

Docket: 2016-1647(IT)I

BETWEEN:

HERALALL NANDLAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 25, 2017, at Toronto, Ontario

Before: The Honourable Justice R  al Favreau

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Caroline Ahn

JUDGMENT

The appeal against the reassessment dated December 3, 2012 made under the *Income Tax Act* in respect of the appellant's 2011 taxation year is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 30th day of August 2017.

“R  al Favreau”

Favreau J.

Citation: 2017 TCC 162

Date: 20170830

Docket: 2016-1647(IT)I

BETWEEN:

HERALALL NANDLAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal against a reassessment dated December 3, 2012 made under the *Income Tax Act*, R.S.C. 1985 (5th supp.), c. 1, as amended (the “*Act*”), by the Minister of National Revenue (the “Minister”) in respect of the appellant’s 2011 taxation year.

[2] The issue in this appeal is whether the appellant is entitled to deduct, in computing his income for the 2011 taxation year, the amount of \$27,078 that he claimed as “Other deductions” and were disallowed by the Minister.

[3] In determining the appellant’s tax liability for the 2011 taxation year, the Minister made the following assumptions of fact:

- a) in 2011, the Appellant earned:
 - i) employment income of \$148,649 from Ally Credit Canada Limited;
 - ii) interest income of \$4,446; and
 - iii) gross business income of \$3,000 and net business income of \$945 from providing accounting, taxation and assurance services as a Chartered Accountant.
- b) on or around 2001 or 2002, the Appellant and a group of individuals (the “Group”) wanted to establish/invest in a regional transport company which served Québec and Ontario;
- c) between 2002 to 2003, the Group created Val Air Inc. and Lignes aeriennes Val Air Inc.;

- d) Val Air Inc. and/or Lignes aeriennes Val Air Inc. were established by the Group to provide services as a regional airline;
- e) in 2002, 2003 and 2004, the Group retained professionals to provide services in respect of implementing a regional airline (the “Services”);
- f) the Services that were provided were never paid by the Group;
- g) the Appellant was a shareholder of Val Air Inc.;
- h) Val Air Inc. declared bankruptcy on February 24, 2004, and the holding company, Lignes aeriennes Val Air Inc., was dissolved on October 17, 2008;
- i) by Judgment dated November 18, 2008, the Court of Québec of Québec (*sic*) found that the Appellant and his co-defendants were liable to pay damages to the plaintiffs in *Lemieux Nolet c. Lignes aériennes Val Air inc.*, 2008 QCCQ 10339 (the “Decision”);
- j) the Appellant and one other co-defendant appealed the Decision (the “Appeal”);
- k) in 2011, the Court of Appeal of Québec dismissed the Appeal;
- l) in 2011, the Appellant paid:
 - i) \$22,578 in respect of court-ordered damages (the “Damages”); and
 - ii) \$4,500 in respect of litigating the Appeal;
(collectively, the “Payments”)
- m) the Damages paid were in respect of unpaid professional fees; and
- n) the Payments were not incurred in the course of the appellant’s business activity.

[4] The amount of \$27,078 that the appellant claimed as a deduction represents an amount of \$4,500 that he paid in 2011 to his lawyers, Kugler Kandestin L.L.P., in representing him in an appeal against a judgment dated November 18, 2008 rendered by the Honourable Justice Michel St-Hilaire of the Court of Québec. The balance of \$22,578.30 represents the amount of legal fees that the appellant paid in 2011 to Beauvais Truchon et Associés, S.E.N.C. pursuant to the judgment referred to above. The amounts paid by the appellant are not contested by the respondent.

[5] Pursuant to the judgment of the Court of Québec dated November 18, 2008, and amended on November 26, 2008, the appellant was held jointly and severally liable with Gilles Filiatreault and Victor Wozniak to pay to :

- (a) Hill & Knowlton Ducharme Perron, the sum of \$64,329.83 with interest plus the additional indemnity under article 1619 of the *Civil Code of Québec* from April 2, 2004;
- (b) Beauvais Truchon et associés, S.E.N.C., the sum of \$40,595.71 with interest plus the additional indemnity under article 1619 of the *Civil Code of Québec*, from May 5, 2003. and
- (c) Lemieux Nolet, an accounting firm, the sum of \$45,289.76 with interest plus the additional indemnity under article 1619 of the *Civil Code of Québec*, from April 2, 2004.

[6] The judgment of the Court of Québec was confirmed by the Court of Appeal of Québec in an unanimous judgment rendered on March 22, 2011.

[7] The appellant, Gilles Filiatreault and Victor Wozniak, as promoters/investors to establish a regional airline company to serve municipalities in the provinces of Quebec and Ontario, were personally sued by three professional firms for services rendered mainly in 2001, 2002 and 2003. The services provided by the professional firms were mainly for the development of business plans, for advice as to how to structure the investment and for their assistance in finding the required financing from governmental institutions and other public or private investment firms.

[8] In pursuing their venture, the promoters/investors incorporated at the end of 2000 or at the beginning of 2001, a numbered company in Quebec which has been inactive until the month of February 2002 at which time, the name of the company was changed to “Les lignes aériennes Val Air Inc.”. This company has never operated as an airline company. In 2003, “Les lignes aériennes Val Air Inc.” became a holding company when the promoters/investors with some other investors from Ontario formed another company, Val Air Inc., to carry out the airline transportation activities. Val Air Inc. started its operations in the month of December 2003 and declared bankruptcy on February 24, 2004. “Les lignes aériennes Val Air Inc.” ceased its operations in 2004 and was dissolved on October 17, 2008.

[9] The appellant was a shareholder and a director of both “Les lignes aériennes Val Air Inc.” and “Val Air Inc.”.

[10] The appellant testified at the hearing. He is an accountant who worked for KPMG from December 2002 until 2008. No information concerning the activities that he carried from 2008 to 2011 were provided. His tax return for the 2011 taxation year has been filed as an exhibit. In that year, the appellant earned employment income in the amount of 148 649.94 \$ as an employee of Ally Credit Canada Limited and reported a gross business income of \$3,000 and a net business income of \$945 generated by his accounting, taxation and assurance services. The amount of \$27,078.30 which is the subject of this appeal was claimed by the appellant on line 232 as “Other deductions”. The appellant explained at the hearing that he carries on his business as a sole practitioner.

Position of the Parties

A. The Appellant's Position

[11] The appellant stated that he claimed a deduction for the amounts that he paid after the Court of Appeal of Quebec made a final determination that he was liable for the payment of the unpaid bills for professional services.

[12] The appellant alleged that the unpaid bills were for professional services rendered while Val Air Inc. was in business.

[13] The appellant sustained that since he was held personally liable for a portion of the unpaid bills, he should be considered as having incurred the expenses himself and as having himself carried on the airline activities with a view to earn income from a business.

[14] The appellant relied on Interpretation Bulletin IT-467R2 which refers to the Supreme Court of Canada's decision in *65302 British Columbia Ltd. v. The Queen*, [1999] 3 S.C.R. 804 and to the Federal Court of Appeal's decision in *Robert McNeill v. The Queen*, 2000 D.T.C. 6211.

B. The Respondent's Position

[15] The respondent stated that the appellant did not carry any airline transportation activities in 2011 and, consequently, he had no source of income in 2011. The amount claimed in 2011 as "Other deductions" was not claimed as business expenses and was not related to the appellant's accounting activities. Accordingly, the expenses claimed by the appellant were personal in nature.

[16] The respondent also alleged that there is no nexus or link between the professional fees paid by the appellant and the business carried on by him or by Val Air Inc.

[17] At the time of payment of the professional fees by the appellant, the company "Les lignes aériennes Val Air Inc." was dissolved and the company "Val Air Inc." had declared bankruptcy. Consequently, the appellant made the payments with no reasonable expectation of income therefrom.

The Law

[18] The provisions of the *Act* that are applicable in this instance are the following: paragraphs 3(a), 4(1)(a), subsections 9(1) and (2), paragraphs 18(1)(a)

and 18(1)(h) and section 248 (the definition of “personal and living expenses”). They read as follows:

Income for taxation year

3 The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

(a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,

...

Income or loss from a source or from sources in a place

4(1) For the purposes of this Act

(a) a taxpayer's income or loss for a taxation year from an office, employment, business, property or other source, or from sources in a particular place, is the taxpayer's income or loss, as the case may be, computed in accordance with this Act on the assumption that the taxpayer had during the taxation year no income or loss except from that source or no income or loss except from those sources, as the case may be, and was allowed no deductions in computing the taxpayer's income for the taxation year except such deductions as may reasonably be regarded as wholly applicable to that source or to those sources, as the case may be, and except such part of any other deductions as may reasonably be regarded as applicable thereto; and

...

Income

9(1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

Loss

(2) Subject to section 31, a taxpayer's loss for a taxation year from a business or property is the amount of the taxpayer's loss, if any, for the taxation year from that source computed by applying the provisions of this Act respecting computation of income from that source with such modifications as the circumstances require.

