

Docket: 2007-4063(IT)I

BETWEEN:

JOHANNES M VAN VOORN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Johannes M Van Voorn* (2007-4164(GST)I), on February 23, 2009, at London, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Tanis Halpape

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* with respect to the Appellant's the 2004 and 2005 taxation years is dismissed.

Signed at Ottawa, Canada, this 27th day of March 2009.

"Patrick Boyle"

Boyle J.

Docket: 2007-4164(GST)I

BETWEEN:

JOHANNES M VAN VOORN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeal of *Johannes M Van Voorn* (2007-4063(IT)I), on February 23, 2009, at London, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Tanis Halpape

JUDGMENT

The appeal from the reassessment made under the *Excise Tax Act*, notice of which is dated March 1, 2007 and bears number 11CU2003926, is dismissed.

Signed at Ottawa, Canada, this 27th day of March 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 176
Date: 20090327
Dockets: 2007-4063(IT)I
2007-4164(GST)I

BETWEEN:

JOHANNES M VAN VOORN,

Appellant,

and

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REASONS FOR JUDGMENT

(Delivered orally from the Bench on February 23, 2009, in London, Ontario
and modified for clarity and accuracy.)

Boyle J.

[1] These are my reasons delivered in Mr. Van Voorn's informal income tax and GST appeals heard today in London. The issues relate to the income tax losses reported and the GST input tax credits claimed by the taxpayer with respect to a construction business he operated aside from his full-time employment.

[2] The taxpayer had earlier been granted adjournments of hearing dates at trial by Justice Paris and Justice Campbell to allow for proper preparation, assembly of documents and presentation. The taxpayer consulted his bookkeeper and a tax lawyer prior to today's hearing.

[3] I refused Mr. Van Voorn's request for a third adjournment this morning. He had requested it because his bookkeeper still had not fully organized and prepared the file and was unable to appear today. I instead granted Mr. Van Voorn a recess sufficient for him to collect his papers from his bookkeeper and his bookkeeper, if desired. According to Mr. Van Voorn, the bookkeeper was aware of today's hearing date since it was set last December.

[4] In 2004, Mr. Van Voorn reported gross income for the business in question of approximately \$46,000 and expenses of approximately \$85,000. In 2005, he reported

\$30,000 of revenues and approximately \$50,000 of expenses. For each year, CRA allowed the deduction of expenses only up to the amount of revenue generated. In short, Mr. Van Voorn was denied his reported losses of \$35,000 and \$28,000 for 2004 and 2005.

[5] Mr. Van Voorn started this business in 2004, and closed it subsequently when he moved out of the province and realized his sons did not wish to continue it.

[6] I explained to Mr. Van Voorn that he has the onus of proof and must satisfy me that CRA's assessments are not correct and complete; that the reassessments are otherwise presumed correct; and that the factual assumptions pleaded by the Crown will be taken by the Court as correct unless he satisfies me with credible evidence, oral and/or written, that the assumed facts are not correct.

[7] With respect to the income tax appeal, the taxpayer has not provided the Court with credible evidence that satisfies me that he should succeed. His oral evidence was incomplete despite considerable attempts to assist and guide him, and it was inconsistent. His written evidence summarising his expenses by class and the detailed breakdown which he prepared for today, do not show total expenses in excess of total revenue and do not therefore support the losses claimed. In cross-examination, it became clear he had not prepared complete exhibits.

[8] In argument, Mr. Van Voorn tried to clarify that his schedule of revenue and expenses entered as an exhibit overlooked his payroll, salary and wages costs. This was, according to him, the reason his schedules in evidence did not show expenses in excess of revenue. However, according to Schedule "A" to the Crown's amended reply, Mr. Van Voorn claimed \$30,000 of salary and wages in 2004 and none in 2005. Thus, Mr. Van Voorn's explanation in argument cannot affect 2005; and for 2004 would still only have supported a very modest loss of approximately \$900.

[9] A further reason for not accepting even that amount is that the taxpayer's written evidence today indicates his 2004 revenues were \$51,000. That is approximately \$5,000 higher than the \$46,000 he reported.

[10] For these reasons, the income tax appeal will be dismissed.

[11] Mr. Van Voorn did not provide any additional evidence in support of his GST appeal and substantiate his claim for additional input tax credits. This would have been necessary in order to rebut the Minister's assumption that the expenses in question were not incurred in the course of the taxpayer's commercial activities.

[12] Accordingly, the taxpayer's GST appeal is dismissed.

Signed at Ottawa, Canada, this 27th day of March 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 176

COURT FILE NOS.: 2007-4063(IT)I, 2007-4164(GST)I

STYLE OF CAUSE: JOHANNES M VAN VOORN v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: February 23, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: March 27, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Tanis Halpape

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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