

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



JAAMIAH AL ULOOM AL ISLAMIYYAH ONTARIO V MINISTER OF NATIONAL REVENUE (CANADA REVENUE AGENCY) 2016 FCA 49

Federal Court Of Appeal, Canada, RYER J.A. WEBB J.A. RENNIE J.A., 10 February 2016

Charity failed to maintain adequate books and records, issued receipts for gifts otherwise than in accordance with the Act.

Key words: Tax, Canada, Books and Records, Audit

1. This was an appeal by Jaamiah Al Uloom Al Islamiyyah Ontario (the Charity) made under section 172(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). The Charity appealed a decision of the Minister of National Revenue (the Minister), acting through the Canada Revenue Agency Appeals Division (the Appeals Division), dated 11 March 2014 (the Confirmation Decision). This decision confirmed a decision of the Minister, acting through the Canada Revenue Agency Charities Directorate, dated 2 August 2012, in which the Charity was advised of the Minister's decision to issue a Notice of Intention to Revoke (NIR) the registration of the Charity under the Act.
2. The NIR arose out of an audit of the Charity for its 2007 and 2008 taxation years. The Minister issued the NIR on the basis that the Charity had failed to comply with the requirements that were necessary to maintain its registration under the Act. In particular the Charity failed to maintain adequate books and records, issued receipts for gifts otherwise than in accordance with the Act and the *Income Tax Regulations*, C.R.C., c. 945 (the Regulations), and failed to file information returns as and when required under the Act and the Regulations. The Charity objected to the NIR and made further submissions to the Appeals Division in support of its objection. The Appeals Division was unpersuaded and confirmed the NIR and all its findings.
3. On appeal, the Charity did not deny its failures under the Act. However, it contended that it had acknowledged its failures and taken remedial action to amend the situation, particularly as to the control of its accounts, and that revocation of its registration was therefore not a reasonable response. Rather, it was an extreme response.
4. Case law referred to revocation as a reasonable response where there had been serious or aggravated non-compliance with the Act by a charity. It was not sufficient that the Minister merely assert serious or aggravated non-compliance, although the court would not interfere with the Minister's finding if such non-compliance was evident on the record (at [11]). In this case, it was (at [13]–[15]):
5. Registered charities have the privilege of issuing charitable donation receipts which entitle taxpayers to reduce their income tax payable under the Act on the basis of such receipts. This privilege carries with it important

responsibilities. One of the key responsibilities of the Charity is to maintain proper books and records that will enable that Minister to verify the accuracy and appropriateness of the income tax deductions and credits that the Charity makes available to those who receive charitable donation receipts from it. In the circumstances of this appeal, the Charity failed to provide the Minister with books and records that would allow the Minister to determine if the appropriate amount of income tax relief was being provided by the Charity to its donors at the expense of the fisc. In our view, this basic requirement is foundational in the sense that the absence of proper books and records places the Minister in the position of being unable to meet her basic obligation to verify the accuracy and validity of the charitable donation receipts that the Charity has issued. Thus, it is apparent that this non-compliance on the part of the Charity is serious and justifies the Minister's conclusion that the extreme sanction of revocation is warranted.

6. Therefore, the appeal was dismissed with costs.

IMPLICATIONS



Refer *Prescient Foundation v Minister for National Revenue* <https://bit.ly/2SWnrND> and *Many Mansions Spiritual Center, Inc* <https://eprints.qut.edu.au/131420/> For further discussion of these issues.

VIEW THE CASE



This case may be viewed at: <http://www.canlii.org/en/ca/fca/doc/2016/2016fca49/2016fca49.html>

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Author: McGregor-Lowndes, Myles & Hannah, Frances M.

Email: acpns@qut.edu.au

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