General limitations

18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

General limitation

- (a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

Personal and living expenses

(h) personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

Definitions

248(1) in this Act,

“personal or living expenses” – “personal or living expenses” includes

- (a) the expenses of properties maintained by any person for the use or benefit of the taxpayer or any person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and not maintained in connection with a business carried on for profit or with a reasonable expectation of profit,
- (b) the expenses, premiums or other costs of a policy of insurance, annuity contract or other like contract if the proceeds of the policy or contract are payable to or for the benefit of the taxpayer or a person connected with the taxpayer by blood relationship, marriage or common-law partnership or adoption, and
- (c) expenses of properties maintained by an estate or trust for the benefit of the taxpayer as one of the beneficiaries;

Analysis

[19] The appellant claimed a deduction of legal expenses and damages totaling \$27,078 in his 2011 income tax return. The claim relates to an award to creditors by the Court of Appeal of Quebec against the appellant and the other promoters/investors relating to unpaid invoices for services rendered to a business venture to establish a regional airline company. The legal fees claimed by the appellant relates to legal fees incurred in defending the appellant's case in court.

[20] The promoters/investors of the venture were Gilles Filiatreault, Heralall Nandlal, Victor Wozniuk and Benoît Tanguay. Mr. Filiatreault was the head of the group and was the one who required the services of the three professional firms. The professionals were responsible for the preparation of the business plans, for the search of the financing required and for the starting up of the airline's operations.

[21] Two corporations were established for the purpose of operating the airline. Les lignes aériennes Val Air Inc.'s only purpose was to hold the shares of Val Air Inc. which operated the airline from November 2003 to February 24, 2004.

[22] Les lignes aériennes Val Air Inc. was named as defendant in the proceedings made by Lemieux Nolet and by Hill & Knowlton/Ducharme Perron in May 2004 but it was not held liable for the unpaid invoices since it was dissolved on October 17, 2008 shortly before the hearing of the case on October 28 and 29, 2008.

[23] In his testimony, the appellant stated that he has invested \$75,000 in a lump sum payment in 2002 in Val Air Inc. but no evidence of this investment has been presented in court. However, Justice Michel St-Hilaire of the Court of Québec indirectly confirmed the investment by the appellant when he said at paragraph 90 of his decision that three of the four promoters invested \$246 000 in Valair Inc.

[24] It is clear from the evidence that the appellant never had the intention to carry out personally or as a member of a group of promoters/investors, the regional airline activities and, in fact, he never did so. Two corporate entities were created to carry out such activities and one of the entities did effectively operate the regional airline for a short period of time. The activities carried out by the appellant in 2001 and 2002 in connection with the airline venture did not constitute a source of income for him.

[25] Even if the airline activities were to constitute a source of income for the appellant, that source of income disappeared when Val Air Inc. declared bankruptcy in 2004 and when Les Lignes Aériennes Val Air Inc. was dissolved in 2008. In 2011, the appellant had no source of income coming from the airline's activities and he was not carrying out any other business but his accounting business. In 2011, there was no nexus between the expenses that the appellant claimed as deductions and the business that he was actually carrying on in 2011, his accounting business. This lack of nexus between the expenses claimed by the appellant and his accounting business appears to be the reason why the appellant

claimed the expenses in his tax return under “other deduction” and not as expenses incurred in carrying out a business.

[26] The Supreme Court of Canada’s decision in *65302 British Columbia Ltd.*, cited above, confirmed the deductibility of fines and penalties incurred for the purpose of gaining or producing income under paragraph 18(1)(a) of the *Act*. In *Robert McNeill*, cited above, the Federal Court of Appeal allowed a similar deduction in respect of court-imposed damages for breach of contract.

[27] In the appeal at bar, the issue is not the deductibility of fines or penalties or the deduction of a court-ordered award of damages for breach of contract. What we have here is essentially a Court judgment ordering the appellant to pay his share of the professional fees charged for services rendered and the legal fees incurred by the appellant in appealing the Court of Québec’s decision to the Court of Appeal of Quebec. The amount of additional indemnity allowed under article 1619 of the *Civil Code of Québec* and paid by the appellant was not specified by the appellant during the court hearing.

[28] In the present circumstances, *65302 British Columbia Ltd.* and the *McNeill* cases do not help the appellant because the expenses made in 2011 when the appellant was ordered to make the payments, were not made for the purpose of gaining or producing income as required by paragraph 18(1)(a) of the *Act*.

[29] Consequently the appeal is dismissed.

Signed at Ottawa, Canada, this 30th day of August 2017.

“Réal Favreau”

Favreau J.

CITATION: 2017 TCC 162
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PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: May 25, 2017
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APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Caroline Ahn

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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