

Docket: 2008-3722(IT)I

BETWEEN:

RICHARD KWAME ADOMPHWE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on March 16, 2010 at Toronto, Ontario

Before: The Honourable Justice Diane Campbell

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Carol Calabrese Aleksandrs Zemdegis

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2004, 2005 and 2006 taxation years are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 5th day of May 2010.

"Diane Campbell"

Campbell J.

Citation: 2010 TCC 240

Date: 20100505

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BETWEEN:

RICHARD KWAME ADOMPHWE,

Appellant,

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REASONS FOR JUDGMENT

Campbell J.

[1] These appeals were part of a group of charitable donation appeals involving almost forty different Appellants. By the time they were scheduled for hearing, many of the Appellants had withdrawn their appeals. In the end, only the appeals of *Richard Kwame Adomphwe* (2008-3722(IT)I), *George W. Scott* (2008-1657(IT)I), *Stephonie Scott* (2008-1704(IT)I) and *Doreen Tuar* (2008-2888(IT)I) proceeded to hearing.

[2] Richard Adomphwe's appeals involve his 2004, 2005 and 2006 taxation years. In each of these years the Appellant claimed non-refundable tax credits in respect to charitable donations totalling \$14,900.00 in 2004, \$11,339.30 in 2005 and \$11,820.00 in 2006. During the hearing, the Appellant testified that in respect to the 2004 taxation year, he did not review his tax return before it was filed and could not identify the organizations or the exact amounts of the donations and could not produce supporting receipts. Consequently, he requested that the only issue which he wanted to place before me was for interest relief. Of course, there is an abundance of caselaw which prevents me from giving the Appellant the interest

relief which he seeks and therefore I am dismissing the appeal respecting the 2004 taxation year.

[3] For the 2005 and 2006 taxation years, the Appellant claimed that the following amounts were paid to several related charities:

Year	Charity	Amount
2005	Bible Teaching Ministries	\$3,514.00
2005	PanAfrican Canadian Multicultural Centre	\$7,825.30
2006	Bible Teaching Ministries	\$2,620.00
2006	Ave Development Foundation	\$4,500.00
2006	Jesus is the Answer Care and Prayer	\$4,650.00
2006	AMREF Canada	\$ 30.00
2006	Canadian Red Cross Society	\$ 20.00

The Minister of National Revenue (the “Minister”) allowed a tax credit in respect to the last two charitable donations of \$30 and \$20 in the above list for the 2006 taxation year but disallowed the remaining donations.

[4] When the Appellant was first introduced to the possibility of making donations to these charities, he investigated the work these charities were engaged in through a friend who lived in the African region where the charities operated. He also determined that the charities were legitimately registered for tax purposes.

[5] The Appellant submitted his bank records respecting the 2005 and 2006 taxation years to show his withdrawals of various cash amounts throughout both years, which he testified he provided to Mr. Gudu to donate to these charities. None of these withdrawals or their totals in either year match the amount of the donations claimed in his returns. However, he admitted that the cash amounts delivered to Mr. Gudu were less than the face value of the receipts in both 2005 and 2006. He explained this discrepancy by stating that in each year he qualified as a member of a small group chosen by the tax preparer, George Gudu, to receive receipts for a higher dollar amount than the actual contributed amounts that were shown as withdrawals on his bank statements. He suggested that he believed ADD Accounting and later, Payless Tax, were “topping off” the differences. The Appellant is now requesting that he be permitted to claim, as donation amounts, only the amounts of these withdrawals, being \$3,860.00 and \$6,000.00 in 2005 and 2006, respectively.

[6] The Appellant provided five donation receipts for four charities: PanAfrican Canadian Multicultural Centre (“PanAfrican”), which states that most of the donation was a gift in kind, and cash donation receipts from Bible Teaching Ministries, Ave Development Foundation and Jesus is the Answer Care and Prayer.

[7] The Appellant on cross-examination stated that, although the PanAfrican receipt states that only \$300.00 was a cash contribution and that the balance of \$7,525.00 was a gift in kind, the amounts he did pay were all cash amounts, which were admittedly less than the face value of the receipt. He surmised that George Gudu used some of his cash donation to purchase goods such as computers for the charity.

[8] The Appellant testified that in the 2005 and 2006 taxation years, he paid the cash amounts to George Gudu, who had been employed by ADD Accounting in 2005 as a part-time tax preparer. At ADD Accounting, Mr. Gudu worked for Ambrose Danso-Dapaah, who pled guilty to fraud on December 15, 2008 for issuing false tax donation receipts to clients of ADD Accounting and preparing false tax returns.

[9] Mr. Gudu purchased the clientele base of ADD Accounting from Mr. Danso-Dapaah in December, 2006 and started operating under the name Payless Tax. It appears from his own admission that he blithely carried on the common practice of issuing false receipts for which, according to his testimony, clients paid only 10 per cent of the face value of the receipt while receiving receipts for much larger amounts. Mr. Gudu has also been charged, along with a third tax preparer, and will be pleading guilty to fraud, pursuant to an agreement with CRA, in the near future.

[10] George Gudu testified that he remembered the Appellant because Mr. Adomphwe worked the night shift at an autoparts business and came to Mr. Gudu’s home to have his return completed after his night shift ended at 6:30 a.m. Mr. Gudu stated that, as the tax preparer, if his clients wanted to maximize their tax refund, he would provide a receipt in respect to one of the charities which ADD Accounting, and later Payless Tax, represented, but that the clients paid only 10 per cent of the face value of the issued receipt. This 10 per cent cash amount was then split between the charity (if, indeed, the money ever found its way to the purported charity) and the tax preparer/office. Various splits

on the 10 per cent donation occurred depending on the charity. He stated that approximately 98 per cent of the office's 3,000 clients purchased receipts.

[11] George Gudu disagreed with the testimony of the Appellant that the office chose a small group of its clients and "topped off" the amounts to equal the face value of their receipts. He stated that all clients had knowledge of the practice of paying only 10 per cent of the face value of the receipt and how it worked. The receipts, attached to the Appellant's 2005 tax return, were prepared by Mr. Gudu and he testified that he recalled a conversation with the Appellant that he would be paying only 10 per cent of the face value of the receipts. The receipts, attached to the Appellant's 2006 tax return, contain different handwriting, although prepared by Payless Tax, because Mr. Gudu did not want the same handwriting on every issued receipt coming out of the office in order to avoid raising suspicion.

[12] Mr. Kofi Debrah, a so-called pastor, testified that he was "involved" with Ambrose Danso-Dapaah and George Gudu on behalf of his charity, Bible Teaching Ministries, which became a registered charity in 2005. He confirmed his "arrangement" with these two individuals respecting the issuance of receipts from Bible Teaching Ministries and the payment of only 10 per cent of the face value of the receipts issued by Bible Teaching Ministries. The flow of money between Mr. Gudu and Mr. Debrah was always in cash. He also admitted that the receipts issued by Bible Teaching Ministries and provided to George Gudu were blank except for being pre-signed.

[13] Deborah Edyvean, the Canada Revenue Agency ("CRA") investigator, detailed the information, including copies of clients' tax returns, obtained from the CANTAX software program on the computers and equipment seized from the Payless Tax offices, as well as Mr. Gudu's personal residence and his van. In addition, receipt booklets, from various charities, some completed and some pre-signed and sealed but otherwise in blank, were seized. Letterhead from some charities and correspondence were seized.

[14] Ms. Edyvean also referred to the invoices attached to the returns in respect to the preparation of the tax returns issued to the Appellant in 2005 and 2006 (part of Exhibits R-4 and R-5, respectively) where the tax preparation fee statement to the Appellant included references to the donation receipt number and the face value amount of the receipt but listing only payment of 10 per cent of that amount being made in the year the return was prepared and filed.

[15] Both Ms. Edyvean and Barbara Lovie, also a special investigator with CRA, determined that Ambrose Danso-Dapaah and George Gudu were participants in a scheme whereby inflated receipt amounts were being utilized by these tax preparers and purchased by the clientele for 10 per cent of the inflated amount. She confirmed that Ambrose Danso-Dapaah entered a guilty plea in 2008 and that George Gudu, among others, has been charged with fraud. All of the charities involved have now had their charitable registrations revoked. According to the evidence of Ms. Lovie, the quantum of false donation receipts issued by Mr. Danso-Dapaah was approximately \$21.6 million with \$6.2 million in non-refundable tax credits claimed.

[16] The main issue in these appeals is whether the Appellant made any gifts to registered charities that would entitle him to claim non-refundable tax credits pursuant to section 118.1 of the *Income Tax Act* (the “*Act*”). In addition, a second issue arises as to whether the receipts issued by these charities can qualify as validly issued receipts in prescribed form pursuant to subsection 118.1(2) of the *Act* and Regulations 3500 and 3501(1) of the *Income Tax Regulations* (the “*Regulations*”).

[17] It is the Respondent’s position that the Appellant did not make a true gift as contemplated by the common law but rather “purchased” donation receipts from his tax preparer which contained grossly inflated face value amounts.

[18] The leading case on the meaning of “gift” is *The Queen v. Friedberg*, 92 D.T.C. 6031, where Linden J.A. defined “gift” as:

...[A] gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor...

[19] Respondent counsel referred to the case of *Coombs et al v. The Queen*, 2008 D.T.C. 4004, where Woods J. at paragraph 15 referred to the elements of this definition in the following manner:

... First, it is necessary that the gifted property be owned by the donor, second that the transfer to the charity be voluntary, third that no consideration flow to the donor in return for the gift, and fourth that the subject of the gift be property, which distinguishes it from providing services to the charity. These elements reflect the general notion that a taxpayer must have a donative intent in regards to the transfer of property to the charity.

[20] In *Webb v. The Queen*, 2004 TCC 619, [2004] T.C.J. No. 453, Bowie J. at paragraph 16 described this “donative intent” to transfer property to a charity as follows:

[16] Much has been written on the subject of charitable donations over the years. The law, however, is in my view quite clear. I am bound by the decision of the Federal Court of Appeal in *The Queen v. Friedberg*, among others. These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid without benefit or consideration flowing back to the donor, either directly or indirectly, or anticipation of that. The intent of the donor must, in other words, be entirely donative.

[21] The Appellant, in addition to his bank statements, submitted a handwritten summary of his withdrawals from his account. The withdrawals varied in amounts between \$100.00 and \$800.00 in 2005 and in amounts between \$400.00 and \$2,000.00 in 2006. The Appellant generated this summary in 2009 from the bank’s computer-generated statements. He testified that, in reviewing his bank statements, he was able to identify the withdrawals, which he used for donations, on the basis that it would not have been economical to drive to Mr. Gudu’s location to give him cash amounts for less than \$100.00.

[22] In 2006, his donation amounts were larger because his income was much higher in that year. He also stated that these donations were made to Mr. Gudu in both years at the Payless Tax office on Kipling Street. Mr. Gudu, however, stated that he met the Appellant through a referral in 2006, in which case the Respondent argues that it would have been impossible for the Appellant to have paid amounts to Mr. Gudu throughout 2005 as the Appellant alleges. In addition, Mr. Gudu claimed that he prepared the Appellant’s 2005 tax return at his home (George Gudu’s home) which was not the business location on Kipling Street of Payless Tax. The evidence was also that Mr. Gudu did not purchase the clientele of ADD Accounting until December of 2006, when he then moved the business to the Kipling Street location. Accordingly, the Appellant could not have attended the Kipling Street address in 2005. Mr. Gudu went on to state that, in 2006 when he prepared the return for the 2005 taxation year, the Appellant paid him for preparing the return together with 10 per cent of the face value of the receipts which he claims Mr. Adomphwe purchased from him in 2006 for the 2005 taxation year.

[23] George Gudu’s evidence was much the same in respect to preparation of the 2006 return, except that in 2007 he prepared the Appellant’s return at the

Kipling Street address and met the Appellant there rather than Mr. Gudu's home, as he had done in the prior year.

[24] There is no direct evidence that the Appellant did not pay the cash amounts to Mr. Gudu in 2005 and 2006 which he claims that he did. The Appellant, as did some of the Appellants in the other appeals, claimed that he always made donations to charities in Africa in prior years but that, in 2003, he was introduced to these charities and the work they were doing in his homeland and was told that since he was donating he might as well get a tax credit for his donations.

[25] The testimony of George Gudu directly conflicts with much of what Mr. Adomphwe told me. However, I have serious problems in stating that I would accept the evidence of George Gudu when he admits that he knowingly continued a practice, commenced by Ambrose Danso-Dapaah, of issuing false receipts and has himself been charged with fraud. I also think it highly improbable that Mr. Gudu has specific recollection of his meetings with the Appellant, and their location, in light of the fact that he had between 3,000 and 3,500 clients in 2006 and 2007 and stated that he never met with the Appellant except on the occasions when he completed his returns in each year.

[26] I also reject the evidence of Kofi Debrah. This so-called pastor, who is fortunately not associated with any particular church, merely confirmed that he had knowledge of this scheme or, as he put it, "arrangement" with George Gudu. Although he did not admit to being part of this "arrangement", according to his evidence, he was clearly a participant, by his own admission, in supplying booklets of uncompleted but signed receipts on behalf of Bible Teaching Ministries to Mr. Gudu. His "understanding" was that Mr. Gudu's clientele paid only 10 per cent of the face value of these receipts which he issued and supplied to Mr. Gudu. There is also a red flag raised respecting the credibility of Mr. Debrah's evidence in that it seems coincidental that he registered Bible Teaching Ministries as a charity in 2005, about the time that he commenced this so-called "arrangement" with these tax preparers.

[27] Despite my rejection of the evidence of George Gudu and Ambrose Danso-Dapaah, the entirety of the evidence, particularly the testimony of the CRA investigators, supports the conclusion that these tax preparers were involved in a tax scheme that permitted taxpayers to be eligible for inflated tax benefits. In fact, the Appellant admitted that he did not give cash amounts that matched the face dollar amounts of the receipts. I have no doubt that he did provide

George Gudu with some cash amounts. However, there is no explanation provided for the figures contained in the invoices attached to the CANTAX returns obtained from the seized computers for each of the Appellant's taxation years. They clearly support the Appellant's involvement in the scheme which the investigation uncovered. These invoices contradict the testimony of the Appellant and indicate that he paid only 10 per cent of the amounts which he claimed in each year.

[28] When presented with copies of invoices, he testified that he had not previously seen these invoices. The invoices for 2005 and 2006 reflect a preparation fee for the return together with a 10 per cent payment amount of the total face value of the receipts submitted in each taxation year. Both invoices reflect that these 10 per cent amounts were paid in the year of the preparation of the return and not throughout the prior taxation year as would be required. These invoices are strong evidence supporting the Respondent's contention that, based on the investigator's evidence, George Gudu's usual practice was to prepare returns, prepare the receipts and then invoice the charge for the preparation fee plus the 10 per cent of the receipt amount at the same time. These invoices represent the 'nail in the coffin' for the Appellant's case. He presented no evidence to refute the invoice statements except to say he had never seen them before. I cannot ignore these invoices in reaching my decision. They are not peculiar to the Appellant's appeals, as invoices surfaced in the other appeals which I heard within this group of appeals. I can think of no other reason for the production and existence of these invoices on the seized computers, except for the fact that they do accurately reflect the payments made and the dates upon which they were received. The Appellant provided no other alternate reason for their existence.

[29] I believe the Appellant may have provided a greater number of cash payments to these tax preparers than the 10 per cent face value of the receipts. However, to quantify exactly how much more the Appellant gave is difficult, if not impossible, for me to do. His summary of withdrawals for 2005 and 2006 was not completed contemporaneously with the withdrawals of cash and delivery to Mr. Gudu. His summary was a reconstructed version and by its very nature potentially fraught with guesswork and error. In addition, the correspondence, dated June 2, 2009 (Exhibit R-3), which the Appellant forwarded to the Department of Justice, leaves one with the impression that the Appellant is stating that he paid the entire amount contained in each receipt. This contradicts his admission that he paid lesser amounts than the face value of the receipts. Although the Respondent produced no direct evidence that the Appellant did not in fact pay these amounts, I must conclude that, based on the entirety of the facts before me,

the Appellant has failed to meet the onus of demolishing the assumptions of fact and, consequently, that he paid only 10 per cent of the face value of the receipts in each year.

[30] Even if I had concluded that the evidence supported a contrary decision, I would still dismiss the appeals on the basis of the Respondent's alternative argument. The receipts simply do not meet the requirements under subsection 118.1(2) of the *Act* and Regulations 3500 and 3501.

[31] According to subsection 118.1(2), a gift is not to be included as a charitable gift unless it is proven by having a receipt for the gift that contains prescribed information filed with the Minister. That prescribed information is set out clearly and in specific detail at Regulation 3501(1). In particular, Regulation 3501(1)(h)(i) states that the receipt shall show:

(h) the amount that is

(i) the amount of a cash donation, or

...

[32] With respect to donations that include gifts of property, other than cash, Regulation 3501(1)(e.1) states that every official receipt shall contain the following:

(e.1) where the donation is a gift of property other than cash

(i) the day on which the donation 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;

[33] The Appellant admitted that he reviewed his returns prior to filing. All of the receipts, by the Appellant's admission, were inflated and therefore do not contain the correct information as prescribed by the *Regulations*, as they do not contain the correct amount of the cash donation. Clearly, the PanAfrican receipt submitted for the 2005 taxation year is deficient, as it contains no description of the property donated. This receipt also contradicts the evidence of the Appellant that he paid

only cash and gave no property. All of these inconsistencies simply further support the existence of this scheme involving inflated receipt amounts.

[34] I subscribe to the remarks by Tardif J. of this Court in *Plante v. The Queen*, [1999] T.C.J. No. 51, on the importance of issuing appropriate receipts. Tardif J. stated at paragraphs 46-48 of his Judgment:

[46] The requirements in question are not frivolous or unimportant; on the contrary, the information required is fundamental, and absolutely necessary for checking both that the indicated value is accurate and that the gift was actually made.

[47] The purpose of such requirements is to prevent abuses of any kind. They are the minimum requirements for defining the kind of gift that can qualify the taxpayer making it for a tax deduction.

[48] If the requirements as to the nature of the information that a receipt must contain are not met, the receipt must be rejected, with the result that the holder of the receipt loses tax benefits. Accordingly, even though a taxpayer may have made a gift of a painting, he or she cannot claim the potential deduction if the appraisal and the receipt issued for the gift do not comply with the requirements of the *Act* and the *Regulations* made thereunder.

[35] Since the receipts do not contain prescribed information, they do not comply with the *Regulations* and therefore cannot be used to support the Appellants' claim that charitable gifts were made in 2005 and 2006.

[36] For these reasons, the appeals for the 2005 and 2006 taxation years are dismissed without costs.

Signed at Ottawa, Canada, this 5th day of May 2010.

"Diane Campbell"

Campbell J.

CITATION: 2010 TCC 240
COURT FILE NO.: 2008-3722(IT)I
STYLE OF CAUSE: Richard Kwame Adomphwe and
Her Majesty The Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: March 16, 2010
REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell
DATE OF JUDGMENT: May 5, 2010

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