

Citation: 2009 TCC 114
Date: 20090225
Docket: 2008-792(IT)I

BETWEEN:

ALDO DIAZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

For the Appellant: The Appellant himself
Counsel for the Respondent: Jack Warren

REASONS FOR JUDGMENT

**(Delivered orally from the bench on
December 12, 2008, at Ottawa, Ontario)**

McArthur J.

[1] These appeals are from reassessments of the Appellant's 2003 and 2004 taxation years. The original appeals dealt with a number of disallowed expenses but at the hearing, the parties narrowed the issue down to automobile expenses only, which issue is whether the Minister of National Revenue was justified in allowing only 24.4% of the Appellant's automobile expenses, as opposed to the 72% percent claimed by him.

[2] The Appellant was a self-employed investment salesman for Primerica, and he was paid commissions for the selling of insurance and investment products. Apparently, his business ceased on December 15, 2004. However, he has also been

working fulltime for Statistics Canada since 1988, earning approximately \$90,000 annually in 2003 and 2004.

[3] The distance travelled by the Appellant in each year, and agreed to by the parties, was 37,000 kilometres. However, the Minister allowed only 24.4% of that mileage for business purposes, while as stated, the Appellant claimed 72% of that mileage for business. In his submissions, the Respondent's counsel narrowed the question down to whether 10,400 kilometres travelled by the Appellant in each of the two years was reasonable for business purposes.

[4] The Appellant had the burden of establishing that 72% of 37,000 kilometres, or about 26,000 kilometres annually, is reasonable, for business purposes, as opposed to, as stated, 10,400 which is the Minister's position. There was considerable discussion of insurance policies, two cars owned by the Appellant, a summer Infinity, and a winter Nissan Maxima, two drivers, and other matters that really did not assist in arriving at the narrow decision. Overall, the Appellant had claimed substantial losses in both years from his self-employment, \$28,988 in 2003 and \$16,628 in 2004.

[5] Under grounds relied on in the Reply to the Notice of Appeal, the Minister submitted that the motor vehicle expenses claimed in the amounts of \$3,844 and \$5,702, respectively, were personal expenses of the Appellant and were not incurred for the purpose of gaining or producing income from a business pursuant to paragraphs 18(1)(a) and 18(1)(h) of the *Income Tax Act*. Those figures cannot be reconciled with the amounts stated earlier.

[6] The question before me is did the Appellant establish on a balance of probabilities that he drove approximately 26,000 kilometres a year for business purposes. He presented no logs for the taxation years in issue, although he did enter a detailed log for the 1999 taxation year, which he stated was similar to his activities in 2003 and 2004. He spoke in generalities of travelling in the city of Ottawa to his office on St. Laurent Boulevard, two or three evenings a week, and often on weekends to smaller communities in the area. Arriving at the mileage certainly is an imprecise science. Both parties' estimates are somewhat arbitrary in part to suit their individual needs. The Appellant's income from his business does not reflect the need for the substantial automobile expenses claimed, although, certainly this alone should not determine the matter.

[7] However, on balance, I do not have sufficient evidence to conclude that the mileage allowed by the Minister is incorrect. The Appellant did not meet the onus placed on him and the appeal is dismissed.

Signed at Ottawa, Canada, this 25th day of February, 2009.

“C.H. McArthur”

McArthur J.

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COURT FILE NO.: 2008-792(IT)I

STYLE OF CAUSE: ALDO DIAZ and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: December 12, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

DATE OF JUDGMENT: December 22, 2008

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jack Warren

COUNSEL OF RECORD:

For the Appellant:	
Name:	N/A
Firm:	N/A
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada