

Docket: 2008-3552(IT)I

BETWEEN:

EARL BURNETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 18, 2009, at Toronto, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Ariane Asselin (student-at-law)
Jenny P. Mboutsiadis

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* with respect to the appellant's the 2003 taxation year is dismissed without costs.

The appeal from the reassessment made under the *Income Tax Act* with respect to the appellant's 2004 taxation year is allowed in part, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the reasons herein.

Signed at Ottawa, Canada, this 1st day of September 2009.

"Patrick Boyle"

Boyle J.

Citation: 2009 TCC 430
Date: 20090901
Docket: 2008-3552(IT)I

BETWEEN:

EARL BURNETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] Mr. Burnett has appealed reassessments by the Canada Revenue Agency (“CRA”) denying or reducing his rental losses in respect of three Mississauga residential properties.

[2] At trial he withdrew his appeal as it relates to the Black Walnut Trail home. The CRA disallowed his losses in full from that property on the basis he was not in the business of renting it out.

[3] The losses relating to the Allcroft Trail home were also disallowed in full by the CRA on the basis Mr. Burnett was not in the business of renting out that home.

[4] The reassessment accepted that Mr. Burnett was in the business of renting out the Beechnut Row home, however, it disallowed a number of the expenses as being either capital, unsubstantiated or personal. At the hearing Mr. Burnett accepted the CRA’s characterization of the expenses claimed but wished to substantiate some of the previously unsubstantiated expenses with receipts totalling approximately \$ 2,000 which the CRA had not previously been given.

I. Allcroft Trail

[5] Mr. Burnett has been unable to demonstrate to the Court with credible and corroborated evidence that his occasional short-term rental of parts of his home while he was largely out of town travelling for extended periods on business constituted a rental business pursued by him in a commercial and business-like fashion. The facts that he lived in parts and rented out parts of the same houses, including the one on Allcroft Trail, designated them to be his principal residences at different times, sold or planned to sell them for tax-exempt capital gains, and owned this property jointly with his sister although he claimed all of the losses, are facts which, for practical purposes, underscored the need for him to clearly satisfy me of the extent of this property's availability for rent and the commerciality of such an approach to renting out parts of his home. He has not. He did not develop nor describe his business plan for renting out only parts of a traditional single family home while the landlord lived in the basement without a separate entry and shared the main floor kitchen. He has never made net rental revenue and acknowledged his economic profit is from his tax-exempt principal residence capital gain. He did not have or make any projections on ultimate profitability absent a tax-free gain following a sale.

[6] I am also troubled by the glaring inconsistencies of Mr. Burnett's answers to the two CRA Rental Questionnaires. In his 2006 questionnaire, Mr. Burnett said he had rented out the Allcroft Trail property from August to September 2003 and from July to December 2004. However, in his 2008 questionnaire, he indicated it was rented out from May to September 2003 and from May to December 2004. There are similar inconsistencies with respect to the other two properties. He did not seek to explain this when asked in cross-examination.

[7] Mr. Burnett is clearly a smart and articulate person with considerable business savvy and experience. He is a Vice-President of a major Canadian bank. His failure to describe a commercial business plan or financial projections in a business-like way was not a reflection of his lack of business smarts and knowledge.

[8] Mr. Burnett's ownership of his Allcroft Trail home and his limited rentals of parts of it are not comparable the facts in cases such as *Brian J. Stewart v. The Queen*, 2002 DTC 6983, wherein the Supreme Court of Canada was considering a rental property that the taxpayer never used personally. In the case of the Allcroft Trail property, there is a significant personal element and I have not been satisfied by Mr. Burnett that he approached his rental activities in a sufficiently commercial manner to constitute a source of income.

[9] Mr. Burnett's appeal with respect to his Allcroft Trail home will be dismissed.

II. Beechnut Row

[10] The CRA accepted, and at trial the Crown agreed that Mr. Burnett's rental activities in respect of his Beechnut Row property constituted a business. His claimed rental losses were allowed in part by the CRA in the reassessments. Based upon the evidence I heard from Mr. Burnett in respect of Beechnut Row, and the evidence from the CRA auditor on why she treated Beechnut Row differently from the taxpayer's other two properties, the CRA was more generous to him than I would have been.

[11] While Mr. Burnett has put forward a further \$2,000 in receipted expenditures in respect of his Beechnut Row home, I note that the majority appears to be of a capital nature. Based upon a limited review of a large number of receipts, and with the benefit of the Crown's submissions on them, I will allow Mr. Burnett's appeal in respect of the Beechnut Row to the extent only of allowing the deduction of an additional \$400 in rental expenses in 2004.

III. Conclusion

[12] I am allowing the taxpayer's appeal in part, without costs, and will be referring his 2004 reassessment back to the Minister for reconsideration and reassessment to permit the deduction of an additional \$400 of business expenses in respect of his Beechnut Row rental activities.

Signed at Ottawa, Canada, this 1st day of September 2009.

"Patrick Boyle"

Boyle J.

CITATION: 2009 TCC 430

COURT FILE NO.: 2008-3552(IT)I

STYLE OF CAUSE: EARL BURNETT v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 18, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: September 1, 2009

APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Ariane Asselin (student-at-law)
Jenny P. Mboutsiadis

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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