

[OFFICIAL ENGLISH TRANSLATION]

2001-1827(IT)I

BETWEEN:

ROBERT BOULIANNE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on July 11, 2002, at Québec, Quebec, by

the Honourable Judge Louise Lamarre Proulx

Appearances

Agent for the Appellant:

Louis Pépin

Counsel for the Respondent:

Stéphanie Côté

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1996 and 1997 taxation years are allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the amount of restaurant expenses is reduced to \$250 a year.

The appellant is entitled to no further relief.

Signed at Ottawa, Canada, this 23rd day of August 2002.

"Louise Lamarre Proulx"

J.T.C.C.

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Date: 20020823
Docket: 2001-1827(IT)I

BETWEEN:

ROBERT BOULIANNE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre Proulx, J.T.C.C.

[1] These are appeals under the informal procedure for the 1996 and 1997 taxation years. The reassessments were made subsequent to a calculation of the appellant's income by means of the net worth method.

[2] The facts that the Minister of National Revenue (the "Minister") relied on in making his reassessments are described in paragraph 5 of the Reply to the Notice of Appeal (the "Reply"), as follows:

[TRANSLATION]

- (a) the appellant has been sole proprietor of "Salon de Quilles et Billards de Donnacona Enr." since 1984;
- (b) during the years in issue, the bowling alley had four lanes and a billiard table;
- (c) during the years in issue, the bowling alley was open for business seven days a week from noon until 11:00 p.m.;

- (d) during the years in issue, the appellant worked in his business full time—he maintained the lanes and gave courses;
- (e) during the years in issue, his *de facto* spouse, Lisette Doré, performed managerial duties at the bowling alley;
- (f) during the years in issue, the appellant reported net business income of \$6,880 and of \$1,361 respectively;
- (g) in view of the poor internal control of the business, the Minister audited the appellant's income using the net worth method (pages 1 to 17);
- (h) the statement of net worth for the appellant includes the assets, liabilities and the reported income of his spouse, Lisette Doré;
- (i) most of the personal expenses were estimated on the basis of an analysis of withdrawals from the various bank accounts;
- (j) at the objection stage, the Minister was convinced that in computing the change in net worth he should lower the grocery and restaurant expenses in the table of personal expenses (see Schedule 1);
- (k) the grocery expenses for the 1996 and 1997 taxation years were revised to \$2,000 a year;
- (l) the restaurant expenses for the 1996 and 1997 taxation years were revised to \$800 a year;
- (m) at the objection stage, the Minister excluded certain large withdrawals in computing the change in net worth;
- (n) for the 1996 taxation year, withdrawals totalling \$28,692 were completely deleted on grounds that an initial sum of \$10,000 constituted a bank correcting entry; that the origin of another \$10,000 had been clarified and that the amount did not constitute unreported income; and that a total of \$8,692, consisting of transfers between the appellant's various bank accounts, should not have been considered in determining personal expenses;
- (o) for the 1997 taxation year, a total of \$7,000, consisting of transfers between the appellant's various bank accounts should not have been considered in determining personal expenses.

[3] The additional income for 1996 was originally \$47,409. After revision at the objection level, it was \$15,652. For 1997, the additional income was originally \$34,528 and, after revision, it was \$24,368.

[4] The appellant and Lisette Doré, the appellant's spouse, testified at the request of their agent, Mr. Pépin. Marc Fournier, auditor, and Etienne Sabourin, appeals officer, testified for the respondent party.

[5] The appellant admitted subparagraphs 5(a) to (f) of the Reply. He stated that he was the owner of a bowling alley, which had a bar in addition to the bowling lanes. The establishment receives approximately 200 bowlers a week—individual players in the afternoons and bowling leagues in the evenings. The alley is open from September to mid-April.

[6] A few points concerning the net worth calculation were raised in the notice of appeal and discussed again at the hearing.

[7] The first point concerns the amount of grocery expenses included in the statement of personal expenses (Exhibit I-1). At the audit level, the grocery expenses were established at \$4,311.47 and at \$4,381.42 for 1996 and 1997 respectively. At the objection stage, the appeals officer reduced them to \$2,000 a year. According to that officer, they could not be reduced further because the withdrawals from the account from which they were purportedly paid, account number 2168596, a description of which appears in Schedule 3, did not corroborate payment for food. There were no withdrawals for a number of months. The explanation could therefore not be accepted.

[8] The restaurant expenses of \$1,553.95 and of \$1,579.16 determined at the audit stage were reduced to \$800. The appellant and his spouse contended that they did not spend more than \$250 a year at restaurants and furthermore that the credit card account payments, statements for which they filed as Exhibit A-1, had included the restaurant expenses.

[9] To grasp the argument on this first point, it must be understood that, in the statement of personal expenses of the appellant and his spouse, the estimated amounts for grocery and restaurant expenses and the actual amounts of the bank withdrawals and credit card account payments were taken into account. The bank accounts were those numbered 01-261-28 and 2168596. The appellant and his spouse therefore argued that the grocery expenses had already been included in the

withdrawals from account number 2168596 and the restaurant expenses, in the credit card account payments.

[10] The credit card account payments (Schedule 2) that were included in the statement of personal expenses are those whose origin the auditor was unable to trace. Some payments were made by cheque drawn on account number 2168596. Those payments were not considered in establishing the net worth or as credit card account payments or as bank account withdrawals. According to the Minister's agents, that was a mistake in the audit that benefited the taxpayer. The appellant and his wife explained that three persons had had access to the credit card, the two spouses and their son Éric. Their son Éric lives in France. They said that the payments whose origin could not be determined had been made out of amounts of money remitted to them by their son Éric to pay his own expenses. Those payments were in the amounts of \$5,239.37 and of \$7,354.84, and the appellant asked that they be cancelled.

[11] Schedule 4 is composed of large withdrawals from two bank accounts. The large unexplained withdrawals were included in computing net worth. For 1996, the added total of \$28,692 was completely written off by the appeals officer. For 1997, the amount of \$27,091 was reduced at the appeals level to \$20,091. The appellant testified that there was a practice at bowling alleys of depositing cash each week in order to establish a fund for a party and prizes at the end of the bowling year, around mid-April. That would be the explanation for the withdrawals of \$3,000 and of \$2,000 on April 11 and 21, 1997. The explanations concerning the withdrawals of \$10,054 and of \$5,037 remained unclear. In addition, that account which, according to the appellant, was specially designated for the party and prizes for bowlers, as the appeals officer noted, was clearly used on a number of occasions for other purposes and for transfers to the appellant's or his spouse's other accounts. It should be noted that no record was filed concerning those amounts of money purportedly placed in the appellant's care.

Conclusion

[12] The onus was on the appellant and his spouse to prove the submissions they made. Apart from the credit card account statements they filed, they adduced no other documents or records. This is not sufficient. These are people who gave me the distinct impression that they knew how to take care of their affairs. Surely they have books in which they mark what is owed them and what they owe. It is therefore impossible to believe that there is no record of the amounts that were remitted to them for prizes to be awarded at the end of the bowling year. No league

would agree to hand over between \$100 and \$1,000 without a record being kept in a book at the league's disposal.

[13] With respect to the grocery expenses purportedly paid by means of withdrawals from the bank account, the withdrawals do not corroborate that claim. The amount of \$2,000 a year entered by the appeals officer is reasonable enough that it must be accepted.

[14] As to the credit card account payments, which the parents say were made by their son Éric, no instrument of payment showing this was filed. For the other payments made out of the bank accounts of the appellant and his wife, since they were not included in establishing net worth, I cannot consider them as having been used to pay for restaurant meals.

[15] With respect to the restaurant meals, I have some hesitation, which I believe should operate in the appellant's favour. The cost was fixed at \$800 a year. The appellant and his wife submit that, consistent with their lifestyle, the figure should instead be set at \$250 a year. The amount of \$800 a year compared to the \$2,000 a year in grocery expenses, which was accepted by the appeals officer, may seem high. I therefore accept the amount of \$250 a year.

[16] As to the large withdrawals entered in Schedule 4, the appellant's explanations cannot be accepted because they are not corroborated by any written document and cannot explain the withdrawals in question.

[17] The appeals are allowed with respect to the reduction of the amount of restaurant expenses to \$250 a year. The appellant is entitled to no further relief.

Signed at Ottawa, Canada, this 23rd day of August 2002.

"Louise Lamarre Proulx"

J.T.C.C.