
**TAX COURT OF CANADA DISMISSES APPEALS
RELATED TO DONATION TAX FRAUD SCHEME**

*By Karen J. Cooper**

A. INTRODUCTION

On May 5, 2010, the Tax Court of Canada released its decisions in three related appeals, *Adomphwe v. The Queen*, 2010 TCC 240; *Scott v. The Queen*, 2010 TCC 237; and *Tuar v. The Queen*, 2010 TCC 236. The appeals were part of a group that had initially involved almost forty different Appellants. The Appellants were former clients of tax preparer Abrose Danso-Dapaah, who pled guilty to fraud on December 15, 2008 for issuing false donation receipts and preparing false tax returns, and later Danso-Dapaah's successor George Gudu, who will be pleading guilty to fraud pursuant to an agreement with CRA in the near future. Through Danso-Dapaah and Gudu, the Appellants had each made donations to several registered charities operating in Africa (the "Charities") which were subsequently disallowed by CRA.¹

B. BACKGROUND

Abrose Danso-Dapaah was the owner of a tax preparation business known as ADD Accounting, of which George Gudu was a part-time employee. In December 2006, Gudu purchased the client base of ADD Accounting from Danso-Dapaah and began operating under the name Payless Tax. The Appellants first became aware of the Charities through Danso-Dapaah and Gudu. In the years at issue, the Appellants each made gifts to the Charities by delivering cash and donated items to Danso-Dapahh and Gudu, who would arrange for the donations to be sent to the intended recipient. The Appellants would then receive an official

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¹ See Karen J. Cooper, "Tax Payer Jailed for Providing False Donations Receipts" in Charity Law Update (January 2009) online at: <http://www.carters.ca/pub/update/charity/09/jan09.pdf> and "CRA Investigators Lay Charges in Donation Tax Fraud Scheme" in Charity Law Update (April, 2010) online at: <http://www.carters.ca/pub/update/charity/10/apr10.pdf>.

donation receipt from the charity in an amount far exceeding the value of the donation. ADD Accounting, and later Payless Tax, then prepared the Appellants' tax returns, claiming a donation tax credit in respect of the full receipted amount.

Following an investigation, CRA determined that Danso-Dapaah and Gudu were participants in a tax scheme whereby inflated donation receipts were being purchased by their clientele for ten per cent of the amount represented on the receipts. The investigation uncovered, among other things, pre-signed receipt booklets and letterhead from various charities in the Payless Tax offices and Mr. Gudu's personal residence and vehicle. The investigators also obtained copies of clients' tax returns from the computers and equipment seized from the Payless Tax offices. Attached to these tax returns were invoices, referencing the donation receipt number and the face value amount of the receipt, but indicating that only ten per cent of that amount had been paid in the year the return was prepared and filed.

As a result of the fraud investigation, CRA reassessed the Appellants and disallowed the donation tax credits claimed in respect of the fraudulent receipts. CRA's position was that the Appellants did not make a true gift as contemplated by the common law, but rather purchased donation receipts from their tax preparers which contained grossly inflated face value amounts.

C. FACTS

1. Adomphwe

The appeals in *Adomphwe* involved the Appellant's 2004, 2005 and 2006 taxation years. In each of the years at issue, the Appellant claimed tax credits in respect of donations made to the Charities which were subsequently reassessed. With respect to 2004, the Appellant sought only interest relief, which was not granted. With respect to 2005 and 2006, the Appellant produced bank records to show his withdrawals of various cash amounts, which he testified he provided to Mr. Gudu to donate to the Charities. The Appellant admitted that the cash amounts he delivered to Mr. Gudu were less than the face value of the receipts he received from the Charities. However, the Appellant explained this discrepancy by stating that he believed the accounting firms were "topping off" his donations to make up the difference. The Appellant requested that he now be permitted to claim as charitable donations only the amounts of the cash withdrawals.

2. Scott

The appeals of Mr. and Mrs. Scott involved their 2005 and 2006 taxation years. The Appellants claimed that they had paid the full dollar amount in respect of each donation receipt either by way of cash or gifts-in-kind. The Appellants testified that they had donated several items of furniture to the Charities through Mr. Gudu. In contrast, Mr. Gadu testified that the gifts-in-kind had primarily consisted of items of clothing that were not appraised and that there was never any attempt to correlate the value of the donated goods to the value recorded on the receipts. Mr. Scott also claimed that he had made cash donations in addition to the donated goods; however, he could provide no documentation to support this claim.

3. Tuar

The appeals in *Tuar* involved the Appellant's 2002, 2003, 2004, 2005 and 2006 taxation years. The Appellant had made donations to the Charities through Mr. Danso-Dapaah, consisting of cash and property items, primarily jewellery. The Appellant claimed that she had gifted cash and property in the full face value of the receipts. However, she could provide no evidence showing that the receipts were accurate. The reassessments in respect of 2002 and 2003 were completed beyond the normal period. For years beyond the normal reassessment period to be reopened, CRA has the onus of establishing that a misrepresentation occurred in each year that was attributable to neglect, carelessness, wilful default or fraud. The TCC found that the Appellant made a misrepresentation attributable to neglect and carelessness which allowed CRA to reopen the two otherwise statute-barred taxation years.

D. ISSUES

The main issues in each appeal were as follows:

- 1) Whether the Appellant made any gifts to registered charities that would entitle him/her to claim non-refundable tax credits pursuant to section 118.1 of the *Income Tax Act*; and
- 2) Whether the receipts issued by the Charities qualify as validly issued receipts in prescribed form pursuant to subsection 118.1(2) of the *ITA* and Regulations 3500 and 3501(1) of the *Income Tax Regulations*.

E. DECISIONS

To determine the first issue, the TCC examined the common law meaning of gift as defined in the *The Queen v. Friedberg*, 92 D.T.C. 6031 and subsequent cases. In *Friedberg*, a gift is defined as “a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the

donor.” The TCC considered the invoices uncovered by the CRA investigators to be very persuasive and none of the Appellants were able to provide convincing proof that they had donated the amounts claimed. Therefore the TCC held that the Appellants paid no more than ten percent in cash or goods in respect of the face value of the receipts that were provided to accompany their returns. In doing so, the TCC found that the Appellants had attempted to take advantage of inflated tax benefits and did not possess the requisite donative intent. Therefore, none of the amounts paid to the Charities qualified as gifts and the appeals were dismissed.

Even if the first issue had been decided differently, the TCC held that the appeals should be dismissed because the receipts did not meet the requirements set out in subsection 118.1(2) of the *ITA* and Regulations 3500 and 3501. Pursuant to subsection 118.1(2), a gift is not to be included as a charitable gift unless it is accompanied by a receipt for the gift that contains certain prescribed information. The receipts at issue in all three appeals were deficient because they lacked certain information prescribed by the Regulations. In particular, the receipts contained no description of the property allegedly gifted. In addition, the Appellant in *Adomphwe* had admitted that the receipts were inflated. Therefore, the receipts did not contain the correct amount of the cash donation.

F. CONCLUSION

Taxpayers involved in schemes similar to those discussed above involving false or inflated charitable donation receipts, as well as tax preparer fraud are being investigated as part of Project Trident, a CRA-wide enforcement project pursuing key players in fraudulent tax schemes and reassessing related tax returns. Those involved in receipting for their charities need to be vigilant in ensuring that all receipts issued are in compliance with regulations 3500 and 3501 of the *ITA*, and that their receipts do not fall prey to being used by fraudulent tax preparers. Donors also need to be satisfied that they are not entering into transactions that can seem too good to be true in relation to charitable donation receipts.