

BETWEEN:

KISHANTHAN NITHYANANDAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 25, 2011 at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Stephen Oakey (Student-at-law) John Grant

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the Appellant's 2004 and 2005 taxation years are allowed, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

- (a) in computing the Appellant's income from his sole proprietorship in 2004 the Appellant is entitled to deduct \$2,274 for accommodations; and
- (b) in computing the Appellant's income from his sole proprietorship in 2005 the Appellant is entitled to deduct \$9,200 for the amount he paid to his spouse for the services that she rendered in relation to the sole proprietorship.

The Appellant is entitled to costs which are fixed in the amount of \$500.

Signed at Ottawa, Canada, this 14th day of March, 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC160
Date: 20110314
Docket: 2010-1902(IT)I

BETWEEN:

KISHANTHAN NITHYANANDAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] These appeals relate to the denial of certain amounts that were claimed by the Appellant as expenses in determining his income from a sole proprietorship in 2004 and 2005. At the commencement of the hearing the Appellant indicated that the deductions in issue were for the following two items:

2004:

Accommodations: \$2,274

2005:

Salaries and wages: \$9,200

[2] Following the presentation of the evidence at the hearing, counsel for the Respondent conceded that the Appellant should be allowed the deduction for accommodation of \$2,274. As a result the only remaining issue is whether the Appellant is entitled to deduct \$9,200 that was identified in the schedule that was submitted at the hearing as “salaries and wages”.

[3] The Appellant worked full time for Ford Motor Company in 2004 and 2005. In addition to his job, the Appellant operated, as a sole proprietorship, a consulting business that was related to leak test applications for manufacturing companies to determine if the products that they were manufacturing were leaking.

[4] The Appellant's business was involved in one project in 2004 and 2005. There was a Phase A in 2004 and a Phase B in 2005. The Appellant had hired an arm's length person as a contractor and this contractor provided services in 2004 and 2005. In 2005 the Appellant needed additional help and he retained his wife who has a Bachelor of Science degree from the University of Windsor in Honours electrical engineering / computer option. The Appellant stated that his wife would "supervise the [installation] and implementation and debugging of a particular hardware portion of it". This work was performed at the customer's site. The project assigned to his wife lasted for about 4 to 6 months.

[5] The Appellant stated that he paid his wife \$9,200 in four payments made throughout the year. In paragraph 9(g) of the Reply, it is stated that the Appellant's spouse did report \$9,200 as gross business income in computing her income for 2005. As well, the following are the total amounts deducted by the Appellant as "salaries, wages and benefits" (which was how the amount paid to his wife in 2005 was claimed) in determining his income for 2004 and 2005:

	2004	2005
Salaries, wages and benefits	\$24,535	\$19,700

[6] The amount claimed for 2005 when his wife was providing services was less than the amount that he claimed for 2004 when she was not providing services to his sole proprietorship.

[7] I accept the testimony of the Appellant. It is more likely than not that he retained the services of his wife in 2005 and that she earned and was paid \$9,200 for these services.

[8] As a result the appeals are allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

- (a) in computing the Appellant's income from his sole proprietorship in 2004 the Appellant is entitled to deduct \$2,274 for accommodations; and

- (b) in computing the Appellant's income from his sole proprietorship in 2005 the Appellant is entitled to deduct \$9,200 for paid to his spouse for the services that she rendered in relation to the sole proprietorship.
- [9] The Appellant is entitled to costs which are fixed in the amount of \$500.

Signed at Ottawa, Ontario, this 14th day of March, 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC160

COURT FILE NO.: 2010-1902(IT)I

STYLE OF CAUSE: KISHANTHAN NITHYANANDAN AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 25, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: March 14, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Stephen Oakey (Student-at-law) John Grant

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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