some point later the T4 from Cuppa Coffee came in the mail. Curious as to why another T4 arrived I called my mother and asked if she could check with the accountant to see if she has all my necessary forms. My mother contacted her and told me she has two T4's from

that year. I thought okay I worked for two different companies, she has two T4's and didn't mention anything about missing forms. I foolishly put the T4 in my tax folder at home and didn't think much else of it. That T4 happened to account for the majority of my earnings that year and the two T4's that were processed were just the two smaller productions at Guru Studio.

So you see how this was just a simple oversight, albeit a bit of a boneheaded one on my part but still not one that was done intentionally with any sort of fraud in mind. I'm a hard-working 100% tax paying, law abiding citizen who happens to not be very "hands on" when it comes to dealing with my finances. Had I had any contact at all with the accountant who filed for me I surely would've noticed that she didn't have all my necessary forms before she e-filed it. As it were she just assumed I didn't make much money that year and filed my taxes without the T4 that happened to account for the bulk of my 2010 work year.

At it happened to account for the vast majority of my work year the 10% penalty is devastatingly large for a person of my income and current situation. I'm not going to cry poor and say it would ruin and put me in the streets. I'm not someone who builds debt, I build children's cartoons for a decent wage. I've very recently gotten married and am doing my best to build a future for my wife and children we hope to have in the years ahead. This penalty would be a huge setback for our start as a family. Given that I have explained how it was a simple oversight and not an act of dishonesty I request that [I] be exempt of this penalty so I can concentrate on building a future for my family and continuing to create inspiring cartoons for Canada's youth. From now on I'm going to hire my own accountant who I can be in contact with to ensure a mistake like this does not happen again.

[5] I do not doubt the veracity of the appellant's testimony. The difficulty is that his reasons for failing to report his income accurately fall short of establishing the level of "due diligence" required in order to avoid liability under subsection 163(1).

[6] According to *Corporation de l'École polytechnique v. Canada*, 2004 FCA 127, [2004] G.S.T.C. 102, 325 N.R. 64, a defendant may rely on a defence of due diligence if either of the following can be established: the defendant made a reasonable mistake of fact, or the defendant took reasonable precautions to avoid the event leading to the imposition of the penalty.

[7] Establishing a reasonable mistake of fact requires meeting a twofold test: subjective and objective. The subjective test is met if the defendant establishes that he or she was mistaken as to a factual situation which, if it had existed, would have made his or her act or omission innocent. In addition, for this aspect of the defence to be effective, the mistake must be reasonable, that is, it must be a mistake a reasonable person in the same circumstances would have made. This is the objective test.

[8] As already stated, the second aspect of the defence requires that all reasonable precautions or measures be taken to avoid the event leading to imposition of the penalty.

[9] There is no reasonable mistake of fact in this case. The appellant can hardly be found to have made a reasonable mistake of fact with regard to having reported all his employment income from Cast & Crew Entertainment Services Inc. for the 2010 taxation year (the amount not reported being \$55,702) by virtue of his having sent (through his mother) the T4 slips to his accountant when he did not even open the envelopes in which he received the T4 slips or review his tax return. Likewise, the appellant cannot establish that he took reasonable precautions to avoid the event that led to the imposition of the penalty. That event was the failure of the appellant to report the bulk of his 2010 employment income. The failure of the appellant to open the envelopes in which his T4 slips were sent to his accountant (through his mother) and to review those slips or to review his tax returns demonstrates that he did not take reasonable precautions to avoid the failure to include the unreported income in his tax returns.

[10] As a result the appeal is dismissed.

Signed at Montreal, Quebec, this 5th day of September 2013.

“Paul Bédard”

Bédard J.

CITATION: 2013 TCC 274

COURT FILE NO.: 2012-3976(IT)I

STYLE OF CAUSE: ANDREW STRIMAITIS v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 5, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: September 5, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Ricky Y. M. Tang

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
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