

Citation: 2007TCC427
Date: 20070809
Docket: 2006-1387(IT)I

BETWEEN:

MOSES OSAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on June 12, 2007
at Vancouver, British Columbia)

Campbell J.

[1] On September 16, 2004 the Appellant was reassessed in respect to his 2001, 2002 and 2003 taxation years. In each of these taxation years the Minister increased the Appellant's gross business income and disallowed certain expenses that had been submitted. Subsequent to this reassessment in 2004, and pursuant to Notices of Objection filed by the Appellant, the Minister reassessed the Appellant on two more occasions, August 2, 2005 and March 6, 2006. On both reassessments the Minister allowed additional business expenses in each of these taxation years.

[2] The issue arising from these reassessments is whether the Appellant is entitled to deduct any additional expenses in excess of those expenses which the Minister allowed in each of the taxation years. The second issue which the Appellant raised was whether he is entitled to claim the non-refundable tax credit for his son Isiah for the 2001 and 2002 taxation years.

[3] The Appellant is an owner/operator of a truck and container, which he used to haul freight. The evidence suggests that the Appellant worked almost exclusively hauling freight for a company by the name of PRTI Transport Inc. The Appellant was paid weekly by cheque, and PRTI kept a record of the number of hauls, the payment per haul and a record of expenses incurred on the Appellant's behalf.

[4] The Appellant prepared his own returns each year, claiming certain business expenses in respect to meals and entertainment, automobile expenses, home office, truck park rental, truck expenses, cell phone, fines, licensing and insurance.

[5] According to the evidence of Ms. Uppal, who completed the audit for the three taxation years, the Appellant provided her with some supporting documentation, but only in respect to the last six months of 2003. He advised the auditor that other records were missing because of a break-in at his home. She then requested and obtained a summary of revenue earned from PRTI Transport.

[6] Her Working Paper, Exhibit R-9, dated July 26, 2004, outlines the reasons that expenses were either allowed or disallowed in each of these last six months of 2003. Based on the additional expenses allowed she determined a percentage and applied this to the first six months of 2001, 2002 and 2003, being those periods for which the Appellant could not provide documentation due to the theft. As I understand her evidence, this percentage included an additional 15% points simply giving the Appellant a so-called "benefit of the doubt" advantage. The Appellant was advised of these final adjustments, after Ms. Uppal's audit, by letter dated October 15, 2004 (Exhibit R-10).

[7] After this initial audit, Ms. Uppal completed a second review after the Appellant submitted additional documentation. On May 18, 2005, the auditor reported her findings to the appeals officer, Samuel Mensah and additional eligible amounts were allowed. In the auditor's Working Paper (Exhibit R-12) a summary of expenses reveals that the total expenses, allowed after two Notices of Objection and reviews, were still higher than the amounts actually determined to be eligible deductions on the last review, and so no additional expenses were allowed. In fact it is interesting to note that the income tax changes outlined in Exhibit R-12 show that expenses of approximately \$30,000.00 were allowed by the auditor over and above what the Appellant could actually account for or for which he could provide supporting documentation.

[8] On the second objection, the Appellant also raised the issue of the credit for a dependent child.

[9] According to the evidence of Mr. Mensah, the appeals officer, who prepared the Report on Objection (Exhibit R-14) in respect to the Appellant's second objection, additional expenses were allowed, based on the "Driver Settlement Reports", for those amounts deducted at source by PRTI. In all other respects, the auditor's prior decision respecting disallowed amounts was confirmed.

[10] Generally my approach, in appeals involving business expenses, is to take each claimed expense separately and to outline why I cannot allow it or why I am prepared to allow all or part of it. However, in these appeals, I do not think I can improve upon the method employed at each stage of the objection review. The Appellant has not presented any new documentation except for a vehicle log for 2001 and a log for 2002. He came to Court with two large brown envelopes full of receipts, for which no summaries or other type of organization was provided. That aside, all of this same information was before the auditor and appeals officer at some point in this long sequence of events. The auditor was able to reconcile some of it and in fact gave the Appellant the benefit of the doubt in his favour to the tune of \$30,000.00 as revealed in Exhibit R-12. I suppose if I took hours to go through this same information I might determine that there are a few expenses that I could allow. But if I did that, I would offset those against the \$30,000.00 advantage given to this Appellant. From my perusal of the evidence it would be minimal amounts at best, but I am not prepared to give this Appellant any benefit of the doubt here. Mr. Osas does not seem to appreciate that if you are going to claim expenses, you must be prepared to come to Court with some type of credible evidence, either documentary or oral. Mr. Osas provided neither. He contradicted his own evidence on a number of occasions, and provided only vague, evasive and unsatisfactory responses to questions posed to him. His claim that I should accept all of his expenses simply because he states they were incurred as a business expense, is unrealistic and unreasonable. Although I have in other appeals accepted an Appellant's oral evidence on expenses without supporting documentation, I cannot do so in these appeals. When an Appellant changes his evidence, contradicts himself, and offers implausible explanations, it casts doubt on all of his evidence. I believe he was most fortunate to have an auditor and appeals officer who made a conscientious effort to sort through a disorganized array of documents that produced a finding favourable to the Appellant in the approximate amount of \$30,000.00 over what he could actually produce supporting documentation.

