Docket: 2010-595(IT)I

BETWEEN:

THÉRÈSE DESGAGNÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on April 6, 2011, at Chicoutimi, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the appellant:	The appellant herself
Counsel for the respondent:	Simon Vincent

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the reassessments made under the *Income Tax Act* for the 2006 and 2007 taxation years is allowed, without costs, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the following basis:

1. The gown and bands are to be included in class 12 and not class 8 and, consequently, the appellant may, if she so chooses, deduct the additional capital cost allowance.

2. The appellant's expenses should be increased by $14.70 in 2006 and $1.33 in 2007.

Signed at Ottawa, Ontario, this 24th day of February 2012.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 24th day of July 2012

François Brunet, Revisor

Citation: 2012 TCC 63
Date: 20120224
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BETWEEN:

THÉRÈSE DESGAGNÉ,

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and

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REASONS FOR JUDGMENT

Jorré J.

Introduction

[1] This is an appeal from reassessments dated August 25, 2008, for the 2006 and 2007 taxation years.

[2] The appellant is a lawyer and she regularly appears in civil court proceedings.

[3] I will examine separately the evidence and the law applicable to the issues.

Deemed benefits

[4] The appellant is a shareholder of the corporation Gestion R.G.T.L. Inc. The common operating costs of the law firm where the appellant works are paid by Gestion R.G.T.L. Inc.

[5] During the two taxation years at issue, the appellant's accounts receivable to Gestion R.G.T.L. were over $15,000. No interest was charged on this debt.

[6] The facts I have described in the preceding paragraph are not in dispute.

[7] In a commercial context, a supplier often gives clients a period for paying invoices, for example 30 or 60 days before charging interest. However, it is not normal for a supplier to indefinitely refrain from charging interest on an account receivable.

[8] The Minister submits that, under subsections 15(1) and 15(9) and subsection 80.4(2) of the *Income Tax Act*, there is a deemed benefit. The details about the amount of the account receivable and the calculation of the benefit appear at tab 6 of Exhibit I-1. The calculation is not in dispute.

[9] Here are the relevant provisions of these subsections:

> 15(1) Where at any time in a taxation year a benefit is conferred on a shareholder, … by a corporation …
> …
> the amount or value thereof shall … be included in computing the income of the shareholder for the year.
>
> (9) Where an amount in respect of a loan or debt is deemed by section 80.4 to be a benefit received by a person … the amount is deemed … to be a benefit conferred in the year on a shareholder….
>
> 80.4(1) …
>
> (2) Where a person … was
>
> (*a*) … a shareholder of a corporation,
> …
>
> and by virtue of that shareholding that person … received a loan from, or otherwise incurred a debt to, that corporation, … the person … shall be deemed to have received a benefit in a taxation year equal to the amount, if any, by which
>
> (*d*) all interest on all such loans and debts computed at the prescribed rate on each such loan and debt for the period in the year during which it was outstanding;
>
> exceeds
>
> (*e*) the amount of interest for the year paid on all such loans and debts not later than 30 days after the later of the end of the year ….

[10] There is no doubt that these provisions apply in this case. The appellant is a shareholder of Gestion R.G.T.L. and owed a debt to this corporation; no interest was paid.

Clothing

[11] The appellant considers this to be the most important issue. She appears regularly before courts.

[12] In certain circumstances, she has to be gowned.

[13] In other circumstances, when gowning is not required, the appellant must wear dark clothing. See, for example, subsection 19(2) of the *Rules of the Court of Appeal of Québec in Civil Matters*, the last paragraph of section 36 of the *Rules of practice of the Superior Court of Québec in civil matters* and section 8 of the *Regulation of the Court of Québec*.

[14] The appellant bought black clothing for these purposes.

[15] The appellant testified that it is not her style to wear such black clothing and that she wears it to go to court and she also wears it at work on days when she has to go to court. On days on which she does not go to court she does not normally wear the clothing at issue. It is rare that she wears this clothing when she is not on duty.

[16] During the two years at issue and previous years, the appellant bought black clothing, added them to class 8 and claimed a class 8 capital cost allowance.

[17] In previous years, the appellant also bought other black clothing, gowns, bands and furnishings that she added to class 8.

[18] In establishing the reassessments, the Minister allowed gowns and bands to be included in class 8; however, the Minister denied the inclusion of the black clothing.

