Docket: 2007-3824(IT)I

BETWEEN:

PETER RAGSDALE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 15, 2008, at Toronto, Ontario.

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Marie-Therese Boris and Sharon Lee

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JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* ("*Act*") for the Appellant's 2000 and 2001 taxation years are allowed, with costs, and this matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to the following amounts as deductions under paragraph 8(1)(h.1) of the *Act* and the following amounts as deductions for capital cost allowance and interest under paragraph 8(1)(j) of the *Act* for 2000 and 2001:

2000

Vehicle	**Item**	**Amount Allowed**
Explorer	Maintenance and Repairs	$358 + $72 = $430
	Insurance	$1,142
	Licence and Registration	$53

	Capital Cost Allowance	$1,893
Porsche	Maintenance and Repairs	$51
	Insurance	$1,164
	Licence and Registration	$74
	Capital Cost Allowance	$3,784
	Other – CAA	$87
Mazda	Maintenance and Repairs	$299
	Insurance	$902
	Licence and Registration	$64
	Capital Cost Allowance	$3,348
Expedition	Maintenance and Repairs	$54
	Insurance	$98
	Licence and Registration	$16
	Capital Cost Allowance	$6,471
	Interest	$199
	Other	$367
Total:		$20,496

2001

Vehicle	**Item**	**Amount Allowed**
Explorer	Maintenance and Repairs	$11
	Insurance	$432
	Licence and Registration	$21
	Capital Cost Allowance	$0
Porsche	Maintenance and Repairs	$0
	Insurance	$547
	Licence and Registration	$74
	Capital Cost Allowance	$2,667
	Other - CAA	$89
Mazda	Maintenance and Repairs	$105
	Insurance	$885
	Licence and Registration	$61
	Capital Cost Allowance	$2,186
Expedition	Maintenance and Repairs	$125
	Insurance	$350
	Licence and Registration	$74
	Capital Cost Allowance	$11,065

	Interest	$2,631
	Other	$0
Total:		$21,323

Signed at Halifax, Nova Scotia, this 29th day of April 2008.

"Wyman W. Webb"

Webb J.

Citation: 2008TCC232
Date: 20080429
Docket: 2007-3824(IT)I

BETWEEN:

PETER RAGSDALE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The Appellant was employed in 2000 and 2001 and in the course of his employment he used four different vehicles. The only issue in this case is the portion of the expenses that were incurred by the Appellant that he is entitled to claim as a deduction under paragraph 8(1)(h .1) of the *Income Tax Act* ("*Act*") and the amount of interest and the portion of the capital cost allowance that the Appellant may claim pursuant to paragraph 8(1)(j) of the *Act* in computing his income for 2000 and 2001.

[2] There is no dispute in this case that the conditions as set out in paragraph 8(1)(h.1) of the *Act* are satisfied. This paragraph provides as follows:

> 8(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> (h.1) where the taxpayer, in the year,
>
> (i) was ordinarily required to carry on the duties of the office or employment away from the employer's place of business or

> in different places, and
>
> (ii) was required under the contract of employment to pay motor vehicle expenses incurred in the performance of the duties of the office or employment,
>
> amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment, except where the taxpayer
>
> (iii) received an allowance for motor vehicle expenses that was, because of paragraph 6(1)(*b*), not included in computing the taxpayer's income for the year,

[3] While the Appellant did receive an allowance with respect to his use of the motor vehicles, the amount of the allowance was included in the Appellant's income.

[4] The Respondent did not dispute the amount of expenses that were incurred by the Appellant nor the undepreciated capital cost of the vehicles. Only the portion of these amounts that could be claimed was disputed.

[5] The Appellant kept detailed records of the number of kilometres that each vehicle was driven for personal use and the number of kilometres that each vehicle was driven in the performance of his employment duties. The Respondent did not dispute the number of kilometres that each vehicle was driven for personal use and in the performance of his employment duties.

[6] The Appellant used four different vehicles in the performance of his employment duties in 2000 and 2001. These vehicles were the following:

(a) a 1994 Ford Explorer ("Explorer");
(b) a 1987 Porsche 911 ("Porsche");
(c) a 1993 Master MX3 ("Mazda"); and
(d) a 2000 Ford Expedition ("Expedition").

[7] The Expedition was acquired late in the year 2000.

[8] The following tables summarize the number of kilometres that each vehicle was driven by the Appellant in 2000 and 2001 in the performance of his duties of employment; the total number of kilometres that each vehicle was driven in each of these years; the percentage of eligible use as determined by the Appellant; and the percentage of eligible use as determined by the Respondent:

2000

Vehicle	Km Driven Re Employment	Total Kms Driven	% Employment Use - Appellant	% Employment Use - Respondent
Explorer	15,437	21,628	71.4%	43%
Porsche	2,108	2,122	99.3%	6%
Mazda	9,870	11,522	85.7%	28%
Expedition	355	363	97.8%	1%
		35,635		

2001

Vehicle	Km Driven Re Employment	Total Kms Driven	% Employment Use - Appellant	% Employment Use - Respondent
Explorer	5,709	20,477	27.9%	18%
Porsche	539	539	100.0%	2%
Mazda	6,149	7,511	81.9%	20%
Expedition	2,981	2,997	99.5%	10%
		31,524		

[9] The expenses incurred by the Appellant and the capital cost allowance amount for each vehicle before taking into account the percentage use in the performance of the duties of employment were:

Explorer

	2000	2001
Maintenance and Repairs	$502	$40
Insurance	$1,600	$1,548
Licence and registration	$74	$74
Capital Cost Allowance	$2,651	$0
	$4,827	$1,662

Porsche

	2000	**2001**
Maintenance and Repairs	$52	$0
Insurance	$1,172	$547
Licence and registration	$75	$74
Capital Cost Allowance	$3,810	$2,667
Other – CAA	$88	$89
	$5,197	$3,377

Mazda

	2000	**2001**
Maintenance and Repairs	$349	$128
Insurance	$1,052	$1,080
Licence and registration	$75	$74
Capital Cost Allowance	$3,907	$2,669
	$5,383	$3,951

Expedition

	2000	**2001**
Maintenance and Repairs	$55	$125
Insurance	$100	$352
Licence and registration	$16	$74
Capital Cost Allowance	$6,617	$11,121
Interest	$203	$2,645
Other	$375	$0
	$7,366	$14,317

The Respondent did not dispute any of these amounts and all of these amounts are set out as part of the assumptions in the Reply. These amounts are the same as the amounts listed by the Appellant on the T777 forms completed by the Appellant before the Employment Use Portion was applied.

[10] The following tables summarize the expenses incurred and the capital cost allowance amount for each vehicle; the percentage of eligible use as determined by the Appellant; the amount claimed by the Appellant; the percentage of eligible use as determined by the Respondent and the amount allowed by the Respondent.

2000

Vehicle	Expenses + CCA	% Employment Use – Appellant	Amount Claimed by the Appellant	% Employment Use - Respondent	Amount Allowed by the Respondent
Explorer	$4,827	71.4%	$3,446	43%	$2,075
Porsche	$5,197	99.3%	$5,161	6%	$312
Mazda	$5,383	85.7%	$4,613	28%	$1,507
Expedition	$7,366	97.8%	$7,204	1%	$74
			$20,424		$3,968

2001

Vehicle	Expenses + CCA	% Employment Use - Appellant	Amount Claimed by the Appellant	% Employment Use - Respondent	Amount Allowed by the Respondent
Explorer	$1,662	27.9%	$464	18%	$299
Porsche	$3,377	100.0%	$3,377	2%	$67
Mazda	$3,951	81.9%	$3,236	20%	$790
Expedition	$14,317	99.5%	$14,245	10%	$1,425
			$21,322		$2,581

[11] The significant difference between the amount claimed by the Appellant and the amount allowed by the Respondent relates to the denominator that was used in the calculation of the amount claimed or allowed for each particular vehicle. For each vehicle, the Appellant determined the appropriate amount to claim based on the number of kilometres that such vehicle was driven in the course of carrying out his duties of employment, divided by the total number of kilometres that such vehicle was driven in the year.

[12] The Respondent agreed with the numerator, but for the denominator used the total number of kilometres that all of the vehicles were driven. As a result, the amounts allowed by the Respondent were significantly less than the amounts claimed by the Appellant.

[13] The problem with the approach taken by the Respondent can be illustrated by a simple example. Assume that an individual who owns two vehicles is entitled to a deduction pursuant to paragraph 8(h.1) of the *Act* (although the amount of such deduction will have to be determined) and the facts related to the number of kilometres driven and the expenses incurred in relation to the operation of the vehicles are as follows:

Vehicle	Kms Driven Re Employment	Total Kms Driven	Operating Expenses
Vehicle #1	20,000	20,000	$3,000
Vehicle #2	0	20,000	$3,000
		40,000	

[14] In this example one vehicle is only used for employment purposes and the other is only used for personal use. Counsel for the Respondent acknowledged that the taxpayer would be entitled to deduct all of the expenses incurred in relation to the first vehicle ($3,000 in this example) as it was only used in the course of performing the duties of employment.

[15] However if the example is changed slightly, by only changing the percentage use in performing the duties of employment from 100% to 99% for the first vehicle (or 19,800 km for employment purposes) and from 0% to 1% for the second vehicle (or 200 km for employment purposes), the following table would illustrate the new set of facts:

Vehicle	Km Driven Re Employment	Total Kms Driven	Operating Expenses
Vehicle #1	19,800	20,000	$3,000
Vehicle #2	200	20,000	$3,000
		40,000	

[16] Using the formula as proposed by the Respondent, the amount that the taxpayer would be entitled to claim would decrease to:

Vehicle #1
19,800 / 40,000 x $3,000 = $1,485

Vehicle #2
200 / 40,000 x $3,000 = $15

[17] Using the methodology proposed by the Respondent and changing the use of the two vehicles from 100% and 0% for employment purposes to 99% and 1% for employment purposes results in the amount allowed being reduced by 50%. In my opinion such a slight change in the facts should not have such a dramatic affect on the amount that may be claimed.

[18] The expenses that may be claimed under paragraph 8(1)(h.1) of the *Act* are one of two types -- fixed or variable costs. The motor vehicle expenses that would be fixed costs would be those that do not vary based on the number of kilometres that

the vehicles are driven. In this particular case, the items that would be fixed expenditures would be insurance, licence and registration. These would not vary depending on the number of kilometres the vehicles are driven. While the amount charged for insurance may depend on the proposed number of kilometres that the vehicle will be driven, once the amount has been determined, the insurance cost is fixed, regardless of the actual number of kilometres that the vehicle is driven.

[19] The variable costs are those that will vary depending on the number of kilometres that the vehicle is driven. The only variable costs in this case are maintenance and repairs. The fuel costs were paid by the Appellant's employer. Fuel costs, if incurred by the Appellant, would have been a variable cost.

[20] Dealing first with the variable costs, in my opinion, the appropriate way to determine the amount of the variable costs for each vehicle that are incurred in relation to a taxpayer performing his or her duties of employment when basing the usage on the kilometres driven would be to determine the portion of these costs based on the number of kilometres that each vehicle was driven and not based on the number of kilometres that all vehicles are driven. To use the total of all kilometres driven by all vehicles would result in a taxpayer not being entitled to deduct all of the variable costs for fuel, repairs and maintenance that the taxpayer actually incurred in carrying out his or her employment duties.

[21] In the above example of a taxpayer with two vehicles that are used 99% and 1% for employment purposes, if the $3,000 of expenses for each vehicle referred to above only included the cost of fuel, using the methodology adopted by the Respondent would mean that the taxpayer would not be entitled to deduct the total amount spent by the taxpayer on fuel in carrying out his employment duties and, in my opinion, this is not the correct result for the purposes of paragraph 8(1)(h.1) of the *Act* which provides that the amounts that may be deducted are "amounts expended by the taxpayer in the year in respect of motor vehicle expenses incurred for travelling in the course of the office or employment". In the example where one vehicle is used 99% for employment purposes and the other vehicle is used 1% for employment purposes, if the total amount spent on fuel for such employment purposes was $3,000 ($2,970 for fuel for the first vehicle and $30 for fuel for the second vehicle), then the taxpayer should be entitled to a deduction for $3,000, assuming the other requirements of paragraph 8(1)(h.1) of the *Act* are satisfied. Any formula or method of determining the amount deductible that produces a lesser amount is, in my opinion, not correct.

[22] Therefore, for each vehicle the portion of the variable cost that would be

deductible by the Appellant would the amount determined by the following formula:

> A / B x C where
>
> A is the total number of kilometres that the particular vehicle was driven by the Appellant during the year in the course of carrying out his duties of employment;
>
> B is the total number of kilometres that the particular vehicle was driven during the year; and
>
> C is the amount of the variable costs incurred in operating the particular vehicle.

[23] With respect to the fixed costs, counsel for the Respondent acknowledged that the appropriate factor to be examined in determining the use of the vehicle was the number of kilometres that such vehicle was driven. Since the appropriate factor to determine the use of a vehicle is the number of kilometres that it is driven, in my opinion, the fixed costs should be amortized over the number of kilometres that the vehicle is driven. Using this methodology would yield the same eligible percentage as that for the variable costs as the portion of the fixed costs that would be deductible would be based on the same formula that would be used to determine the amount of variable costs that would be deductible. The benefit of the fixed costs of insurance and registration are only realized by driving the vehicle. It seems reasonable that these should be amortized over the number of kilometres driven. As a result the appropriate amount of the fixed costs or variable costs that can be deducted should be determined by the formula set out above which is the same formula as adopted by the Appellant.

[24] Paragraph 8(1)(j) of the *Act* sets out the right of the Appellant to claim capital cost allowance and interest. This paragraph provides as follows:

> 8(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> …
>
> (j) where a deduction may be made under paragraph (f), (h) or (h.1) in computing the taxpayer's income from an office or employment for a taxation year,
>
> (i) any interest paid by the taxpayer in the year on borrowed money used for the purpose of acquiring, or on an amount payable for the acquisition of, property that is

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the taxpayer's office or employment, and

(ii) such part, if any, of the capital cost to the taxpayer of

(A) a motor vehicle that is used, or

(B) an aircraft that is required for use

in the performance of the duties of the office or employment as is allowed by regulation;

[25] The criteria set out in paragraph 8(1)(j) of the *Act* is simply that a deduction may be made under paragraph 8(1)(h.1) of the *Act* and therefore the portion of the expenses allowed under paragraph 8(1)(h.1) of the *Act* will determine the portion of the interest and capital cost allowance that will be allowed. The portion of the expenses for the purposes of paragraph 8(1)(h.1) of the *Act* that relate to the performance of the duties of employment will be the same portion for the purposes of paragraph 8(1)(j) of the *Act*. This is the same methodology as adopted by the Appellant for each vehicle.

[26] The number of kilometres that a particular vehicle is driven during a year in the course of employment divided by the number of kilometres that such vehicle is driven during such year will determine the amount of the variable costs, the amount of the fixed costs, the amount of interest and the amount of capital cost allowance that may be claimed.

[27] The auditor for the Canada Revenue Agency (“CRA”) testified and she stated that if the Appellant would have been a sole proprietor carrying on a business and not an employee, the same methodology would not have been used and the business use of each vehicle would have been determined based on the number of kilometres that such vehicle was driven. Therefore if the Appellant would have been a sole proprietor carrying on business with four vehicles and with all of the other facts remaining the same related to the number of kilometres driven for business purposes, the total number of kilometres driven, and the amounts expended, presumably he would have been allowed to deduct the amounts that he had claimed. The auditor stated that the basis for the different treatment by the CRA was that as an employee

he could only drive one vehicle at a time but if he was in business, the vehicle could be driven by other employees (which assumes that if he was in business he would have other employees). Of course if he would have been in business, he could only drive one vehicle at a time for personal use, which is the other side of the usage coin.

[28] The general limitation for business expenses is in paragraph 18(1)(a) of the *Act* and provides that:

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

[29] Since the number of kilometres that a vehicle is driven for business purposes divided by the total number of kilometres that such vehicle is driven will be used to determine the amount of fixed and variable costs and capital cost allowance that were made or incurred for the purpose of gaining or producing income from a business, why would a different formula be used to determine the amounts expended by a taxpayer in the year in respect of the motor vehicle expenses incurred for travelling in the course of an office or employment? If the appropriate way of determining the amount of business use (and hence the portion of expenses that are deductible) when dealing with a vehicle that is used by a sole proprietor partially for business and partially for personal purposes, and this vehicle is not the only vehicle owned by the sole proprietor that is so used, is to divide the number of kilometres that a vehicle is driven for business purposes by the total number of kilometres that such vehicle is driven, then the same methodology should be used to determine the extent to which a vehicle is used for traveling in the course of employment (and hence the portion of expenses that are deductible). Generally a vehicle that is used for more than one purpose is only being used for a business purpose when someone is using it to travel for business purposes and therefore if the appropriate measure of the business use is determined by using the kilometres for that vehicle in the denominator, then this same principle should apply in determining the percentage that a vehicle is used in travelling for employment purposes.

[30] The Respondent had also raised the issue of reasonableness. In *Podlesny v. The Queen*, 2005 TCC 97; 2005 DTC 344; [2005] 1 C.T.C. 2912, Associate Chief Justice Bowman (as he then was) dealt with a case where an employee had three vehicles of which two were used in carrying out his duties of employment. The Reply that was filed in that case did not refer to section 67 of the

Act and a request at the opening of trial to amend the Reply to add a reference to section 67 of the *Act* was denied. In that case Associate Chief Justice Bowman (as he then was) made the following comments on reasonableness:

