

Docket: 2018-561(IT)I

BETWEEN:

EVELYN E. WILSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on February 7, 2019, at Hamilton, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Appellant:                      The Appellant herself  
Counsel for the Respondent:        Rhoda Lemphers

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**JUDGMENT**

IN ACCORDANCE WITH the attached Reasons for Judgment, the appeal in respect of the Appellant's 2009,2010,2011,2012,2013,2014 and 2015 taxation years is allowed, without costs, solely on the basis that the Appellant's net income from her bed and breakfast business was \$13,743, \$14,427, \$15,196, \$15,656, \$17,589, \$18,368 and \$18,996, respectively.

The matter is referred back to the Minister of National Revenue for reconsideration and reassessment.

Signed at Ottawa, Canada, this 25<sup>th</sup> day of February 2019.

“R.S. Boccock”

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Boccock J.

Citation: 2019 TCC 42  
Date:20180225  
Docket: 2018-561(IT)I

BETWEEN:

EVELYN E. WILSON,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Bocock J.

[1] The Appellant (“Ms. Wilson”) failed to file income tax returns for taxation years 2009 to 2015, inclusive (the “assessed years”). The Minister assessed Ms. Wilson as a non-filer under subsection 152(7) of the *Income Tax Act*, R.S.C. 1985 c.1, as amended (the “Act”).

[2] In doing so the Minister assessed Ms. Wilson for the following amounts for each of the assessed years:

- a) pension benefits received from a registered pension plan (the “RPP amounts”) entirely based upon the payor’s filings;
- b) Canada Pension Plan benefits (“CPP benefits”) received by Ms. Wilson, again traced through payor filings with the Minister;
- c) Old Age Security Act pension benefits (“OAS benefits”) received by Ms. Wilson and detected through payor records;
- d) in respect of income from a bed and breakfast business operated from Ms. Wilson’s house (the “B&B Business”), the following amounts on account of:

- (i) gross business income in each assessed year of \$30,000;
  - (ii) net business income in each assessed year of \$30,000 – by implication allowing no deduction of business expenses against gross business income; and
  - (iii) unremitted Canada Pension Plan contributions on self-employed earnings of the B&B Business for each assessed year
- e) late filing penalties for each assessed year relating to taxes payable and unremitted beyond the balance due date (the “late filing penalties”);
  - f) late filing penalties for each assessed year relating to Canada Pension Plan contributions on self-employment earnings and unremitted beyond the balance due date (the “CPP penalties”);
  - g) interest on each of the foregoing amount in accordance with the *Act*.

[3] The Minister gave Ms. Wilson credit for taxes withheld at source on the amounts received from third party payors. Ms. Wilson provided some anecdotal testimony that she felt the RPP benefits she received contained some arithmetic errors as to either the over-statement of the gross amount paid or under-statement of tax withheld. No specific evidence, either oral or documentary, supported this claim. Beyond that and aside from the reasons described below concerning access to records, Ms. Wilson did not contest the RPP amounts, the CPP benefits, the OAS pension or having not filed her tax returns related to the assessed years. Therefore, as a preliminary matter, the Court finds the Minister’s assessments for these amounts unassailed and entirely reliable. As such, the assessments concerning these amounts are correct.

[4] The balance of this appeal and these reasons deal with the B&B Business. Ms. Wilson no longer owns the more than 21 acres and dwelling from which she operated the B&B Business. It was subject to a mortgagee’s final order of foreclosure and ultimately repossessed under executed writ of possession in July, 2018. The Mortgagee, one Laurent Carrier, was a non-institutional lender who foreclosed thereby extinguishing the mortgage and, according to Ms. Wilson, subsequently sold the property at a much greater value.

[5] Whatever the actual dealings were, the outcome is clear: Ms. Wilson is near destitute, emotionally frail and distanced from the bulk of the documents relating

to her B&B Business. Further, any further delay in hearing the appeal would not have helped. Ms. Wilson has no prospective plan or hope of acquiring access to such documents, even if she knew where they were and what still existed. It is with this limited access to the business records, lost to Ms. Wilson for at least a year, which the Court undertakes its review and determination of the Minister's alternative assessment.

[6] Certain documents were made available which Ms. Wilson salvaged after the foreclosure action. This "evidence of a kind" is neither perfect nor unassailable; it is however evidence previously used by the mortgagee, Mr. Carrier, in the action to wrest the property from Ms. Wilson. Using the best evidence rule and the inherent credibility given its adverse third party source, the Court relies on it as corroborative of Ms. Wilson's oral testimony, to a point.

[7] To begin, the Minister has ascribed to Ms. Wilson gross income of \$30,000.00 for each assessed year. Ms. Wilson asserts it was nearer to \$10,000 and never more than \$15,000. When pressed to provide an amount for each assessed year, even within that stated range, she refused. With an alternative assessment, a taxpayer may challenge the need for the alternative assessment, the Minister's methodology or any error in calculation: *Golden v HMQ*, 2016 TCC 396, at paragraphs 11 and 12. Ms. Wilson did not file tax returns for the assessed years. This left the Minister with no choice but to employ her rights under subsection 152(7) and alternatively assess. Ms. Wilson summoned no evidence concerning the Minister's methodology. She provided no alternative or preferred method or records to suggest a different approach was warranted. Lastly, there was no suggestion beyond hunch and her own vague generic view that gross income was not \$30,000.00 (the "ascribed income") for each assessed year.

[8] Further, the Minister's gross income assumptions are arithmetically moderate and even conservative in light of Ms. Wilson's own tendered evidence and description of her business prepared by her in June, 2016. This description appears to have been appended to documents from the foreclosure proceeding. Ms. Wilson calculated that the 3 B&B suites, operational since 2006, at 300 nights per annum and \$150.00 per night would yield annual revenue of \$135,000 ("optimal revenue"). Ms. Wilson then offered that because of ongoing litigation, optimal revenue was reduced to between \$50 to \$100 per night. This seems incongruous because the foreclosure proceeding itself did not substantively commence until March 2016, a date beyond any assessed year.

[9] Pure mathematics bears the mark of reasonableness on the Minister’s part. The Minister’s ascribed income is 22% of optimal income. Using an average nightly rate of \$75 - mid-range between the \$50 and \$100 Ms. Wilson suggested - reveals the Minister’s conservative estimate of unreported gross income. Assuming Ms. Wilson had a B&B guest in each room for 133 nights annually, this would fetch the \$30,000.00 assessed by the Minister. This is not unreasonable or unforeseeable as a supportable assumption. Moreover, there is nothing before the Court to challenge that assumption in the alternative assessment beyond the bald and vague general assertion of a range of \$10,000 to \$15,000 in all assessed years, but in no specific year. The assessed gross B&B Business income of \$30,000.00 remains.

[10] There was however “a kind of evidence” concerning probable or more likely net income for the assessed years. Ms. Wilson presented attachments from the mortgagee’s foreclosure proceedings. As stated, these documents, by virtue of embedded data text lines, third party invoices and reference to court documents, were collaborative of Ms. Wilson’s assertions concerning certain “costs” related to the property. While not clearly expressed by her, certain facts are implicit from the Minister’s assumptions and other evidence. The B&B Business was operated on the property. The Minister assumed there was a business with a gross income of \$30,000 each assessed year. If the property had certain expenses arising from its operation or occupation by Ms. Wilson, deductively, these were incurred in the deployment of the asset for the operation of the assumed business. As such, some portion of these expenses, relevant to a B&B Business, were incurred and deductible from gross ascribed income. In fairness to the Minister, until the hearing, Ms. Wilson provided no such evidence or submissions beyond her misdirected assertion that the mortgage litigation somehow alleviated her of the legal obligation to file tax returns and pay taxes.

[11] At the hearing, there was third party evidence of taxes, interest costs and insurance expenses incurred by Ms. Wilson before the Court for each assessed year. The source of the property taxes and interest originated from the mortgagee’s summary judgment motion in June, 2016. The insurance premium is taken from an invoice dated May, 2016 and addressed to the B&B Business. The insurance premium is only for one year. For simplicity, the Court has utilized that premium less \$100 for each previous assessed year. The taxes and interest amounts are available for each assessed year. The aggregate amounts are as follows:

<u>Year</u>	<u>Taxes</u>	<u>Interest</u>	<u>Insurance</u>	<u>Total</u>
2009	\$9,263.29	\$10,651.37	\$4600.00	\$24,514.00

2010	\$9,668.46	\$8,777.48	\$4700.00	\$23,146.00
2011	\$9,927.54	\$6,880.95	\$4800.00	\$21,608.00
2012	\$10,268.24	\$5,160.56	\$4900.00	\$20,688.00
2013	\$8,865.78	\$2,956.22	\$5000.00	\$16,822.00
2014	\$8,588.87	\$1,574.87	\$5100.00	\$15,264.00
2015	\$8,386.75	\$420.79	\$5200.00	\$14,008.00

[12] The Court identifies that such amounts apply to the entire property; there were 21 acres of land and a certain percentage of use of the dwelling was to Ms. Wilson's personal benefit. She maintained three B&B units. As well, the rustic, natural setting on the Niagara escarpment was undoubtedly attractive to B&B guests. As such, the Court is prepared to allow a 50% deduction of these expenses as business related. Not to be forgotten is the fact the B&B Business by definition included breakfast for each guest for each night stayed. Undoubtedly, there were other direct costs related to the 400 guests nights beyond taxes, interest and insurance. These direct business costs would fluctuate based upon single or double occupancy. For simplicity, the Court will simply adopt \$10.00 per day per room revenue night. Revenue each night is averaged to \$75 as per the Minister's alternative assessment. At 400 total guest nights occupancy each year, the direct cost for such patrons totals \$4000 annually to earn the Minister's gross ascribed income of \$30,000.00. As such, Ms. Wilson's net income, inclusive of 50% of expenses for taxes, interest and insurance and \$4000 for direct guest costs, would be as follows:

<u>Year</u>	<u>Total Property expenses</u>	<u>One-half allocable to B&amp;B Business</u>	<u>Other direct guests costs</u>	<u>Total B&amp;B Business expenses</u>
2009	\$24,514	\$12,257	\$4000	\$16,257
2010	\$23,146	\$11,573	\$4000	\$15,573
2011	\$21,608	\$10,804	\$4000	\$14,804
2012	\$20,688	\$10,344	\$4000	\$14,344
2013	\$16,822	\$8,411	\$4000	\$12,411
2014	\$15,264	\$7,632	\$4000	\$11,632
2015	\$14,008	\$7,004	\$4000	\$11,004

[13] On the basis of the foregoing, after deducting the total B&B Business expenses from the Minister's gross ascribed income of \$30,000 per assessed year,

the Court finds that on the basis of an alternative assessment Ms. Wilson's net business income would more likely have been \$13,743, \$14,427, \$15,196, \$15,656, \$17,589, \$18,368 and \$18,996 for each of the taxation years 2009, 2010, 2011, 2012, 2013, 2014 and 2015, respectively.

[14] The issue of unremitted CPP contributions on self-employed earnings shall be reconsidered according to the net business income amounts above.

[15] For these reasons, the appeal is allowed concerning the net business income calculations of the B&B Business and any concordant adjustments to CPP premiums and other amounts of interests related to tax owing. There shall be no costs.

Signed at Ottawa, Canada, this 25<sup>th</sup> day of February 2019.

“R.S. Boccock”

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Boccock J.

CITATION: 2019 TCC 42

COURT FILE NO.: 2018-561(IT)I

STYLE OF CAUSE: EVELYN E. WILSON AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: February 07, 2019

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.  
Bocock

DATE OF JUDGMENT: February 25, 2019

APPEARANCES:

For the Appellant: The Appellant herself  
Counsel for the Respondent: Rhoda Lemphers

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
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