[19] More specifically, he denied the inclusion of clothing bought during the two years at issue, and he reduced the opening balance of class 8 at the beginning of 2006 in such a way as to exclude the purchase of clothing before 2006 and to include the depreciated value of the gowns and furnishings. (See, *inter alia*, tab 8 of Exhibit I-1, in particular note 1 at the bottom of the first page.)

[20] In support of her appeal, the appellant cites *Charron v. Canada* [1997] T.C.J. No. 1181 (QL), a decision of this Court regarding a lawyer who claimed clothing costs. That case also refers to the dress code required under the rules of practice of different courts. In *Charron*, the Court allowed the expense claimed.

[21] However, the circumstances under *Charron* seemed to be different from those in this case. In *Charron*, there was no description of the clothing at issue; however, the parts of the provisions of the rules cited at paragraph 18 of the judgment refer only to situations where gowning is required, which would imply that the clothing at issue was very specialized clothing such as the gown and bands that, in practice, are only worn in court.

[22] Intrinsically, the cost of purchasing clothing is generally a personal expense which is not deductible under paragraph 18(1)(*h*) of the *Income Tax Act*. It is only in special circumstances that clothing purchases are not considered a personal expense. (See also the decision by Paris J. in *Rupprecht v. The Queen*, 2007 TCC 191, at paragraphs 12, 13 and 17 to 19, which was affirmed by the Federal Court of Appeal, 2009 FCA 314.)

[23] In this case, we are not in one of these limited situations where the cost of clothing may be deducted. Although it is dark clothing, it is still clothing that can be worn in general at work or elsewhere. It is not very specialized clothing or a uniform.

[24] Thus, the Minister correctly decided not to allow the deduction for clothing expenses.

Adjustment to the class 8 opening balance

[25] The appellant submits that the Minister cannot adjust the class 8 opening balance at the beginning of 2006 because it would be in part an adjustment in statute-barred years.

[26] I cannot accept this argument because it is settled law that an assessment involves a determination of the amount of tax payable for a year. An assessment does not establish the underlying facts for the coming years, including the balance of different accounts that may be relevant for future assessments.

[27] In *Coastal Construction and Excavating Ltd. v. Canada*, [1996] T.C.J. No. 1102 (QL), Justice Bowman, subsequently the Chief Justice, explained the following:

> . . . The Minister is obliged to assess in accordance with the law. If he assesses a prior year incorrectly and that year becomes statute-barred this will prevent his reassessing tax for that year, but it does not prevent his correcting the error in a year that is not statute-barred, even though it involves adjusting carry-forward balances from previous years, whether they be loss carry-forwards or balances of investment tax credits. *New St. James Limited v. M.N.R.*, 66 DTC 5241; *Allcann Wood Suppliers Inc. v. The Queen*, 94 DTC 1475. No question of estoppel arises: *Goldstein v. The Queen*, 74 DTC 1029.

(This translation of the excerpt is taken from paragraph 16 of *Leola Purdy Sons Ltd. v. The Queen*, 2009 TCC 21.)

[28] As for the amount of the adjustment, I accept the appellant's testimony that she bought the furnishings for her office.

[29] The appellant also testified that the reduction of the opening balance should include more than just the clothing. However, I did not hear any specific evidence regarding past purchases, even for a few years before the years at issue.

[30] Class 8 allows a 20% annual deduction according to the declining balance method; this rate allows a depreciation of over 60% after five years. Consequently, class 8 purchases made when the appellant began her practice would have very little effect on the opening balance in 2006. In contrast, if purchases were made under this class over the five years preceding the years at issue, these purchases would probably have a significant impact on the opening balance.

[31] The appellant started practising law in 1994. It is undoubtedly difficult to establish the original purchase costs of the furnishings. However, we would expect the appellant to be able to provide more detailed evidence regarding the balances and additions to class 8 during at least a few years before the two years at issue, which might have made it possible to provide some evidence of a different amount.

[32] In the absence of evidence that would enable me to find that the opening balance should be a larger amount than the amount established by the auditor, there is nothing that would allow me to find that a different opening balance should be used.

Class 8

[33] The appellant included the gown and bands in class 8, perhaps because that is what was done in *Charron*. In *Charron*, it does not seem as though the appropriate class was discussed, but I considered this issue when drafting these reasons.

[34] The issue of whether class 8 is the correct class was never raised at the hearing and, therefore, I did not have the benefit of any submissions by the parties on that issue. However, in view of subsection 18.5(3) of the *Tax Court of Canada Act*, and given that the amount of the taxes affected would be very small, rather than ask the parties to make additional submissions, I concluded that it would be best to rule directly on this issue while making it known that I did not have the advantage of submissions from the parties.

[35] Class 12 of Schedule II of the *Income Tax Regulations* includes in paragraph (*i*) "a uniform".

[36] The Nouveau Petit Robert, 2006, provides the second definition of "uniforme" as follows:

> [TRANSLATION]
> 2. (1831) specific suit or clothing, required to be worn by a group (professional, etc.). *Bailiff's* uniform, *contractor's uniform. [TRANSLATION]* "*his caricature of a clergyman's uniform, homberg, long black frock coat*" (Mirbeau).

[37] Accordingly, the gown and bands that a lawyer wears in court are covered by paragraph (*i*) of class 12.

[38] The gown and bands thus fall under class 12 which has a higher depreciation rate than class 8.

Interest and bank fees

[39] In 2006 and 2007, the appellant claimed interest deductions in the amounts of $4,649.62 and $4,394.68, respectively. A portion of these amounts were various bank fees and not interest.

[40] The auditor accepted that the bank fees designated as [TRANSLATION] "monthly billing" were for business purposes and allowed a deduction for these amounts.

[41] As to the other bank fees, the auditor concluded that they were related to the line of credit.

[42] The auditor found that the current account for the practice typically had little money in it and that, from time to time, the appellant wrote personal cheques in her name, which generally generated a bank overdraft. The overdraft was very quickly covered by a deposit from the line of credit. I also note that when the balance of the current account was greater than required for immediate needs, the surplus was used to make payments on the line of credit.

[43] After noting that the line of credit was used partly to pay for the cheques to the appellant, the auditor concluded that the line of credit was used in part for personal purposes; he evaluated the percentage of personal use at 25%. (See, *inter alia*, questions 39 to 53 of the transcript and tab 7 of Exhibit I-1.)

[44] As evidence, the appellant filed Exhibits A-2 to A-4 that provide details of various bank fees. I am satisfied that the amounts of $5.25 and $9.95 on the first pages of these Exhibits are bank fees exclusively related to the monthly billing. When these amounts are added to the amounts of the monthly billing calculated by the appellant, it produces a total of $434.70 in 2006 and $421.33 in 2007, or $14.70 and $1.33, respectively, more than the amounts used by the Canada Revenue Agency.

[45] Thus, the expenses must be increased by $14.70 in 2006 and $1.33 in 2007.

[46] The appellant also testified that she paid personally, and not from the current account of the practice, certain practice expenses, such as the licence plates, auto insurance, driver's licence and vehicle maintenance, or the purchase of the clothing discussed above. Consequently, she submits that even though the personal cheques in the appellant's name were funded from the line of credit for the practice, these cheques were used to pay for business expenses and consequently, still represented a business use of the line of credit.

[47] I accept the appellant's testimony that the personal cheques were used to pay expenses of the practice.

[48] However, the appellant's evidence does not make any distinction between the amounts withdrawn by cheque to pay for business expenses and the amounts withdrawn to pay for other expenses. Moreover, part of the motor vehicle expenses

was personal; the denied clothing expenses were also personal. There may have been other personal expenses paid with these cheques.

[49] There is therefore no doubt that part of the use of the line of credit was personal. Was this use less than 25%? I do not see what evidence could lead me to determine another specific percentage. Consequently, there will be no other changes in the amount of deductible interest.

[50] There is also $180 in fees for negotiating credit in 2006 and 2007. These fees are related to the line of credit. The deductibility of these fees must be established in the same proportion as the deductibility of interest since the line of credit was used for commercial and personal purposes. Given that these fees are included in the interest allowed at 75%, there is no reason to increase the deductible proportion of these two amounts of $180.

Conclusions

[51] For these reasons, the appeal will be allowed, without costs, and the matter will be referred back to the Minister for reconsideration and reassessment on the basis that:

1. The gown and bands are to be included in class 12 and not class 8 and, consequently, the appellant may, if she so chooses, deduct the additional capital cost allowance.

2. The appellant's expenses should be increased by $14.70 in 2006 and $1.33 in 2007.

Signed at Ottawa, Ontario, this 24th day of February 2012.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 24th day of July 2012

François Brunet, Revisor

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APPEARANCES:

For the appellant:	The appellant herself
Counsel for the respondent:	Simon Vincent

COUNSEL OF RECORD

For the appellant:	
Name:	
Firm:	
For the respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada