

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.



Rajesh Ramroop v The King 2024 TCC 39

Tax Court of Canada, Yuan J, 26 March 2024

An appeal from the denial of a tax credit for a donation where the reassessment was outside the normal period.

Key words: Tax, Canada, Charitable Donation, Tax Credit, Reassessment

1. R was a car mechanic who, in his tax returns for the years 2003, 2004, 2006, 2008, 2009, and 2010, claimed about \$6,000 of charitable donations in each return. In 2006, the claimed donation was to Mega Church.
2. The Minister of National Revenue reassessed R to entirely disallow the prior charitable donation claims, primarily because R could not provide proof of funds transfer to charitable organisations during the Canada Revenue Agency's (CRA) audit of his tax returns for those years.
3. The reassessment was outside the normal reassessment period. Accordingly, the Minister had the onus of proof. Under 152(4)(a) of the [Income Tax Act](#), the Minister was required to show that a misrepresentation was made in the tax return, and that the misrepresentation was attributable to neglect, carelessness, or wilful default.
4. The first alleged misrepresentation was the claim on Schedule 9 of the appellant's 2006 T1 return for a charitable donation of \$6,000 to Mega Church to receive a tax credit. The second alleged misrepresentation was failing to include the name and address of the professional who prepared the return.
5. The Court found R's evidence concerning his attendance at, and donations to, Mega Church to be neither credible nor reliable. It concluded that, on a balance of probabilities, R did not purchase and deliver bank drafts payable to Mega Church in 2006 with face amounts of \$6,000 in aggregate. This was based on the inconsistency of R's evidence with regard to the Court.
6. The Court rejected the argument that Mega Church and all the other charities R donated to from 2003 to 2006 had their charitable registrations revoked by the Minister in years after 2006. The Court found that (at [26]):

... the onus was on the Minister to show that the payments were not made and the fact that the Minister subsequently revoked the charitable status of those entities is not relevant to that point.
7. The Court rejected the contention that the donation was a significant portion of R's reported income. It noted (at [24]):

In my view, statistical measures of the percentage of charitable giving in a year to net income for the year are useful audit tools for the Minister to identify the taxpayers who might be candidates to have their charitable

donations more closely scrutinized. However, if the Respondent's point in all this was that the Appellant could not have the financial resources to make the payments to charities, then more evidence was required on where his 2006 income was going and precluding the possibility that the Appellant had other non-taxable sources of funds to make the donations.

8. The Court also refused to draw adverse inferences concerning the failure to produce copies of bank drafts purchased in 2006 that were payable to Mega Church, despite CRA in written correspondence seeking such documents. This was because:
 - an adverse inference should only be drawn when the party having the burden of proof had made out a prima facie case, and this had not been done at this point; and
 - it would be inappropriate to draw an adverse inference in circumstances where the party against whose interest the inference would be drawn had a credible explanation for why the evidence was not provided.
9. The Court found that R was not entitled to the donation tax credit.
10. The undated receipt issued to R by Mega Church did not comply with the requirements prescribed by subsection 3501(1) of the [Income Tax Regulations](#) in that it did not identify the place where it was issued. As the donation was made by way of bank drafts rather than cash, the receipt also did not identify the dates of the gifts, or include a brief description of the property.
11. The appeal was dismissed.

COMMENT



Compared to Australia, Canadian tax regulations have detailed and specific requirements for a valid gift receipt.

In Australia, most organisations will issue a receipt for a donation, but they are not required to. If the taxpayer does not have a receipt, the taxpayer can still claim a deduction by using other records, such as bank statements. If a receipt is issued for a deductible gift, the receipt must state:

- the name of the fund, authority or institution to which the donation was made;
- the Deductible Gift Recipient's Australian business number (ABN) (some DGRs listed by name in the law may not have an ABN); and
- that it is for a gift.

VIEW THE CASE



This case may be viewed at: <https://www.canlii.org/en/ca/tcc/doc/2024/2024tcc39/2024tcc39.html>

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