

Court File No. 2006-865(IT)I

TAX COURT OF CANADA

IN RE: the Income Tax Act

BETWEEN

WALID W. A. ALSAMMAN

Applicant

- and -

HER MAJESTY THE QUEEN

Respondent

ORAL REASONS FOR JUDGEMENT GIVEN BY

MR. JUSTICE PARIS

in Courts Administration Service,
180 Queen Street West, Toronto, Ontario,
on Friday, February 13, 2007 at 2:11 p.m.

APPEARANCES:

Mr. Costa A. Abinajem

for the Appellant

Mr. Laurent Bartleman

for the Respondent

Also Present:

Mr. Colin Nethercut

Court Registrar

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1 Toronto, Ontario

2 --- Upon commencing the oral reasons on Friday,

3 February 13, 2007 at 2:11 p.m.

4 **THE REGISTRAR:** Please be seated,
5 the hearing is resumed.

6 **THE COURT:** This is the reasons
7 for judgement in the case of Walid Alsamman versus
8 The Queen in 2006-865(IT)I.

9 This is an appeal from
10 reassessment to the appellant's 2001 and 2002
11 taxation years by which the Minister of National
12 Revenue increased the appellant's income from
13 business by \$20,668 and \$22,492 respectively and
14 levied penalties under Subsection 163(2) of the
15 Income Tax Act on the unreported business income.
16 The assumptions relied upon by the Minister in
17 reassessing are set out in Paragraph 9 of the reply
18 to Notice of Appeal and will form part of these
19 reasons.

20 The appellant's position is that
21 the unidentified deposits in his bank account,
22 which were treated as income from business by the
23 Minister, were in part deposits of amounts he
24 received from his family and in part deposits
25 received from clients as reimbursements for amounts

1 he spent on materials used in his business.
2 He claimed that he did not deduct the cost of those
3 materials in calculating his income from business
4 and that if the reimbursements for materials were
5 included in his income, he should be able to deduct
6 what he paid for the materials.

7 The appellant admits that he had
8 unreported business income of \$17,885 in 2002 but
9 says that he should not be liable for penalties
10 because he had just started his business in 2001,
11 had difficulties with record keeping, that he was
12 trying to do all the record keeping himself, and
13 that he had no formal education and was depressed
14 at the time.

15 No supporting documents were
16 produced by the appellant with respect to the
17 amounts he allegedly received as reimbursements
18 from clients for materials. He said that he had
19 receipts but these were not produced. The amounts
20 involved were not detailed in any way and the
21 evidence as a whole on this point was unconvincing.
22 With respect to the appellant's claim he received
23 amounts from family members, the appellant produced
24 a letter from his mother and a letter from his
25 brother, Mohamad, stating they had given him a

1 total of \$25,200 in cash and a copy of a cheque
2 received from another brother in 2002 for \$4,000.

3 None of these persons were called
4 to testify. Also, the appellant did not produce any
5 evidence tying the cash he supposedly received with
6 deposits made to his bank account.

7 In the case of his mother the
8 appellant said she had lived outside Canada and
9 would visit him and give him cash. According to his
10 mother's letter, she gave him \$16,000 in 2001 and
11 2002. No particular dates or amounts of payments
12 were given.

13 The appellant did not attempt to
14 identify any particular bank deposits as ones made
15 with the cash received. This was also the case for
16 the alleged \$100 cash payment the appellant's
17 brother said he made weekly to the appellant for
18 room and board. No evidence was led to show the
19 appellant deposited the amounts if in fact he
20 received them to his bank account.

21 The appellant also produced, as
22 Exhibit A-5, a list of deposits to his bank account
23 for 2001 and 2002 with a note explaining the
24 deposit, in some cases as a transfer or an amount
25 from a credit card, and in others, as amounts

1 received for family members.

2 I note that according to the
3 appeals officer who testified, many of the amounts
4 were accepted as not being business income. I refer
5 to Exhibit R-1, Tab 6 and 7. For the remaining
6 amounts no corroboration of the source of the
7 deposits was provided in court.

8 Overall, I am not satisfied that
9 the appellant has shown on the balance of
10 probabilities that he received these amounts, or
11 that these amounts were deposited to his bank
12 account and form part of the unidentified deposits.

13 The remaining amount, the \$4,000
14 the appellant received by cheque from his brother
15 was supported in evidence by a copy of the cheque.
16 This amount was shown to have been deposited to the
17 appellant's bank account and treated as unreported
18 income by the auditor.

19 I'm of the view that the appellant
20 has made a prima facie case that the \$4,000 was not
21 connected to his business and the respondent has
22 let no evidence to show any reason that the amount
23 should be considered as business income.

24 Therefore the appellant's business
25 income should be reduced by \$4,000 in 2002 to the

1 amount of \$18,492. This is largely consistent with
2 the appellant's admission that he had unreported
3 business income of \$17,885 for 2002.

4 As already indicated, the
5 appellant has not met the onus on him to show that
6 any reductions to his business income are warranted
7 for his 2001 taxation year.

8 I turn now to the issue of
9 penalties imposed under Subsection 163(2) of the
10 Income Tax Act.

11 The respondent has the onus to
12 show that the appellant knowingly or in
13 circumstances amounting to gross negligence made
14 false statements or omissions in his 2001 and 2002
15 tax returns. The evidence shows the appellant
16 reported his business income as \$10,008 and \$25,001
17 in 2001 and 2002 respectively.

18 I'm also satisfied the evidence
19 shows the appellant had unreported income from
20 business of \$17,885 in 2002, as admitted by the
21 appellant.

22 However, I'm not satisfied the
23 respondent has met the burden of proving on the
24 balance of probabilities the appellant had
25 unreported business income in excess of the amount

1 stated for 2002 or that the Minister has proven
2 independently of the assumptions relied on by the
3 Minister in assessing the appellant that he had
4 unreported business income for 2001.

5 The respondent's burden of proving in this
6 representation issue is independent of the onus on
7 the appellant in relation to the underlying
8 reassessment of tax.

9 The respondent did not call as a
10 witness the auditor who reviewed the books and
11 records of the appellant to provide details of the
12 reassessment and the evidence of the appeals
13 officer shows that he did not review or analyse the
14 source documents obtained originally from the
15 appellant.

16 I am satisfied, though, that the
17 respondent has shown that the misrepresentation
18 with respect to the appellant's income in 2002 was
19 made in circumstances amounting to gross
20 negligence.

21 The materiality of the
22 misrepresentation, \$17,885, compared to the total
23 business income for that year, taken along with the
24 appellant's admission that his record keeping was
25 inadequate, that he did not know what he was doing

1 with respect to the accounting for his business,
2 all these lead to conclude that he was more than
3 simply negligent in his approach to fulfilling the
4 obligations placed on him under the Income Tax Act
5 to accurately report his income.

6 With respect to the appellant's submission that he
7 was depressed at the time, I note that he was
8 carrying on his handyman business throughout the
9 period at issue and that this depression did not
10 seem to affect him to the point of being unable to
11 perform those activities.

12 There's no basis for assuming that
13 the alleged depression would therefore have impeded
14 him in carrying out the duties to accurately
15 account for his income as required by the Income
16 Tax Act.

17 A taxpayer in the appellant's
18 position of not knowing how to go about recording
19 and reporting income should seek the help of a
20 bookkeeper or accountant and when he chooses not
21 to, engages in conduct tantamount to a wilful
22 disregard of his legal obligations.

23 For all of these reasons the
24 appeal is allowed in part. The amount of the
25 appellant's income from business in 2002 will be

1 reduced by the amount of \$4,000 and the penalties
2 under Subsection 163(2) with respect to the 2001
3 taxation year shall be deleted and any penalties on
4 amounts in excess of \$17,885 of unreported income
5 in 2002 should be deleted as well.

6 --- Whereupon proceedings adjourned at 2:30 p.m.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately transcribed
the foregoing interview.

Antoinette Forcione, Legal Transcriptionist