[11] To summarize briefly, my conclusions respecting each of these expenses are as follows:

(1) Most of his claim for his vehicle expense related to expenses for travel to and from home and work. This expense of course is not deductible as there is ample case law to support that conclusion. I simply reject the Appellant's other assertions that he never used his vehicle for anything but business relying on his friends for example to take him to visit his children. This is simply unreasonable and I reject his evidence on this point.

(2) There was no documentation provided concerning the insurance and his claim for fines, very little evidence concerning his home office deduction, except his evidence that he met potential clients there and introduced them to PRTI.

(3) His claim for meals related primarily to lunches and coffee and, on a quick perusal, the receipts were co-mingled with receipts clearly related to family meals. There were absolutely no attempts made to assist me in relating any receipts to business meals.

(4) The Appellant's evidence was that he paid \$75.00 monthly for truck parking in 2001 and \$200.00 monthly in 2002 and 2003. He submitted 12 receipts for 2001, which suggests that he paid \$200.00 monthly in 2001 and not the \$75.00 monthly as he claimed. He provided no explanation for this discrepancy. Again it appears that these receipts were recreated. There is nothing to relate them to PRTI except for the handwritten reference to PRTI. They are all signed by an unknown individual named Jimmy without referencing a last name.

[12] And finally the Appellant's claim that he paid someone \$100.00 weekly in cash to organize his books is rejected. I cannot accept that he would pay anyone over a three-year period to maintain the disorganization that I see here.

[13] The only new documentary evidence provided to me, which the auditor did not have on any of the several reviews, are the two vehicle logs; one for 2001 and one for 2002. I have serious doubts that these logs were maintained on an ongoing basis throughout 2001 and 2002. The more logical conclusion is that they were recreated sometime after 2001 and 2002, and I say this for several reasons:

(1) Although the Appellant's evidence was that he was frequently on the road for three and four days at a time, doing long hauls into the States, these logs for the most part show the Appellant returning to his home each evening, Monday to Friday, with no weekend trips. In February 2001, the Appellant, according to his Notice of Objection, was in the United States for one week yet the log contains no such record; and

(2) The kilometers traveled each week are almost constant at 60 to 68 kilometers per day. This again contradicts his oral evidence that he traveled to various U.S. points of destination.

[14] I believe these logs are nothing more than self-serving attempts to bolster his claim for vehicle expenses.

[15] Now, in respect to the second issue, the evidence, contrary to the Appellant's submissions, supports that the Appellant lived with Ms. Naiker, his common-law spouse throughout 2001 and 2002. They were co-owners of a property in Surrey, they shared the same phone number and address, they had a second child in March 2003, and Ms. Naiker was listed as the Appellant's representative in his Notice of Objection (Exhibit R-6). Since the Appellant was living in a common-law relationship with Ms. Naiker in the 2001 and 2002 taxation years, he does not meet the criteria specified in paragraph 118(1)(b).

[16] I believe Justice Bowman's comments in *Chrabalowski v. Canada*, [2004] T.C.J. No. 488, are particularly appropriate to this appeal. At paragraph 12 he stated, and I quote:

One problem faced by an appellant in a case of this sort is that if there is a series of excessive, implausible or unreasonable claims it casts doubt on all of the claims. In other words, once a pattern of implausibility or excessiveness is established, the court is inclined to scrutinize with greater care claims that, standing alone, might be sustainable. In other words, any gaps left in the evidence are filled in, and any doubts resolved, in a manner that is consistent with the pattern.

[17] I could not have expressed this any more concisely than Chief Justice Bowman did, and it is exactly the scenario he is describing that I have before me in these appeals. I clearly cannot accept some of the Appellant's evidence where it is contradictory and implausible. Unfortunately, those instances color the rest of his evidence.

[19] Accordingly, the appeals for the 2001, 2002 and 2003 taxation years are dismissed.

Signed at Sydney, Nova Scotia, this 9th day of August 2007.

“Diane Campbell”

Campbell J.

CITATION: 2007TCC427

COURT FILE NO.: 2006-1387(IT)I

STYLE OF CAUSE: Moses Osas and
Her Majesty the Queen

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REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

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APPEARANCES:

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