

Docket: 2012-5173(IT)I

BETWEEN:

EMILY SOWAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on September 6, 2013, at Toronto, Ontario

Before: The Honourable Justice Campbell J. Miller

Appearances:

Agent for the Appellant: Richard Twumasi  
Counsel for the Respondent: Jill Chisholm

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**JUDGMENT**

The Appeal from the assessment made under the *Income Tax Act* for the 2006 taxation year is dismissed.

Signed at Ottawa, Canada, this 20th day of September 2013.

"Campbell J. Miller"

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C. Miller J.

Citation: 2013 TCC 297

Date: 20130920

Docket: 2012-5173(IT)I

BETWEEN:

EMILY SOWAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

C. Miller J.

[1] Emily Sowah appeals the Minister of National Revenue's (the "Minister") assessment of her 2006 taxation year in which Ms. Sowah's claim for a \$10,252 charitable donation was denied. The Minister's position is, first, that the receipt submitted by Ms. Sowah does not meet the legislative requirements; and, second, that in any event, she has been unable to prove she made the cash donations of \$10,252 to the Jesus Healing Center.

#### Facts

[2] Ms. Sowah did not appear at the hearing to give evidence, but her husband, Mr. R. Twumasi, acted as her agent and also testified.

[3] Mr. Twumasi explained that, starting in late 2004, he and the Appellant began to attend the Jesus Healing Center, as a friend had recommended it. He claimed that they went every Sunday, and donated \$100 or \$200 cash each time, sometimes more. According to Mr. Twumasi the Appellant would either put the cash in an envelope at home or in an envelope provided by the church that was tucked in with the hymn book or bible in the row in front. Mr. Twumasi explained his wife would simply just put the cash in the envelope and deposit it in the offertory dish that was passed around.

[4] Mr. Twumasi said that all the donations came from the Appellant's salary. They would withdraw cash as needed from the bank for domestic purposes, and when they ran out they would simply take out more. The cash for the donations, according to Mr. Twumasi, came from this household money. Mr. Twumasi provided no bank records to corroborate these regular cash withdrawals.

[5] In 2006, Ms. Sowah had income of approximately \$86,000 and Mr. Twumasi had income of approximately \$8,000. He said he was working that year, though not perhaps for the full year. He was an accountant and was responsible for doing all his wife's returns. As well as a mortgage, the Appellant and Mr. Twumasi had a line of credit, which currently stands at around \$60,000 but Mr. Twumasi could not recall what it was in 2006.

[6] Mr. Twumasi claimed that the Pastor at the Jesus Healing Center, who he named as Edwin Areposo, indicated, as soon as they started going in late 2004 or early 2005, that the church needed money for a new building. It was not until 2006, however, that the Appellant started to make any donations to support the building. No building was ever undertaken.

[7] Ms. Sowah's charitable giving history from 1997 to and including 2005 was minimal, a few years with nothing at all and the other years averaging approximately \$270 a year. Mr. Twumasi alleged they would make donations of a couple of thousand dollars, but would not claim such amounts if they could not readily track down receipts. I found this evidence difficult to accept.

[8] Mr. Twumasi initially filed the Appellant's 2006 return without claiming a charitable donation, but received a receipt from the Jesus Healing Center two or three months later, so he then made an adjusted return, claiming the \$10,250. The receipt is reproduced as Appendix A.

[9] I point out the following with respect to the receipt: no specific date is given, but an indication of January – December 2006; the address of the Jesus Healing Center is provided but no indication of the locality of where the receipt was issued; there is no statement on the receipt that it is an official receipt for income tax purposes.

[10] In early 2007, Mr. Twumasi caught wind of some problems with the church elders so he and Ms. Sowah stopped attending the Jesus Healing Center.

[11] Before turning to the evidence of the Canada Revenue Agency ("CRA") officer, Mr. Huenemoeder, I note that Mr. Twumasi had an injury back in 1993 that caused mental impairment. Indeed, in 2000 he filed for a disability tax credit, by providing a doctor's certificate that certified that he could not live independently, and that his wife had to manage the money affairs. It certified that Mr. Twumasi was unable to think, perceive and remember. At trial, Mr. Twumasi confirmed he no longer has problems with memory. He was quite capable of conducting the Appeal for his wife and left an impression he was no longer under any disability. He continues, however, to claim the disability tax credit.

[12] I turn now to the testimony of Mr. Huenemoeder, a charities audit team leader with the CRA, who led the audit into the Jesus Healing Center, starting in March 2008 and terminating with the revocation of the Jesus Healing Center's charitable status in May 2009.

[13] Mr. Huenemoeder testified that the Jesus Healing Center registered as a charity in January 2006, a year after Mr. Twumasi maintains he and the Appellant started attending services at the Jesus Healing Center. He indicated there were few books and records of the Jesus Healing Center, nothing that could validate the \$3,200,000 worth of charitable donation receipts that had been issued by the Jesus Healing Center over a two year period. The bank statements of the Jesus Healing Center showed deposits of only \$18,000. A list of donations suggested there were 760 individual donors. The audit team contacted a random sample of donors, none of whom could support the amount of their donations. A review of expense receipts by the audit team showed a computer expense of \$2,000, though a claim of over \$700,000 for computers allegedly sent to Ghana.

[14] Mr. Huenemoeder interviewed Pastor Oforio at the location of the Jesus Healing Center (note the different name from that provided by Mr. Twumasi). He noted there were no pews, only stackable chairs. None of the books and records included any donation envelopes. He was led to believe from his interview with the Pastor that the Jesus Healing Center received only \$2,000 to \$3,000 in donations a week.

### Analysis

[15] Section 118.1 of the *Income Tax Act* (the "Act") provides for a tax credit for donations to duly qualified charities. Two things are essential:

- a) gift to the charity;

- b) a receipt for the gift with prescribed information.

### Receipt

[16] I will deal first with the issue of the receipt. The prescribed information for a receipt is found in Regulation 3501(1) of the *Income Tax Regulations* (the "Regulations").

Every official receipt issued by a registered organization shall contain a statement that it is an official receipt for income tax purposes and shall show clearly in such a manner that it cannot readily be altered,

- (a) the name and address in Canada of the organization as recorded with the Minister;
- (b) the registration number assigned by the Minister to the organization;
- (c) the serial number of the receipt;
- (d) the place or locality where the receipt was issued;
- (e) where the gift is a cash gift, the date on which or the year during which the gift was received;
- (e.1) where the gift is of property other than cash
  - (i) the date on which the gift was received,
  - (ii) a brief description of the property, and
  - (iii) the name and address of the appraiser of the property if an appraisal is done;
- (f) the date on which the receipt was issued;
- (g) the name and address of the donor including, in the case of an individual, the individual's first name and initial;
- (h) the amount that is
  - (i) the amount of a cash gift, or

- (ii) if the gift is of property other than cash, the amount that is the fair market value of the property at the time that the gift is made;
- (h.1) a description of the advantage, if any, in respect of the gift and the amount of that advantage;
- (h.2) the eligible amount of the gift;
- (i) the signature, as provided in subsection (2) or (3), of a responsible individual who has been authorized by the organization to acknowledge gifts; and
- (j) the name and Internet website of the Canada Revenue Agency.

Case law is clear that these requirements are mandatory and are to be strictly adhered to (see for example the cases of *Afovia v The Queen*,<sup>1</sup> *Sklowdowski v The Queen*,<sup>2</sup> *Plante v Canada*).<sup>3</sup>

[17] Does the receipt provided by the Appellant meet all the requirements? It does not. It fails on three counts. First, the receipt does not contain the statement that it is an official receipt for income tax purposes. In the case of *Ehiozomwangie v R*,<sup>4</sup> Justice Campbell made it clear that the requirement that the receipt indicate that it is an official receipt for income tax purposes is one of the mandatory requirements. I agree. There can be no clearer reassurance to a taxpayer on the face of a receipt than an indication that it is an official receipt for tax purposes. Failure to meet this simple qualification casts real suspicion on the credibility of the receipt. It is a mandatory condition that has not been met in this case.

[18] Second, another simple requirement is the date on which the receipt was issued. On Ms. Sowah's receipt no date is given, only the year (January to December 2006). Again, this is a mandatory condition that simply has not been met.

[19] Third, the receipt must show the locality or place where the receipt was issued. This is a separate requirement from the address of the organization as recorded with the Minister. Here, while we might presume the address of the organization is the same place as where the receipt was issued, this should not be left to presumption.

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<sup>1</sup> 2012 TCC 391.

<sup>2</sup> 2013 TCC 37.

<sup>3</sup> [1999] T.C.J. No. 51.

<sup>4</sup> 2013 TCC 145.

Maybe there are several Jesus Healing Centers throughout Toronto. It should be clear on the receipt from which place the receipt is issued. It is not. Again, a requirement has not been met.

[20] The Appellant has therefore not provided a receipt with the prescribed information and has therefore not met the second condition necessary to obtain credit for a charitable donation. The Appeal can be dismissed on that basis.

#### Failure to prove donation

[21] I am also going to address the first requirement – the need for a gift to a charitable organization. I doubt the veracity of the Appellant's claim of having donated \$10,250 for the following reasons:

- a) I question Mr. Twumasi's integrity. He tells me he is no longer suffering any mental impairment from an injury 20 years ago yet admits he continues to claim the disability tax credit every year. On its face, this shows some disregard for requirements of the *Act*.
- b) Mr. Twumasi claims donations were made to help the building fund, yet there was no evidence of any plans for a building. Further, the receipt showed funds were donated for different reasons, none of which were mentioned by Mr. Twumasi.
- c) Mr. Twumasi provided no corroboration for the cash payments: no bank records, no ATM withdrawals, nothing.
- d) He provided a different name for the Pastor than that given by Mr. Huenemoeder, who interviewed the man. I would have thought that going to a church every Sunday for a couple of years that Mr. Twumasi would have recalled the Pastor's name.
- e) Mr. Twumasi's claim that money was put in envelopes provided by the church would accord with pews with pouches in them, not with the use of stackable chairs for the congregation. Further, he gave no indication that the Appellant wrote her name on the envelope purportedly provided, so that the church could track the donations. He also provided no sample of the envelope, nor did the audit team come across any envelopes. Mr. Twumasi's story in this regard simply does not ring true and is not supportable.

- f) The Appellant had no history of charitable giving beyond a minimal annual amount.
- g) The amount of the alleged donations was approximately 13% of the Appellant's after tax income, a huge contribution that one would anticipate would cause the donor to at least follow up that the purpose of the donation was being fulfilled: nothing in evidence in that regard.
- h) The books and records of the Jesus Healing Center could not support the quantity of donations evidenced by the receipts.
- i) A sample of requests to other donors by the CRA audit team revealed no corroborative support from individual donors of their donations.

[22] On balance there is substantial evidence to suggest the Appellant did not make the sizable contribution claimed. Maybe she did attend the Jesus Healing Center and maybe she did make some cash contributions, but she has not proven that she donated \$10,250. For this reason as well as for the deficiencies in the receipt, I would dismiss the Appeal.

Signed at Ottawa, Canada, this 20th day of September 2013.

"Campbell J. Miller"

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C. Miller J.



APPENDIX A



Jesus Healing Center

293 Eddystone Avenue  
Toronto, Ontario M3N 1H8

Nº 000608

A-1

Date January - December 2006

NAME: EMILY SOWA

ADDRESS: 50 HARRING DE

AJAX ONT L1T 3V1

We gratefully acknowledge your financial support to the following funds of this church for the year ending

TITHES & OFFERINGS \$ 2,000.00

MISSIONS \$ 1,250.00

BUILDING OR MORTGAGE FUND \$ 3,000.00

EVANGELISM \$ 1,000.00

864192372RR0001  
REGISTRATION NUMBER

THANKS-GIVING OFFERING \$ 2,000.00

PLEDGES \$ 1,000.00

*John Amato*  
AUTHORIZED SIGNATURE

Total Amount Received \$ 10,250.00

CITATION: 2013 TCC 297

COURT FILE NO.: 2012-5173(IT)I

STYLE OF CAUSE: EMILY SOWAH AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 6, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF JUDGMENT: September 20, 2013

APPEARANCES:

Agent for the Appellant:	Richard Twumasi
Counsel for the Respondent:	Jill Chisholm

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	

For the Respondent:

William F. Pentney Deputy Attorney General of Canada Ottawa, Canada
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