

Docket: 2014-16(IT)I

BETWEEN:

JOHN F. COOMBS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
Select Travel Inc. (2013-4883(IT)I) and Sun-Air Travel Inc.
(2013-4882(IT)I), on March 5 and 6, 2015, at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Ricky Y.M. Tang

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2003, 2004, 2005 and 2008 taxation years are dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of June 2015.

“Robert J. Hogan”

Hogan J.

Docket: 2013-4883(IT)I

BETWEEN:

SELECT TRAVEL INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
John F. Coombs (2014-16(IT)I) and Sun-Air Travel Inc.
(2013-4882(IT)I), on March 5 and 6, 2015, at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Ricky Y.M. Tang

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2001, 2002, 2003, 2004, 2005, 2006 and 2007 taxation years are dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of June 2015.

“Robert J. Hogan”

Hogan J.

Docket: 2013-4882(IT)I

BETWEEN:

SUN-AIR TRAVEL INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeals of
John F. Coombs (2014-16(IT)I) and Select Travel Inc. (2013-4883(IT)I),
on March 5 and 6, 2015, at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Agent for the Appellant: Harold Coombs

Counsel for the Respondent: Ricky Y.M. Tang

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2002, 2003, 2004, 2005 and 2006 taxation years are dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 15th day of June 2015.

“Robert J. Hogan”

Hogan J.

Citation: 2015 TCC 148
Date: 20150615
Dockets: 2014-16(IT)I
2013-4883(IT)I
2013-4882(IT)I

BETWEEN:

JOHN F. COOMBS,
SELECT TRAVEL INC.,
SUN-AIR TRAVEL INC.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Hogan J.

I. Overview

[1] The appeals of the three appellants were brought under the Tax Court of Canada's Informal Procedure and were heard on common evidence.

(1) Appeals of John F. Coombs

[2] In the appeals of John Coombs, the Minister of National Revenue (the "Minister") disallowed allowable business investment losses ("ABILs") claimed for the 2003 and 2004 taxation years in respect of the alleged disposition of shares; the Minister did so on the grounds that the Appellant never owned the shares in question. The Minister also disallowed a business loss claimed by the Appellant in connection with a business, JFC Consulting, that the Minister says he did not actually operate. Finally, the Minister disallowed, on the grounds that the Appellant was not an employee of Select in those years, a credit for taxes purportedly withheld at source by Select Travel Inc. ("Select") in connection with employment income purportedly earned by the Appellant in 2004 and 2005. The

Minister alleges that any taxes that were remitted on the Appellant's behalf were paid for the sole purpose of allowing him to claim a credit on his tax return.

[3] The Respondent attempted to serve the Appellant with a subpoena to compel him to appear as an adverse witness. Counsel for the Respondent informed the Court that he was unable to locate the Appellant and served the subpoena on his brother, Harold Coombs, who acted as the Appellant's agent in connection with his appeals. Harold Coombs is a licensed Chartered Professional Accountant ("CPA") and Certified General Accountant ("CGA").

[4] When questioned on why his brother failed to appear, Harold Coombs informed the Court that he was under no duty to receive the subpoena on behalf of his brother. He then stated that his communications with his brother were infrequent.

[5] The assessments of John Coombs were issued beyond the normal reassessment period. Therefore, under subparagraph 152(4)(a)(i) of the *Income Tax Act* (the "Act"), the Respondent bears the onus of establishing that the Appellant claimed the ABILs, business loss and employment credits for withheld tax in circumstances amounting to neglect, carelessness or wilful default. The Minister also assessed gross negligence penalties with respect to the ABILs and business loss. Therefore, pursuant to subsection 163(2) of the Act, the Minister also bears the onus of establishing that those amounts were claimed under circumstances amounting to gross negligence.

(2) Appeals of Sun-Air Travel Inc.

[6] The Minister reassessed Sun-Air Travel Inc. ("Sun-Air") for its 2002 to 2006 taxation years in connection with the following items: ¹

¹ Respondent's Book of Documents, 2013-4882(IT)I, Tab A, page 2.

ADJ	DESCRIPTION	2002	2003	2004	2005	2006
1	Unreported Revenue (T2)			\$52,588	\$52,229	(\$4,095)
2	Personal expenses paid by Corporation	\$13,514	\$21,217			
3	Overclaimed expenses			\$6,862	\$76,539	\$38,302

[7] The Minister alleges that Harold Coombs directed and controlled the activities of Sun-Air and caused it to pay personal expenses in the amounts shown above incurred by himself and other members of his family. The Minister also alleges that for 2004, 2005 and 2006 the Appellant claimed deductions for expenses that it did not incur, that for 2004 and 2005 it failed to report revenue earned from services provided to Travelsphere Inc. (“Travelsphere”) and Select, and that for 2006 it over-reported revenue.

[8] The assessments were issued beyond the normal reassessment period, and gross negligence penalties were also imposed by the Minister. The Minister thus bears the onus of establishing the circumstances that give rise to the application of subparagraph 152(4)(a)(i) and subsection 163(2) of the Act.

(3) Select Travel Inc.

[9] In the appeals of Select, the Minister disallowed \$29,503 of expenses claimed by Select with respect to its 2003 taxation year on the grounds that this amount represented expenses claimed on Select’s 2003 T2 return in excess of the expenses reported on its financial statements for that year (the “excess expenses”). The excess expenses consisted of salary expenses overstated by \$20,000 and other expenses overstated by \$9,503. The Minister also disallowed non-capital losses claimed by Select with respect to its 2001, 2002, 2004, 2005, 2006 and 2007 taxation years. The non-capital losses claimed in 2001 and 2002 were attributable to the excess expenses claimed in 2003. The losses claimed in 2004, 2005, 2006 and 2007 were attributable to Sun-Air and were claimed by Select on the basis that Sun-Air was wound up into Select in 2003. The Minister disallowed these losses on the basis that, at the applicable time, Select did not own at least 90% of each class of the issued and outstanding shares of Sun-Air, notwithstanding the fact that Harold Coombs allegedly fabricated documents to show otherwise. Furthermore, the Minister alleges that Harold Coombs wrote to the shareholders of Sun-Air to

say that it was insolvent in 2003, which would have made the winding-up of Sun-Air into Select impractical.

[10] The Minister reassessed Select beyond the normal reassessment period with respect to its 2001, 2002, 2003, 2004 and 2005 taxation years, and the Minister has the onus of establishing the circumstances that give rise to the application of subparagraph 152(4)(a)(i) in respect of those years. The Minister also applied a gross negligence penalty with respect to the excess expenses, and the Minister has the onus of establishing the circumstances which give rise to the application of subsection 163(2) of the Act.

II. Evidence and Credibility Findings

(1) Testimony of Harold Coombs

[11] At the start of the trial, the Appellants, through their agent Harold Coombs, requested an adjournment on the basis that the Minister's representatives had refused to return documents allegedly seized by John Legros, an investigator with the Canada Revenue Agency (CRA), on September 20, 2006. The Appellants allege that the CRA's refusal to return some documents causes prejudice to their appeals.

[12] I note that the Appellants challenged the September 20, 2006 search and seizure in the Federal Court. The Appellants' applications were dismissed by the Federal Court, and appeals of those decisions were dismissed by the Federal Court of Appeal.

[13] The Appellants sought to compel Mr. Legros and other CRA officials involved in underlying searches and seizures to testify as adverse witnesses in their appeals. The Respondent brought a motion to quash the notices of intent to call an adverse party as a witness. My colleague, Justice Boyle, allowed the Respondent's motion, ruling as follows:²

[2] The Appellants seek to compel the testimony of a number of CRA officials involved in one of the many underlying search and seizures. The Respondent brought a motion to quash the four notices of intent to call an adverse party. Mr. Coombs maintains that some documents were taken by CRA, not

² *Sun Air Travel Inc. v. The Queen* (October 16, 2014), TCC, 2013-4882(IT)I (motion to quash notices of intent to call an adverse party as a witness).

inventoried, and not returned. The Appellants seek to compel each of the 10 CRA officials at the search site to testify in the appeals.

[3] In addition to the affidavits of Mr. Coombs and Ms. Watson filed ahead of the motion, the Court has had the benefit of hearing testimony from the office manager of the enterprise that was searched, along with another employee of that office, and from Mr. Ruan and Ms. Watson of the CRA, as well as, I should add, Mr. Coombs himself, supplementing his affidavit.

[4] There is no evidence that reasonably suggests to me that CRA's inventory of documents is not complete. Mr. Coombs could not describe with any specificity any particular document. He and his affidavit spoke almost exclusively in broad generalities as to types of missing documents.

[5] His concern arises because a CRA official who was not named in the search warrant attended and was seen carrying out boxes from the search premises to the CRA vehicles. This evidence does not cause me to believe that the CRA document inventory is suspect or questionable.

[6] The evidence is that this official, John Legros, arrived between 1:50 and two in the afternoon and left by the time the search had ended at 3:10 p.m. The search started before 8:30 a.m. I accept the evidence of Mr. Ruan of the CRA and Mr. Volochkov, who is both one of the Appellants and the office manager. None of the affidavits or witnesses could place Mr. Legros reviewing any files, paper or electronic, or placing anything in the boxes seized by CRA. The only evidence is that he carried out boxes, at least two, near the end of the operation.

[7] I accept the uncontradicted evidence of Mr. Ruan that before any boxes were removed from the premises they were sealed by the individual seizing officer who had filled the box. Mr. Legros' involvement began when a van needed to be rented to carry the 69 seized boxes. The evidence is 69 boxes were seized and 69 boxes' contents were inventoried. Based on the evidence I have, I do not see the existence of a Charter breach because of this involvement of Mr. Legros.

