

Docket: 2004-642(IT)I

BETWEEN:

RICHARD COOK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 14, 2004 at Kitchener, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: John R. Shipley

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2000 and 2001 taxation years are allowed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 22nd day of December 2004.

"L.M. Little"

Little J.

Citation: 2004TCC824

Date: 20041222

Docket: 2004-642(IT)I

BETWEEN:

RICHARD COOK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS:

[1] In the 2000 and 2001 taxation years the Appellant was employed as a sheet metal worker by Metropolitan Sheet Metal Ltd. ("Metropolitan").

[2] The Appellant said that in the 2000 and 2001 taxation years he and his wife lived in Cambridge, Ontario.

[3] The Appellant explained that his normal work routine could be summarized as follows:

The Appellant would phone Metropolitan's office early in the morning and obtain instructions on the location of a job site. He would drive from his Cambridge home either to the employer's warehouse at the corner of Weston Road and 401 Highway, Ontario where he would pick up ductwork material or he would proceed directly to a job site as designated by Metropolitan.

[4] The Appellant said that during the 2000 and 2001 taxation years he was primarily installing the ductwork for gas fired furnaces for new homes being constructed in the Oshawa area.

[5] The Appellant also said that on a number of occasions he was retained by other furnace dealers to install ductwork in private residences.

[6] The Appellant said that in the 2000 and 2001 taxation years he leased a one-half ton truck (the "Truck"). The Truck was used by the Appellant to carry his tools plus ductwork supplies. The Appellant said that the Truck was used exclusively by him for business purposes.

[7] When the Appellant filed his income tax returns for the 2000 and 2001 taxation years he deducted the following expenses that he had incurred in the operation of the Truck:

2000	\$ 17,839.00
2001	\$ 9,973.00

[8] The Minister of National Revenue (the "Minister") reassessed the Appellant for the 2000 and 2001 taxation years and disallowed the expenses of \$17,839.00 and \$9,973.00 that the Appellant had claimed with respect to the operation of the Truck.

B. ISSUE:

[9] Is the Appellant entitled to deduct any of the expenses that he incurred in the operation of the Truck in the 2000 and 2001 taxation years?

C. ANALYSIS:

[10] Counsel for the Respondent said that the Minister disallowed the Truck expenses claimed by the Appellant because they were considered to be expenses primarily incurred in travelling from the Appellant's home to his employer's place of business.

[11] The Appellant testified that between 50% – 75% of the time when he worked for Metropolitan he would drive from Cambridge to his employer's warehouse to obtain ductwork supplies. He would then take the ductwork supplies to a particular job site and install the ductwork.

[12] The Appellant also noted that when he was instructed to go to a specific job site he frequently discovered that it was impossible for him to work at that job site and he would then be requested to drive to a different job site.

[13] After considering the testimony of the Appellant I am satisfied that he was required to use the Truck to pick up supplies at Metropolitan's warehouse or to drive to different job sites. In other words, it could not be said that all of the expenses incurred in the operation of the Truck were used to drive from the Appellant's home to the employer's place of business. I have concluded that the Appellant should be allowed to deduct the following amounts in determining his income for the 2000 and 2001 taxation years:

2000 Taxation Year	- Deduct 50% of \$17,839.00 = \$8,919.50
2001 Taxation Year	- Deduct 50% of \$9,973.00 = \$4,986.50

[14] In reaching my conclusion I have determined that the Appellant would be travelling in the performance of the duties of his employment when he travels between Metropolitan's office and the job site where the Appellant installs the ductwork.

[15] The appeals are allowed, without costs, to permit the Minister to reassess the Appellant on the basis as outlined above.

Signed at Vancouver, British Columbia, this 22nd day of December 2004.

"L.M. Little"

Little J.

CITATION: 2004TCC824

COURT FILE NO.: 2004-642(IT)I

STYLE OF CAUSE: Richard Cook and
Her Majesty the Queen

PLACE OF HEARING: Kitchener, Ontario

DATE OF HEARING: December 14, 2004

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: December 22, 2004

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: John R. Shipley

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada