

Docket: 2006-276(IT)I

BETWEEN:

NICOLA BRIZZI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 15, 2007, at Montréal, Quebec

Before: The Honourable Justice François Angers

Appearances:

Counsel for the Appellant: Vincent Rose

Counsel for the Respondent: Marie-Aimée Cantin

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2001 taxation year is allowed to correct the added income from \$69,232 to \$65,813 in accordance with the attached Reasons for Judgment. In all other respect, the assessment is valid.

Signed at Ottawa, Canada, this 23rd day of May 2007.

“François Angers”

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Angers J.

Citation: 2007TCC226  
Date: 20070523  
Docket: 2006-276(IT)I

BETWEEN:

NICOLA BRIZZI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Angers J.

[1] This is an appeal of the assessment for the appellant's 2001 taxation year. The minister of National Revenue (the "Minister") assessed the appellant using the net worth method to determine his income and accordingly included an amount of \$69,232 as other income for the taxation year under appeal. The parties filed an Agreed Statement of Facts and the only issue before this Court is whether the amount of \$33,698 used by the appellant to acquire shares he held in the Royal Bank of Canada should be included in the appellant's net income. The Agreed Statement of Facts reads as follows:

...

#### **AGREED STATEMENT OF FACTS**

The parties hereto agree that, for the purposes of the present appeal, the facts as set out in the present document are accurate;

#### **FACTS**

1. In the year 2000 the appellant was under investigation by the RCMP.
2. The 5<sup>th</sup> of November 2001, following the Investigation, the Appellant pleaded guilty to the following accusations:

- Conspiracy to import a designated substance: haschisch [*sic*] (section 465(1)(c) of the Criminal Code and section 5 of the Controlled Drugs and Substances Act);
  - Conspiracy for trafficking in a substance: haschisch [*sic*] (section 465(1)(c) of the Criminal Code and section 5 of the Controlled Drugs and Substances Act);
  - Conspiracy to launder proceeds of crime (section 465(1)(c) of the Criminal Code and section 9 of the Controlled Drugs and Substances Act);
3. The 14<sup>th</sup> of November 2001, an Order of forfeiture of property on conviction was issued (Court #: 500-73-001541-016) with respect to the following property belonging to Nicolas [*sic*] Brizzi, as the property constituted "proceeds of crime":
- Shares held at the Royal Bank of Canada, account number 6824064817 in Canadian currency:
    - 200 srs Intel Corp.
    - 2000 srs Covad Communciations Group Inc.
    - 400 srs Cosco Systems Inc.
    - 400 srs Nortel Networks Corp.
    - 100 srs Bank of America Corp.
    - 1000 srs Loudeloud Inc.
  - Shares held at the Royal Bank of Canada, account number 6824064817 in American currency:
    - 500 srs Nortel Networks Corp.
    - 250 srs Intel Corp.
    - 100 srs Pfizer Inc.
    - 100 srs Nokia Corp-Sponsored Adr.
    - 100 srs Claco Systems Inc.
    - 300 srs Worlddoom Inc.
    - 1500 srs 360 Networks Inc.
4. The above-mentioned property was sold by the RCMP in 2002.
5. During 2004, the Appellant was under investigation by the Canada Revenue Agency.

6. The auditor, Mr. Yvon Talbot, proceeded to audit the Appellant for the 2000, 2001 and 2002 taxation years using the net worth method.
7. Although the taxation years 2001 and 2002 were assessed by the Canada Revenue Agency, only the 2001 taxation year is disputed in the present appeal.
8. The only question at issue for the 2001 taxation year is the inclusion of the amount of 33 698 \$ (16 171 \$ for the Can shares and 17 527 \$ for the US shares) used to acquire the shares held in the Royal Bank of Canada and seized by the RCMP in the net income of the Appellant. (Mentioned in paragraph 3 of the present agreement). As for the remainder of the assessment, no other point will be disputed during the hearing, as the other points are not contested by the Appellant.
9. Concerning the shares mentioned in the previous paragraph, it is not disputed that the shares were purchased with unreported income.
10. The value of the shares in the Canadian currency account and in the American currency account is not disputed by the Appellant. What is disputed is the fact that these amounts have been included in the calculation of the Appellant's net worth.

MONTREAL, March 13, 2007

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[2] The added income in the amount of \$69,232 was reduced to \$65,813 as a result of modified calculations submitted by the respondent at the beginning of the trial. The only issue remaining concerns the amount used to purchase the shares that were seized by the RCMP.

[3] The appellant's position is that drug trafficking is a business and forfeiture of assets is part of that business. Therefore the forfeited shares should be considered a business-related expense and not be included in his net worth. He pursues his point by arguing that, since income from illegal activities is taxed, expenses relating to such activities should be deductible. The appellant submits that forfeiture, under the provisions of the *Criminal Code* can be considered as an expense because expenses are incident to carrying on a business and an order of forfeiture is a risk in this particular kind of business. The appellant also argues that it is double jeopardy to deny him the deduction of the amount of the forfeited shares in that he is paying taxes on their value even though they have been forfeited. He suggests

that it is unfair to deny him the deduction when he is paying taxes on the income. He claims that he has already paid his debt to society.

[4] The respondent submits that the forfeiture does not constitute a business expense because it is not an expense incurred for the purpose of gaining or producing income from a business. The shares were actually bought as a personal asset and not as a business asset and thus their forfeiture cannot constitute a business expense. The respondent argues that the forfeiture constitutes rather involuntary disposition of income.

[5] It is important to mention that the tax authorities are not concerned with the legality of an activity (see *Canada (M.N.R.) v. Eldridge*, [1965] 1 Ex. C.R. 758 (QL), at par. 25, and *65302 British Columbia Ltd. v. Canada*, [1999] 3 S.C.R. 804, at par. 56). It is accepted that if a taxpayer's income from an illegal business is taxable, that taxpayer should be allowed the benefits of the *Income Tax Act* (the "Act") in terms of deductions. It is also important to mention that this Court is only concerned with determining the validity of an assessment after considering all relevant facts and with ascertaining whether the assessment is in compliance with the *Act*. Equitable considerations are not within our jurisdiction.

[6] That being said, I will now refer to subsection 18(1) of the *Act*, which sets out the limitations on the deductions one can make from business income.

18(1) General Limitation

(a) General limitation — 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;

(b) Capital outlay or loss — an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this part.

[7] For the deduction of an expense to be allowed, the expense must have been made or incurred for the purpose of producing income from a business or property and it must not be a capital expense. In this instance, I agree with counsel for the respondent when she states that the shares that were forfeited were bought as a personal asset and not in the course of the appellant's illegal activities. One can only assume that the money used by the appellant to purchase the forfeited shares was from the net income derived from his illegal business activities. The loss

incurred through the forfeiture is in my opinion a consequence of carrying an illegal business activity and therefore certainly not an expense that assisted or resulted in producing income.

[8] Counsel for the appellant cited *65302 British Columbia* referred to above, in which the Court allowed an over-quota levy to be deducted on the basis that the levy was incurred as part of the appellant's day-to-day operations of carrying on a poultry farm business, that the decision to produce over quota was a business decision made in order to realize income, and that the deduction should not be disallowed for reasons of public policy. That case is distinguishable from the present one in that the levy was incurred in order to realize more income while here it cannot be said that the forfeiture allowed the appellant to realize more income. It is a loss that occurred as a result and consequence of carrying an illegal activity and therefore was not incurred to gain income.

[9] The appeal is allowed in order to correct the amount of added income from \$69,232 to \$65,813. The assessment is valid in all other respects.

Signed at Ottawa, Canada, this 23rd day of May 2007.

“François Angers”

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Angers J.

CITATION: 2007TCC226  
COURT FILE NO.: 2006-276(IT)I  
STYLE OF CAUSE: Nicola Brizzi and Her Majesty The Queen  
PLACE OF HEARING: Montréal, Quebec  
DATE OF HEARING: March 15, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice François Angers  
DATE OF JUDGMENT: May 23, 2007

APPEARANCES:

Counsel for the Appellant: Vincent Rose  
Counsel for the Respondent: Marie-Aimée Cantin

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