Date: 20050915

Docket: A-481-04

Citation: 2005 FCA 298

CORAM: DÉCARY J.A.

LINDENJ.A.

SEXTON J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

MARK DOUBININ

Respondent

Heard at Vancouver, British Columbia, on September 14, 2005.

Judgment delivered at Vancouver, British Columbia, on September 15, 2005.

REASONS FOR JUDGMENT BY: SEXTON J.A.

CONCURRED IN BY: DÉCARY J.A.

LINDEN J.A.

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REASONS FOR JUDGMENT

SEXTON J.A.

[1] This is an appeal from a judgment of the Tax Court of Canada wherein the Tax Court allowed the Respondent's (Doubinin) appeal from the reassessment of the Appellant, the Minister of National Revenue (Minister), which denied his claim for a charitable donation deduction in its entirety. The Tax Court found that the amount contributed by the Respondent was a charitable gift and allowed him a tax credit based upon his actual donation of $6,887.

[2] The Respondent, as a result of the advice of his financial planner and confirmation from Canada Revenue Agency (CRA) that the Association for the Betterment of Literacy and Education (ABLE) was a registered charity, believed that if he donated $6,887 to ABLE, he would become eligible to receive charitable donation receipts for $27,548 if a non-resident trust, the Publishers Philanthropic Fund of Bermuda (PPF), a private philanthropic entity made a charitable donation to ABLE on his behalf equal to 3 times the donation of the Respondent.

[3] The Respondent knew, however, that there was no obligation on PPF to make any matching donation to ABLE and he did not expect, let alone know that PPF would donate. In 1996 the Respondent paid ABLE $6,887 and in 1997 the Respondent was issued a tax receipt for $27,548 by ABLE.

[4] After the Respondent was told by a representative of ABLE that PPF had indeed made the hoped for contribution, the Respondent claimed the tax credit of $27,548 in his 1996 tax return.

[5] The Minister disallowed the tax credit entirely on the basis that the expected benefit was the "inflated tax receipt" (as labelled by the Appellant).

[6] Upon learning from the Minister that PPF had not made the contribution and before the hearing in Tax Court, the Respondent reduced his claim for a tax credit to $6,887 - the amount of his cash donation.

[7] The Tax Court Judge found that the promoter of ABLE and ABLE itself might be part of a fraudulent tax shelter but that the Respondent was not part of any tax evasion scheme. The Respondent had no personal relationship to ABLE or any of its officers or directors.

[8] The Tax Court Judge allowed the Respondent's appeal. In so doing the Tax Court Judge found that the Respondent was entitled to a tax credit in the amount of $6,887. The Tax Court Judge accepted the Respondent's evidence that he had the requisite intent to establish that his donation of $6,887 was a charitable donation to a registered charity. The Tax Court Judge said "It was a genuine gift and not given with the expectation of a receiving a material benefit or any other type of consideration from PPF. The PPF donation was a mere possibility ...".

[9] In essence, the Appellant argues that because the taxpayer hoped to become entitled to a tax credit of $27,548, he became disentitled to a tax credit even for the amount he had actually given to a registered charity (ABLE), namely $6,887. The Appellant argued that the reliance by the Respondent on a "inflated tax receipt" constituted a benefit thus vitiating the entire gift.

[10] The Appellant further argues that the Tax Court Judge erred in finding that the Respondent did not expect to receive a benefit related to the "inflated tax receipt". However, the Tax Court Judge saw and listened to the evidence of the Respondent and accepted his evidence that he did not "expect" to receive such a benefit.

[11] The Appellant must establish that the Tax Court Judge made an erroneous finding of fact that was made in a perverse or capricious manner or without regard to the evidence before the court. The standard of review on such question is very high: see *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235 (SCC).

[12] We are unable to conclude that the finding of no expectation of benefit by the Tax Court Judge was perverse or made in a capricious manner or without regard to the evidence. There was evidence upon which the Tax Court Judge could so hold. Indeed the Appellant elicited this evidence from the Respondent in cross-examination.

[13] The Appellant, relied upon *The Queen v. Friedberg*, 92 DTC 6031 (FCA), and specifically the quote from the reasons of Linden J.A. on what constitutes a gift as follows:

a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor (see Heald, J. in *The Queen v. Zandstra* [74 DTC 6416] [1974] 2 F.C. 254, at p. 261.)

[14] The Appellant argues that the receipt of the "inflated tax receipt" was a benefit. We do not agree.

[15] It was impossible for the Respondent to benefit from the inflated tax credit on the specific facts of this case because even if PPF had made the donation to ABLE, ABLE could not have validly issued a charitable receipt in the Respondent's name for the amount donated by PPF. Section 118.1 of the*Income Tax Act* does not allow one individual to claim a charitable tax credit for a gift made by some other person.

[16] Thus, it cannot be said that the Respondent received any actual benefit from the "inflated tax receipt". In fact, it might well be described as a burden. If he had not received it, he would have not experienced the difficulty he later faced in claiming a credit for the $6,887, which he actually contributed to a registered charity.

[17] The Appellant also relies upon the case of *Webb v. The Queen*, 2004 TCC 619 where the taxpayer was denied a tax deduction in any amount. That case involved a donation to the same charity, ABLE. However, there, the Tax Court found that the taxpayer had knowingly participated in the issuance of false receipts and in addition that the taxpayer made the donation in anticipation of the future return of a large portion of the gift back to him, either from ABLE or through an indirect channel. This is not the case here. In the present case there is no evidence that the Respondent had any knowledge of any wrongdoing. Indeed, he was advised by Revenue Canada that ABLE was a registered charity at the time of his contribution. Further, there was not the expectation of a benefit which the Tax Court had found in *Webb*.

[18] The present case thus differs on the facts from *Webb*, and we are unable to determine that on the specific facts of the present case, that the Tax Court Judge erred.

[19] For all of the above reason this appeal should be dismissed with costs.

"J. Edgar Sexton"

J.A.

"I agree.

Robert Décary, J.A."

"I agree.

A.M. Linden, J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-481-04

(APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED JUNE 22, 2004, DOCKET NO. 2004-43(IT)I)

STYLE OF CAUSE:	Her Majesty the Queen v. Mark Doubinin
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	September 14, 2005
REASONS FOR JUDGMENT BY:	Sexton J.A.
CONCURRED IN BY:	Décary J.A.
	Linden J.A.
DATED:	September 15, 2005

APPEARANCES:

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