[8] Since I have no other evidence to even suggest that documents were seized that do not appear on the CRA document inventory and that have not been returned to Mr. Coombs or the Appellants, I do not see how allowing the Appellants to require other CRA officials to come to testify in the appeals as to the documents they seized and the conduct of the search and seizure operation will bring forward any material testimony or other material evidence to help the Appellants advance their position.

[9] In addition to Ms. Watson's affidavit regarding CRA's conduct of the search and seizure operation and the role of the CRA officials the Appellants wish

to compel, Ms. Watson testified today and was cross-examined by Mr. Coombs, as did Mr. Ruan, one of the witnesses the Appellants wish to compel in the hearing of the appeals. Mr. Ruan's search notes are also in evidence.

[10] While Mr. Coombs' allegation of an illegal seizure is possible, the evidence does not suggest to me that its probability is anything greater than the same mere possibility that attaches to most anything.

[11] Mr. Coombs would not accept the return by CRA of the 69 boxes seized, and he hasn't accessed them since they were seized; he has merely reviewed the inventory list and found it deficient. It is hard to see how he could be so concerned that documents were taken that aren't on the inventory or in the boxes to be returned if he hasn't looked at the actual documents.

[12] The Respondent's motion is allowed. Costs are awarded in the fixed amount of \$500 in the aggregate. This same issue was considered by Justice Bockock involving this same search and one of the same Appellants who was represented by Mr. Coombs at that hearing. Mr. Coombs advanced similar arguments unsuccessfully in front of Justice Woods in the case of Coombs.

[14] In the present appeals, I allowed Harold Coombs considerable liberty to ask questions or advance arguments similar to those dealt with by Justice Boyle in his earlier order. Oleg Volochkov, who was called as a witness, admitted that he did not see Mr. Legros search for or place documents in boxes used in effecting the seizure at the offices of Sun-Air, Select and Travelsphere (which are all at the same location). At best, as noted by Justice Boyle, he saw Mr. Legros assist the seizing officers by carrying out two boxes from the premises where the search and seizure was effected. He admitted that he did not see Mr. Legros search for any documents or see him place any documents in boxes.

[15] What Mr. Volochkov did say is revealing. He admitted that he was present at Sun-Air's and Select's premises when the CRA tried to return the seized documents, but was instructed by Harold Coombs not to accept them. Considering the evidence as a whole, I believe that Harold Coombs did not want to accept the return of the documents so that he could concoct a defence based on his inability to recall relevant events because of alleged missing documents. Indeed, the spurious claim that boxes of seized documents have gone missing affords Harold Coombs a convenient excuse not to answer questions concerning his alleged involvement in the matters at issue in these appeals.

[16] In this context, I understand why Harold Coombs often answered embarrassing questions with statements such as (Transcript at p. 73): "I would not

be able to recall. Again, I don't have all my documents". I surmise that Harold Coombs apprehended that he would be called as an adverse witness because of his guiding and instrumental role in the matters at bar, including the preparation of corporate documents underlying the transactions and the preparation of the Appellants' tax returns. I observe that Harold Coombs is no stranger to this Court. He has acted as agent in a number of tax appeals that were dismissed on evidence that false tax claims had been made that were based on fictitious documents or incorrect book entries that he had had a hand in preparing or making.³

[17] Although Harold Coombs repeatedly claimed to have a poor memory of the events in question due to alleged missing documents, I also observed that at times his ability to recollect was conveniently not affected by the passage of time, particularly when it was advantageous to him to remember. For example, Harold Coombs cross-examined Lynn Watson, the CRA auditor, on her statement that John Coombs had been reassessed with respect to donation claims. With pinpoint accuracy, Harold Coombs denied Ms. Watson's statement on the basis of his recollection of events that occurred many years ago.

[18] There were other notable inconsistencies which undermined Harold Coombs' credibility. For example, he acknowledged that Sun-Air had given up its licence as a travel agency in 2002 and therefore could not provide services to the public after that date, and that he had written to Sun-Air's shareholders in 2003 to tell them that Sun-Air was insolvent. Despite this, Sun-Air expended significant amounts as salaries in 2004 and 2005. Jeff Russell purportedly received \$21,345 in 2004, when he was employed elsewhere. T4 information slips were prepared, but no withholdings or remittances were made with respect to payroll taxes. When questioned on this particular expense, Harold Coombs first said that Mr. Russell provided sales services. When it was pointed out that Sun-Air was no longer registered as a travel agency, he said he could not recall what sales services Mr. Russell may have provided or whether he brought in any sales at all, despite Mr. Russell's purported salary being the highest of any Sun-Air employee for the year. When questioned on the fact that Mr. Russell claimed he was not an employee and the Respondent's allegation that the book entries were made to allow Sun-Air to claim a fictitious expense and to allow Mr. Russell to claim a credit for fictitious withholding taxes, Harold Coombs explained that Sun-Air may have paid the expense in shares.

³ See *Coombs v. The Queen*, 2008 TCC 289; *Select Travel Inc. v. The Queen*, 2013 TCC 93; *Romanuk v. Canada*, 2013 FCA 133; *Lobo v. The Queen*, 2004 TCC 128; *Lobo v. The Queen*, 2011 TCC 132; *Coombs v. Canada (Attorney General)*, 2014 FC 233.

[19] Considering Mr. Coombs' testimony as a whole, I did not find him to be a credible witness.

(2) Testimony of Lynn Watson

[20] Ms. Watson, who was an investigator with the CRA at the time of the audit of the Appellants, testified on behalf of the Respondent. She explained that search and seizure operations had been conducted at the offices of Travelsphere, Sun-Air, Select and Dunwoody ("BDO") and also at the residences of Harold Coombs and other individuals associated with the activities of Sun-Air, Travelsphere and Select. No criminal charges were ultimately laid and the CRA attempted to return all seized documents to the persons from whom they were seized.

[21] Ms. Watson prepared comprehensive T20 audit reports and also penalty reports with respect to each item in dispute in these appeals. In painstaking detail, she presented the financial, accounting and shareholder information which she relied on to disallow the expenses, losses and/or credits at issue in the matters at bar. Ms. Watson's testimony was not contradicted on cross-examination. I could discern no errors, discrepancies or inconsistencies in her presentation of her audit and penalty reports. Her theory was that Harold Coombs was once again engaged in the fabrication of fictitious tax benefits to advantage himself directly or indirectly. As observed by Ms. Watson, the incorrect book entries and corporate documents were prepared by Harold Coombs with little care for detail. For example, he claimed that Sun-Air commenced its winding-up in 2003, yet, in correspondence earlier that year, he advised shareholders that Sun-Air was insolvent. He then continued to record expenses for Sun-Air in 2003 and 2004. He appears to have taken the position that Sun-Air's shares were all owned by Select in 2003, yet none of the share transfer registers in the corporate documents allow one to arrive at that conclusion.

III. Appropriateness of Penalties/Opening of Statute-Barred Years

[22] The evidence shows that Harold Coombs was the directing mind of the two corporate Appellants. Therefore, his actions are properly imputable to the corporate Appellants.

[23] John Coombs appears to have conveniently avoided receipt of a subpoena to testify as an adverse witness in his own appeal. There is not a shred of reliable evidence supporting the credits and expenses claimed by John Coombs. On the contrary, there is considerable reliable evidence to show that he was not entitled to

the deductions, losses and credits disallowed by the Minister. The paperwork was so poorly done that I can properly infer that Mr. John Coombs knew that misrepresentations attributable to gross negligence were made in his tax returns with respect to the amounts disallowed by the Minister.

[24] Therefore, the Minister has met the burden of establishing that subparagraph 152(4)(a)(i) and subsection 163(2) apply to justify gross negligence penalties and the assessment of the Appellants beyond the normal reassessment period.

IV. Conclusion

[25] In the appeals of John Coombs, I find that the Minister correctly disallowed the ABILs, business loss, and employment credits claimed by the Appellant. In the appeals of Select, I find that the Minister correctly disallowed the excess expenses and non-capital losses. In the appeals of Sun-Air, I find that the Minister correctly disallowed the overclaimed expenses and personal expenses (as set out in the chart in paragraph 6 above), and that the Minister correctly included in income the unreported revenue. With respect to the unreported revenue, I note that the Minister relied on journal entries purportedly transferring funds from Select and Travelsphere to Sun-Air. While such journal entries on their own would not always be sufficient to establish actual income flowing into Sun-Air, I accept the argument made by the Respondent's counsel that in this case, where there are multiple instances of fraud and fabrication, and where the preparer of the entries could not give any explanation as to their purpose, the journal entries are sufficient to establish the existence of unreported revenue.

[26] For all these reasons, the appeals are dismissed and the reassessments are confirmed.

Signed at Ottawa, Canada, this 15th day of June 2015.

“Robert J. Hogan”

Hogan J.

CITATION: 2015 TCC 148

COURT FILE NO.: 2014-16(IT)
2013-4883(IT)I
2013-4882(IT)I

STYLE OF CAUSE: JOHN F. COOMBS,
SELECT TRAVEL INC.,
SUN-AIR TRAVEL INC.
v. THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: March 5 and 6, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: June 15, 2015

APPEARANCES:

Agent for the Appellants: Harold Coombs

Counsel for the Respondent: Ricky Y.M. Tang

COUNSEL OF RECORD:

For the Appellants:

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada