

Docket: 2009-315(IT)I

BETWEEN:

LISA METZA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on June 28, 2011, at Cranbrook, British Columbia

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Rob Whittaker

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeals from the reassessments by the Minister of National Revenue under the *Income Tax Act* of the Appellant's 2004 and 2005 taxation years are allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that the Appellant is entitled to business expense deductions for each of the taxation years as set out below:

For 2004:

1. Travel: 70% of the \$7,194.85 claimed by the Appellant in her 2004 income tax return;
2. Legal Expenses: \$ 7,000, the full amount claimed by the Appellant in her 2004 income tax return; and

3. Business Use of Home: 60% of the \$7,475.93 claimed by the Appellant in her 2004 income tax return.

For 2005:

1. Travel: 70% of the \$6,790.92 claimed by the Appellant in her 2005 income tax return;
2. Business Use of Home: 60% of the \$4,943 claimed by the Appellant in her 2005 income tax return.

Signed at Ottawa, Canada, this 5th day of July 2011.

“G. A. Sheridan”

Sheridan J.

Citation: 2011TCC331
Date: 20110705
Docket: 2009-315(IT)I

BETWEEN:

LISA METZA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant, Lisa Metza, is appealing reassessments by the Minister of National Revenue which disallowed certain business expense deductions claimed in 2004 and 2005.

[2] The Appellant represented herself and testified at the hearing. Called for the Respondent was Clive Wheatley, the Appeals Officer who reviewed her Notice of Objection.

[3] As is often the case in Informal Procedure appeals involving business expenses, the Appellant had not previously disclosed to the Respondent some of the documentation she intended to rely on at the hearing. After reviewing the documentation with his client and having heard the Appellant's evidence in respect thereof, counsel for the Respondent conceded that the Appellant was entitled to deduct the following amounts in 2004 and 2005:

For 2004:

1. Travel: 70% of \$7,194.85, the amount claimed by the Appellant in her 2004 income tax return; and

2. Legal Expenses: \$ 7,000, the full amount claimed by the Appellant in her 2004 income tax return.

For 2005:

1. Travel: 70% of \$6,790.92, the amount claimed by the Appellant in her 2005 income tax return;

[4] The only issues then remaining for the Court's consideration were the Appellant's entitlement to the amounts claimed in her 2004 and 2005 income tax returns in respect of Office Expenses and Business Use of Home.

[5] By way of background, the Appellant is in the business of designing and sewing traditional Bavarian costumes. She works out of her home and markets her merchandise primarily at German folk festivals across Canada and the United States. She uses fabric, thread and other items typically associated with sewing in her business. Her home is equipped with cutting tables, merchandise racks, an iron and ironing board, heavy duty shelving for the fabric and accessories used to make the clothing, storage containers, display tables and other marketing paraphernalia used at the festivals. The Appellant is passionate about sewing and takes great pride in her work as a seamstress.

Office Expenses – 2004

[6] The Appellant claimed \$5,848.72 as Office Expenses in 2004. At the audit stage, the auditor disallowed the entire amount because the Appellant had not provided documents in support of her claim. However, when reviewing her file at the objection stage, Mr. Wheatley took the view that as the Appellant was carrying on a business in 2004, it followed that she would have had *some* expenses. In the absence of supporting documentation, he felt a better approach would be to allow \$3,000, approximately the same amount claimed by the Appellant and accepted by the Minister in 2005. This strikes me as entirely reasonable and since the Appellant produced no receipts at the hearing, I can see no justification for interfering with the \$3,000 amount already allowed by Mr. Wheatley.

Business Use of Home – 2004 and 2005

[7] In each of the taxation years, the Appellant claimed \$7,475.93 and \$4,943.21, respectively, for the business use of her home, both of which amounts were disallowed in full. At the objection stage, after discussing the matter with the

Appellant and her tax preparer at H&R Block, Mr. Wheatley allowed 50% of the amounts claimed. At the hearing, the Appellant argued that because her business had effectively taken over her home, she ought to be able to claim 90% of her residence costs.

[8] While she provided no floor plan or photos of her home, the Appellant was credible in her description of it and its use in her business. It is a small two-bedroom house which, in 2004 and 2005, she shared with her son. While she would have preferred to have a separate studio in which to carry out her craft, she has not yet managed to achieve this dream. As a result, much of her home was taken over by her sewing business. The living room was where she did the cutting, sewing, ironing and other tasks associated with making the costumes. Her bedroom was dedicated to storing the merchandise and some of the sewing supplies. The second bedroom, her son's, housed the computer used for correspondence that had to be written in English. (The Appellant's first language is German and she said she had to rely on her son to look after this for her because she was not as fluent in written English as she would have liked to be. Although a translator was provided for her at the hearing, the Appellant impressed me with her fluency in English.) The basement was used to some extent for storing fabrics but this ultimately proved unsatisfactory because of its dampness. The kitchen, bathroom, a corner of the living room housing the television and a small sleeping area were for personal use.

[9] While I accept Mr. Wheatley's evidence that the 50% that he allowed on objection is higher than is typically allowed for a business use of home deduction, each case must be decided on its particular facts. Based on the additional information provided by the Appellant at the hearing, I am satisfied that the appropriate percentage of business use of her home was 60% of the amounts originally claimed.

[10] The appeals of the 2004 and 2005 taxation years are allowed in accordance with the reasons set out above.

Signed at Ottawa, Canada, this 5th day of July 2011.

"G. A. Sheridan"

Sheridan J.

CITATION: 2011TCC331
COURT FILE NO.: 2009-315(IT)I
STYLE OF CAUSE: LISA METZA AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Cranbrook, British Columbia

DATE OF HEARING: June 28, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: July 5, 2011

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Rob Whittaker

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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