

Docket: 2007-2115(IT)I

BETWEEN:

ABDOLLAH VALIBEIGI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on July 10, 2009 at
Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

Agent for the Appellant: Sam Fewaz

Counsel for the Respondent: Selena Sit and Clare Benton

AMENDED JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this **21st** day of **October** 2009.

“L.M. Little”

Little J.

Citation: 2009 TCC 379
Date: 20091021
Docket: 2007-2115(IT)I

BETWEEN:

ABDOLLAH VALIBEIGI,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] In 1998, the Appellant commenced to operate a business (the “Business”).

[2] The Business was operated under the name of Pacific Renovation and Painting.

[3] In the 2002 and 2003 taxation years, the Business involved residential renovations and painting services and was operated by the Appellant as a sole proprietorship.

[4] The Business was operated by the Appellant from his principal residence located at #1107 Charland Avenue in Coquitlam, British Columbia.

[5] In the 2002 and 2003 taxation years, approximately 60% of the income of the Business came from providing painting services and 40% of the income of the Business came from carrying out renovations.

[6] The Appellant’s spouse, Nina Medic, was the bookkeeper for the Business.

[7] The Appellant testified that all of the revenue from the Business was deposited into the Business bank account located at TD Canada Trust Bank: account #0936-0322039.

[8] The Appellant and his wife also had a personal joint bank account at the Canadian Imperial Bank of Commerce: account #77-46237.

[9] When the Appellant filed income tax returns for the Business for 2002 and 2003 he reported the following amounts:

	Gross Income	Net Income
2002	\$26,400.00	\$9,665.80
2003	\$44,036.74	\$8,067.26

[10] The Minister of National Revenue (the “Minister”) determined that the Appellant failed to report all of the revenue received from the Business. The Minister determined that the Appellant failed to report the following revenue in 2002 and 2003:

	Unreported Income
2002	\$37,415.00
2003	\$ 3,857.00

[11] When the Appellant filed the income tax returns for the Business he claimed business expenses as noted below. The Minister also allowed additional business expenses.

	Business Expenses Claimed	Additional Expenses Allowed by the Minister
2002	\$16,734.20	\$12,501.00
2003	\$ 6,500.00	\$ 511.00

[12] The Minister also imposed penalties under subsection 163(2) of the *Income Tax Act* on the basis that the Appellant understated the income from the Business for the 2002 and 2003 taxation years.

B. ISSUES

[13] The issues are:

- a) Did the Minister properly determine that the Appellant failed to report gross business income from the Business for the 2002 and 2003 taxation years in the amounts of \$37,415.00 and \$3,857.00 respectively?
- b) Did the Minister properly levy gross negligence penalties?

[14] At the commencement of the hearing counsel for the Respondent stated that the unreported sales for the 2002 taxation year should be reduced from \$37,415.08 to \$36,601.71 and that the unreported sales for the 2003 taxation year should be reduced from \$3,857.18 to \$2,649.70.

C. ANALYSIS

[15] The evidence presented by counsel for the Respondent indicated that the Minister determined the unreported amounts by carrying out a bank deposit analysis of deposits made to the Appellant's bank accounts. In carrying out the bank deposit analysis, the Minister determined that there was a discrepancy between the Appellant's reported income and a number of unidentified deposits made to the Appellant's bank accounts. (Note: The deposits used by the Canada Revenue Agency (the "CRA") did not include any amounts identified as being from Freybe Sausage Ltd. (the Appellant's wife's former employer) or from the Government of Canada (i.e. Employment Insurance benefits paid to the Appellant's wife).)

[16] In cases of this nature, officials of the CRA are entitled to challenge the income reported by a taxpayer by carrying out a net worth analysis or by reviewing the actual deposits made to the taxpayer's bank account in order to determine if the taxpayer reported all of his income when he filed his income tax returns.

[17] Officials of the CRA concluded that the Appellant did not include as income all of the deposits made to his bank accounts and issued Reassessments for the 2002 and 2003 taxation years to include unidentified bank deposits as income for those years.

[18] The law is clear that when the Minister issues Reassessments against a taxpayer, the taxpayer has the onus of proving that the unidentified bank deposits that were included as income did not represent unreported income.

[19] I have considered that evidence that was presented and I have concluded that the majority of the unidentified bank deposits made to the Appellant's bank accounts represent unreported income from the Business.

Inheritance Received by the Appellant's Wife

[20] The Appellant's wife testified under oath that she had received an inheritance from her grandfather in the amount of \$15,000.00. The Appellant's wife testified that she visited her mother in Bosnia in 2002 and during the visit she received an amount of \$11,000.00 in Canadian funds from her mother.

[21] The Appellant's wife testified that upon her return to Canada she deposited the amount of \$11,000.00 in the joint bank account (see Exhibit R-1, Tab 2, working paper 5000-2). This exhibit indicates that the amount of \$11,000.00 was deposited to the joint bank account at the C.I.B.C.: account #77-46237 on October 7, 2002.

[22] The Appellant's wife also testified that a friend of hers visited her mother in Bosnia a few months later and received a further sum of \$4,000.00 from the Appellant's wife's mother. Upon her return to Canada the friend gave the Appellant's wife the \$4,000.00 that she had received. The Appellant's wife deposited this amount of money in the joint bank account at the C.I.B.C.

[23] I accept the evidence provided by the Appellant's wife with respect to the inheritance of \$15,000.00 that she received from her grandfather. It therefore follows that the following amounts should be reduced from the Appellant's income:

2002	\$11,000.00
2003	\$ 4,000.00
Total:	\$15,000.00

Expenses

[24] The Appellant's agent said that he does not dispute the expenses that the Appellant has been allowed by officials of the CRA in 2002 and 2003.

Penalties

[25] I have concluded that the Minister was correct to impose penalties with respect to the unidentified bank deposits. I have reached this conclusion because of the numerous unidentified bank deposits. For example, in 2002 there were 26 unidentified deposits to the C.I.B.C. bank account and in 2003 there were 14 unidentified deposits to this bank account. In addition, in 2002 there were 14 unidentified deposits made to the TD Canada Trust bank account and in 2003 there were 14 unidentified deposits made to the TD Canada Trust bank account. In my opinion a taxpayer who operates a business such as the Business in question must have an accounting system which enables him to properly identify bank deposits. I have concluded that the failure by the Appellant to maintain a proper accounting system to identify bank deposits justifies the Minister in imposing the penalties.

~~[26] The appeals are to be allowed, without costs, to enable the Minister to deduct a total of \$15,000.00 from the unidentified bank deposits. No further adjustments should be made to the unreported income as determined by the Minister.~~

[26] By letter dated August 10, 2009, counsel for the Respondent indicated that the Respondent is prepared to allow additional deductions of \$2,020.85.

[27] In the letter dated August 10, 2009, counsel for the Respondent stated as follows:

... the total deductions allowed should be \$11,813.37 for 2002 and \$5,207.48 for 2003. ...

[28] I agree with the position as outlined by counsel for the Respondent and I order that the appeals be allowed, without costs, to recognize the concessions as noted above.

Signed at Vancouver, British Columbia, this **21st** day of **October** 2009.

“L.M. Little”

Little J.

CITATION: 2009 TCC 379

COURT FILE NO.: 2007-2115(IT)I

STYLE OF CAUSE: Abdollah Valibeigi and
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: July 10, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: August 4, 2009

**DATE OF AMENDED
JUDGMENT:** **October 21, 2009**

APPEARANCES:

Agent for the Appellant: Sam Fewaz

Counsel for the Respondent: Selena Sit and Clare Benton

COUNSEL OF RECORD:

Counsel for the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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