> 15 There is also the question of reasonableness which was not pleaded but which appears to have been an important consideration in the making of the assessments. It is obvious to me that Mr. Podlesny was rather aggressive in claiming the cost of two cars in computing his employment income. It is equally obvious that he liked cars. That, however, is his choice. It is not for me or the Minister to second-guess his business judgement and say that he cannot use two cars for business purposes even though he might have been able to make do with only one, and a cheaper one at that. His work is important and at times urgent. His decision to have two well maintained automobiles is not so patently absurd that I would be justified in setting it aside as irrational or capricious. (See, for example, *Gabco Ltd. v. M.N.R.*, [1968] DTC 5210). To do so would require me to substitute my business judgement for that of the taxpayer and that is not something that I am entitled or prepared to do. Moreover, I would be to some extent usurping the role of Parliament. If Parliament wants to say that you can only use one car in your business it knows how to say so, just as it has put a limit on how much CCA you can claim on a luxury car. I do not think that one can, under the guise of "reasonableness" substitute the court's judgement for that of the taxpayer….
>
> …
>
> 17 Even if the question of reasonableness had been pleaded I would not be prepared to uphold the Minister's action in allowing certain expenses on only one automobile or allowing CCA on both automobiles but limiting it to what is essentially the total amount that might be claimed on one. This sort of rough and ready approach may have a certain superficial attractiveness but it is simply not in accordance with a measured application of the rule of reasonableness. It is arbitrary. Once it is accepted that the "business" use of two automobiles is 97%, the Minister cannot simply reduce the amount allowed to a figure that he finds more palatable.

[31] Counsel for the Respondent submitted that the *Podlesny* case can be distinguished because the Minister in that case had accepted that the “business” use of the two automobiles was 97%. In this case the Respondent has accepted that all four vehicles were used by the Appellant in the course of carrying on his duties of employment and has accepted the number of kilometres that each vehicle was driven in the course of such employment. As well the Respondent has agreed that the appropriate factor to be considered when determining the percentage use of a vehicle is the number of kilometres driven. Once these facts are accepted the “business” use of each vehicle is a simple calculation and the only issue is the amount to be used in the denominator of the formula. As set out above, I do not accept that the appropriate number to be used in the denominator is the total number of kilometres that all of the vehicles were driven. I do not agree that the *Podlesny* case can be distinguished.

[32] As noted by Associate Chief Justice Bowman (as he then was) it is not appropriate for me to second guess the decision of the Appellant to use more than one vehicle. The Appellant stated that he needed different vehicles for different purposes. He called as a witness Mr. Heath who is a traffic engineer with the Regional Municipality of Waterloo, a customer of the Appellant's employer. Mr. Heath testified that the Appellant would deliver items from time to time in the Expedition. He also testified that the Appellant would also attend at meetings with him and others in the Mazda or the Porsche. Mr. Heath on one occasion needed to attend a demonstration in Minneapolis but would not fly. The Appellant drove Mr. Heath in one of his vehicles. The Appellant would also the larger vehicles to transport heavy items to trade shows.

[33] The Appellant stated that he would receive a bonus each year based on the profitability of his division. He submitted a summary of his pay stub for the period ending December 16, 2000 showing that he received a bonus for that year of $45,000. The amount of his bonus for this one year exceeded the total amount of the motor vehicle expenses claimed for both years.

[34] As a result I find that in this case the amounts claimed by the Appellant were reasonable.

[35] The Appellant also raised an issue with respect to the Explorer. While he was driving the Explorer in the course of carrying out his duties of employment in 2000 he was involved in an accident. The amount of the deductible under the insurance policy was $250. Based on the above formula, only 71.4% of the amount incurred for the deductible would be permitted as a deduction in computing his income for the purposes of the *Act*. For expenses that can clearly be identified as having only been incurred while traveling in the course of an office or employment, those amounts should be fully deductible and therefore the amount that should have been allowed for the deductible under the insurance policy should be $250 not $178. Therefore the Appellant is entitled to an additional deduction of $72 in computing his income in 2000. If the accident would have occurred while the vehicle was being used personally, then no portion of the deductible amount under the insurance policy could be claimed under paragraph 8(1)(h.1) of the *Act*. Expenses that can clearly be identified as having only been incurred while traveling in the course of performing the duties of employment are fully deductible and no portion of those expenses that can be identified as only being incurred while traveling for other reasons will be deductible under paragraph 8(1)(h.1) of the *Act*.

[36] As a result, the appeal is allowed, with costs, and this matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to the following amounts as deductions under paragraph 8(1)(h.1) of the *Act* for 2000 and 2001 and the following amounts as deductions for capital cost allowance and interest under paragraph 8(1)(j) of the *Act* for 2000 and 2001:

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Signed at Halifax, Nova Scotia, this 29th day of April 2008.

"Wyman W. Webb"

Webb J.

CITATION:	2008TCC232
COURT FILE NO.:	2007-3824(IT)I
STYLE OF CAUSE:	PETER RAGSDALE AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 15, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	April 29, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Marie-Therese Boris and Sharon Lee

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada