

Docket: 2014-4343(IT)I

BETWEEN:

CHRIS LUCYK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on December 8, 2015, at Regina, Saskatchewan

By: The Honourable Justice Don R. Sommerfeldt

Appearances:

Agent for the Appellant: Ralph Munchinsky

Counsel for the Respondent: Cailen Brust

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**JUDGMENT**

The Appeal is allowed in part, without costs, and the reassessments that are the subject of the Appeal are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that 10% of the usage of the telephone in the home of the Appellant pertained to the business of 101103269 Saskatchewan Ltd.

Signed at Ottawa, Canada, this 8th day of January 2016.

“Don R. Sommerfeldt”

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Sommerfeldt J.

Citation: 2016 TCC 9  
Date: 20160108  
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BETWEEN:

CHRIS LUCYK,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Sommerfeldt J.

#### Introduction

[1] This Appeal, which relates to the 2009 and 2010 taxation years, was heard in Regina, Saskatchewan on December 8, 2015.

[2] The Appellant, Chris Lucyk, is a dedicated and hard-working carpet layer. In fact, he is so dedicated and hard-working that he chose to spend December 8, 2015 working on an installation job, rather than attending the hearing of this Appeal. At the hearing, Mr. Lucyk was represented by Ralph Munchinsky, who is a friend and business associate of Mr. Lucyk. In particular, Mr. Munchinsky is Mr. Lucyk's life insurance agent. As well, Mr. Munchinsky functioned as Mr. Lucyk's agent for the purposes of section 18.14 of the *Tax Court of Canada Act* (the "TCCA").<sup>1</sup>

[3] Given the close relationship between Mr. Lucyk and Mr. Munchinsky, the latter has some personal knowledge of the former's working arrangements. Accordingly, Mr. Munchinsky, who was sworn as a witness, gave evidence in support of Mr. Lucyk's Appeal. However, as counsel for the Crown diligently pointed out, some of what Mr. Munchinsky had to say was hearsay. As this Appeal was heard pursuant to the informal procedure, I permitted Mr. Munchinsky to say

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<sup>1</sup> RSC 1985, c. T-2, as amended.

what he had to say,<sup>2</sup> but indicated that, to the extent that Mr. Munchinsky provided hearsay evidence, I would consider and determine the weight to be given to such evidence.<sup>3</sup>

### Background

[4] Mr. Lucyk is the sole shareholder and an employee of 101103269 Saskatchewan Ltd. (“101SK”), which carries on a carpet-installation business. 101SK employs Mr. Lucyk to do much of the installation work.

[5] Mr. Lucyk is married to Rosalind Lucyk, who is employed, by an unrelated employer, in a retail position that is not relevant to this Appeal. She does a small amount of work for 101SK, but not in a formal sense, as it appears that she is not an employee of 101SK.<sup>4</sup>

### Reassessments

[6] By way of Notices of Reassessment dated March 14, 2013 (the “Reassessments”), the Minister reassessed Mr. Lucyk to include taxable benefits in computing his income for the 2009 and 2010 taxation years. The benefits related to alleged personal expenses of Mr. and Mrs. Lucyk, in the amounts of \$35,168.00 and \$32,857.00 in 2009 and 2010 respectively, that were paid by 101SK. The Minister subsequently varied the Reassessments so as to allow Mr. Lucyk to deduct motor vehicle travel expenses in the amounts of \$18,373.00 and \$17,958.00 in 2009 and 2010 respectively.

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<sup>2</sup> See subsection 18.15(3) of the *TCCA*.

<sup>3</sup> See *Suchon v. The Queen*, 2002 FCA 282, ¶ 29; and *Selmeci v. The Queen*, 2002 FCA 293, ¶ 4-9.

<sup>4</sup> In subparagraph 8(c) of the Reply to the Notice of Appeal (the “Reply”), the Minister of National Revenue (the “Minister”) assumed that Mrs. Lucyk is not an employee of 101SK. No evidence was led to refute that assumption.

[7] The respective categories and amounts of the expenses allegedly paid by 101SK on behalf of Mr. Lucyk are as follows:

<u>Description</u>	<u>2009</u>	<u>2010</u>
Meals & Entertainment	\$3,730.98	\$3,040.66
Travel	597.98	352.06
Uniforms	300.00	459.55
Telephone	1,001.82	776.47
Utilities	1,340.63	1,039.36
Vehicle	<u>22,649.40</u>	<u>22,953.00</u>
	<u>\$29,620.81</u>	<u>\$28,621.10</u>

[8] The respective categories and amounts of the expenses allegedly paid by 101SK on behalf of Mrs. Lucyk are as follows:

<u>Description</u>	<u>2009</u>	<u>2010</u>
Meals & Entertainment	\$854.83	\$777.86
Telephone	115.78	611.44
Vehicle	<u>\$4,576.20</u>	<u>2,847.00</u>
	<u>\$5,546.81</u>	<u>\$4,236.30</u>

[9] In issuing the Reassessments, the Minister was of the view that:

- a) 101SK's payment of Mr. Lucyk's personal expenses gave rise to benefits received by Mr. Lucyk in his capacity as an employee or shareholder of 101SK, so as to be included in computing his income pursuant to section 6 or subsection 15(1), as the case may be, of the *Income Tax Act* (the "ITA"),<sup>5</sup> and
- b) 101SK's payment of Mrs. Lucyk's personal expenses gave rise to benefits received by Mr. Lucyk pursuant to subsection 56(2) of the ITA.

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<sup>5</sup> RSC 1985, c. 1 (Fifth Supplement), as amended.

Concessions

[10] At the hearing of this Appeal, Mr. Munchinsky advised the Court that Mr. Lucyk has conceded that the Reassessments are correct in respect of the following expenses:

	<u>2009</u>	<u>2010</u>
Travel	\$597.98	\$352.06
Uniforms	300.00	459.55
Utilities	1,340.63	1,039.36

[11] Thus, subject to a comment made in paragraph 13 below, the only categories and amounts of Mr. Lucyk's expenses that remain in issue are the following:

	<u>2009</u>	<u>2010</u>
Meals & Entertainment	\$3,730.98	\$3,040.66
Telephone	1,001.82	776.47
Vehicle	22,649.40	22,953.00

[12] For clarity, subject to the next paragraph, the expenses allegedly paid by 101SK on behalf of Mrs. Lucyk, as set out in paragraph 8 above, also remain in issue.

[13] Mr. Munchinsky also advised that Mr. Lucyk is no longer contesting the portions of the Reassessments pertaining to the cost of meals paid by 101SK where Mr. and Mrs. Lucyk were the only individuals participating in a particular meal. The respective amounts of the meal expenses that are no longer contested and the meal expenses that continue to be contested were not provided to me during the hearing.

Analysis

Meals and Entertainment

[14] At the hearing, Mr. Munchinsky stated that Mr. Lucyk (as an employee of 101SK) often worked with other carpet installers on what were termed "split jobs." Where a job was split, 101SK and some other carpet installer would jointly bid on a job and, if the bid was accepted, would jointly install the carpet. In those

situations, Mr. Lucyk would sometimes invite the other installer (or, if the other installer was a corporation, the other installer's employee) for a meal, and 101SK would pay the cost of the meal.

[15] Mr. Munchinsky submitted that the cost of a meal paid by 101SK in the situation described in the preceding paragraph was not a personal expense incurred for the benefit of Mr. Lucyk. As explained in the next paragraph, the Canada Revenue Agency (the "CRA") took the same view.

[16] At the hearing, Mr. Munchinsky entered, as Exhibit A-1, a letter dated February 28, 2013 from the Audit Division in the Regina Tax Services Office of the CRA, with an attached Summary of Adjustments (Revised) and accompanying working papers. Those working papers indicate that meal expenses were not viewed by the CRA as a taxable benefit in situations where Mr. Lucyk was working on a split job and was having a meal with another carpet installer who was also working on that job and whose name appeared on the meal receipt. Thus, based on Exhibit A-1, the CRA has not treated a meal expense in a split-job situation as a taxable benefit.

[17] Mr. Munchinsky also stated that, from time to time, Mr. Lucyk bought meals for his helpers. It is not clear who those helpers were, as the audit by the CRA did not find anything to suggest that 101SK had any employees other than Mr. Lucyk or to indicate that 101SK engaged subcontractors. Regrettably, Mr. Lucyk was not present at the hearing to provide evidence as to who those helpers were or which meals pertained to them.

[18] Working paper #7005 of Exhibit A-1 contains the following statements:

The shareholder [i.e., Mr. Lucyk] states that he often takes his wife out because she is not paid for her work making bank deposits and paying bills. As those amounts were not included on a T4 for the wife, (for the meal amount paid in lieu of wages), they will be considered to be personal expenditures....

Often, it is only the shareholder's spouse's name that appears on the receipts.

[19] As noted in paragraph 13 above, Mr. Lucyk is no longer contesting the inclusion of a taxable benefit in his income in respect of meals where he and his wife were the only participants.

[20] In view of the foregoing, I have not been persuaded that the Reassessments are incorrect insofar as they pertain to meals and entertainment.

## Telephones

[21] During the taxation years in question, Mr. and Mrs. Lucyk had a residential telephone in their home and they each had a cell phone. SaskTel issued a bill each month for the home telephone and Telus issued a single bill each month for the two cell phones together. 101SK paid the monthly telephone bills for all three phones. The CRA took the position that the home telephone and Mrs. Lucyk's cell phone were not used for business purposes. Accordingly, the CRA included:

- a) the full amount of the monthly telephone bills for the home telephone in Mr. Lucyk's income pursuant to subsection 15(1) of the ITA, and
- b) one-half of the monthly cell phone bills (representing the portion attributable to Mrs. Lucyk's cell phone) in Mr. Lucyk's income pursuant to subsection 56(2) of the ITA.

[22] At the hearing, Mr. Munchinsky testified that the home telephone was used from time to time for business purposes, such that a portion of the monthly home telephone bills should be deductible by 101SK (which was not in issue in this Appeal), and should not be a taxable benefit included in Mr. Lucyk's income. Mr. Munchinsky was not able to provide any detailed or specific evidence as to the proportion of the home telephone's usage that had a business purpose. Unfortunately, Mr. Lucyk was not in court to provide evidence as to the extent to which he used his home telephone for business purposes.

[23] During the taxation years in question, 101SK conducted its business out of Mr. and Mrs. Lucyk's home and Mr. Lucyk's Ford F350 van (the "Van"). 101SK did not have any other business premises. Accordingly, I am satisfied that the telephone in Mr. and Mrs. Lucyk's home was used on occasion for business purposes. However, with only Mr. Munchinsky's evidence, based on his general knowledge, and without evidence from Mr. Lucyk concerning the extent to which the home phone was used for business purposes, I am not prepared to allocate any more than 10% to business usage.

[24] Mr. Munchinsky was of the view that the CRA had treated only half of Mr. Lucyk's cell phone usage as business related, given that the working papers set out in Exhibit A-1 show that the CRA treated half of each monthly cell phone bill as a taxable benefit. However, a closer examination of those working papers makes it clear that the CRA accepted that Mr. Lucyk used his cell phone entirely for business purposes and assumed that Mrs. Lucyk did not use her cell phone at all in

respect of 101SK's business. Thus, the half of each bill that the CRA treated as a taxable benefit was the half that pertained to Mrs. Lucyk's cell phone.

[25] To summarize my finding in respect of the telephone expenses, the Reassessments should be revised so as to treat only 90% (rather than 100%) of the cost of the home telephone as a taxable benefit. As there was no evidence concerning the use of Mrs. Lucyk's cell phone, there is no reason to revise the Reassessments insofar as they pertain to the cost of the cell phones.

### Vehicles

[26] As mentioned above, Mr. Lucyk generally drove the Van, which he owns personally, when conducting 101SK's business. At the hearing, Mr. Munchinsky ably described the costs incurred by Mr. Lucyk in operating the Van. Mr. Munchinsky submitted that a Ford F350 van, particularly when heavily loaded with equipment, carpet, underlay, glue and other supplies, is an expensive vehicle to operate.

[27] Mr. Munchinsky testified that 101SK paid an allowance to Mr. Lucyk for the use of the Van, at the rate of \$0.80 per kilometer. It was Mr. Munchinsky's understanding that, in issuing the Reassessments, in the context of the Van, the CRA had calculated the amount of the taxable benefit on the assumption that the allowance had been paid at the rate of \$0.80 per kilometer. However, a review of the working papers in Exhibit A-1 and the assumptions in subparagraphs 8(jj) through 8(eee) of the Reply shows that the CRA calculated the taxable benefit on the assumption that the allowance was paid at the rate of \$0.60 per kilometer, rather than \$0.80 per kilometer. Thus, if the allowance was really paid at the rate of \$0.80 per kilometer, the CRA has generously (or inadvertently) under-calculated the amount of the taxable benefit by \$0.20 per kilometer.

[28] Although the CRA included, in computing Mr. Lucyk's income, Van-related taxable benefits in the respective amounts of \$22,649.40 and \$22,953.00 for 2009 and 2010, it is important to note that the CRA also allowed him to deduct, pursuant to paragraph 8(1)(h.1) of the ITA, motor vehicle travel expenses in the amounts of \$18,373.00 and \$17,958.00 in 2009 and 2010 respectively. Hence, the net Van-related increase in Mr. Lucyk's income by reason of the Reassessments was \$4,276.00 (i.e., \$22,649.00 – \$18,373.00) for 2009 and \$4,995.00 (i.e., \$22,953.00 – \$17,958.00) for 2010.



[29] In 2009 and 2010, Mrs. Lucyk owned a motor vehicle, which she drove to her own place of employment and to various destinations that were not work related. She also used her vehicle to do some of the banking for 101SK, which paid her an allowance at the rate of \$0.60 per kilometer, for almost all of the kilometers driven by her each year (i.e., for both personal and business purposes). The CRA determined (using distances and a methodology that were generously favorable to Mr. Lucyk) that a significant portion of the kilometers driven by Mrs. Lucyk did not pertain to 101SK's business. Accordingly, pursuant to subsection 56(2) of the ITA, the CRA included, in computing Mr. Lucyk's income for 2009 and 2010, taxable benefits in the respective amounts of \$4,576.20 and \$2,847.00.

[30] Mr. Munchinsky did not produce any evidence that satisfied me that the CRA's calculation of the vehicle-related taxable benefits (with respect to either the Van or Mrs. Lucyk's vehicle) was incorrect. Neither Mr. nor Mrs. Lucyk was present in court to testify as to the extent to which Mrs. Lucyk used her vehicle in conducting the business of 101SK.

### Conclusion

[31] My impression in reading the working papers set out in Exhibit A-1 is that, in identifying and calculating the taxable benefits that were the subject of the Reassessments, the CRA gave the benefit of the doubt to Mr. Lucyk and tended to make rounding adjustments and other approximations in his favor (rather than in favor of the fisc).

[32] In reflecting on the submissions made during the hearing by Mr. Munchinsky on behalf of Mr. Lucyk, my sense is that both gentlemen perceived the Reassessments to be more onerous than they actually were. For instance, it appears that they understood that the CRA had treated the cost of meals in respect of split jobs as being a taxable benefit, whereas the CRA had actually allowed 101SK to deduct the cost of those meals and had not included that cost in computing Mr. Lucyk's income. As well, Mr. Munchinsky and Mr. Lucyk appeared to be of the view that the CRA had included half of the monthly cost of Mr. Lucyk's cell phone in computing his income, whereas the CRA had actually recognized the full cost of his cell phone as a business expense and, insofar as the cell phones were concerned, had included only the cost of Mrs. Lucyk's cell phone in computing his income. In addition, it seems that Mr. Munchinsky, and perhaps Mr. Lucyk, were of the view that the CRA had calculated the amount of the Van-related taxable benefit by reference to an allowance paid by 101SK at the rate of \$0.80 per kilometer, whereas the rate used by the CRA in calculating the amount

of the benefit was only \$0.60 per kilometer. Furthermore, the CRA allowed Mr. Lucyk to deduct significant motor vehicle travel expenses, which greatly reduced the impact of the Reassessments.

[33] Apart from the modest amount of business usage that I have allocated to the telephone in Mr. Lucyk's home, I am of the view that the Reassessments were correct. However, by reason of my finding in respect of the home telephone, this Appeal is allowed in part, without costs, and the Reassessments are referred back to the Minister for reconsideration and reassessment on the basis that 10% of the usage of the telephone in Mr. Lucyk's home pertained to the business of 101SK. Subject to the direction noted in the preceding sentence, the remaining portions of the Reassessments are upheld.

Signed at Ottawa, Canada, this 8th day of January 2016.

“Don R. Sommerfeldt”

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Sommerfeldt J.

CITATION: 2016 TCC 9

COURT FILE NO.: 2014-4343(IT)I

STYLE OF CAUSE: CHRIS LUCYK AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Regina, Saskatchewan

DATE OF HEARING: December 8, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Don R.  
Sommerfeldt

DATE OF JUDGMENT: January 8, 2016

APPEARANCES:

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