

Docket: 2024-570(IT)I

BETWEEN:

TEMITOPE SENNAIKE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on May 21, 2025 at Oakville, Ontario and on June 6, 2025
at Ottawa, Ontario.

Before: The Honourable Justice Edward (Ted) Cook

Appearances:

For the Appellant: The Appellant

Counsel for the Respondent: Andrew Stuart

JUDGMENT

In accordance with the attached Reasons, the Appellant's appeals from the Minister of National Revenue's reassessments of the Appellant's 2019 and 2020 taxation years are dismissed without costs.

Signed on this 3rd day of September 2025.

"Ted Cook"

Cook J.

Citation: 2025 TCC 122

Date: 2025/09/03

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BETWEEN:

TEMITOPE SENNAIKE,

Appellant,

and

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REASONS FOR JUDGMENT

Cook J.

Introduction

[1] Mr. Sennaïke appeals from the Minister of National Revenue's ("Minister's") reassessments of his 2019 and 2020 taxation years in relation to business losses associated with his participation in Amway. This appeal is under the Informal Procedure.

[2] Mr. Sennaïke began selling Amway products in April 2019. He devoted approximately 15 to 20 hours per week to Amway in 2019 and 2020. This was in addition to his regular full-time employment.

[3] His approach was simple. He would meet a potential customer in person or through social media and go over Amway's offerings. The customer would agree to purchase one or more products. These were generally household products, such as shampoo, body wash and multi-vitamins. Mr. Sennaïke would determine the selling price. The price was set so that he would receive what he referred to as a "premium", usually in the range of 5% to 10% and depending on the product it could go as high as 15%. He would order the products from the Amway website and upon receipt he would personally deliver them to the customer and get paid in cash.

[4] Mr. Sennaike also had his own page on the Amway website and his customers could order directly from Amway. He testified that he would receive a commission on those sales; but no evidence was adduced as to how many of those sales actually occurred and his financial statements did not show any revenue from such sales. As well, he received some small commissions when business goals were met, such as introducing other people to the Amway business.

[5] Mr. Sennaike explained that he participated in Amway's leadership training development ("LTD") program as part of his business. He was partnered with a mentorship group that teaches people how to run an Amway business. Under the program, he paid fees to attend weekly workshops, quarterly functions and business seminars/conferences. He also purchased a number of books and CDs through Amway.

[6] For 2019, Mr. Sennaike reported gross revenue of \$3,150, expenses of \$6,404 and a net business loss of \$3,254. For 2020, he reported gross revenue of \$5,556, expenses of \$19,036 and a net business loss of \$12,684, as well as a net business loss from commission of \$6,990. The Minister reassessed Mr. Sennaike on the basis that his Amway activities were not a source of income.

Issues

[7] At issue is whether Mr. Sennaike's participation in Amway constituted a source of income for him. If those activities did constitute a source of income, there would be additional issues regarding the deductibility of expenses; however, it is not necessary to consider them given my decision on the source issue.

Analysis

[8] The applicable law for determining whether there is a source of income was set out by the Supreme Court of Canada in *Stewart v Canada*, 2002 SCC 46. At para 50, the Supreme Court framed its two-stage approach:

- Is the activity of the taxpayer undertaken in pursuit of profit, or is it a personal endeavour?

- If it is not a personal endeavour, is the source of the income a business or property?

The Supreme Court then explained that where a taxpayer's venture has elements that suggest it could be considered a hobby or other personal pursuit, it will be considered a source of income if it is undertaken in a sufficiently commercial manner (*Stewart* at para 52).

[9] At para 54 of *Stewart*, the Supreme Court restated the first stage of the approach as “[d]oes the taxpayer intend to carry on an activity for profit and is there evidence to support that intention?” This would require the taxpayer to establish that their predominant intention was to make a profit and that they carried out the activity in accordance with objective standards of businesslike behaviour.

[10] Mr. Sennaike argues that his Amway activities did not have any personal element. They were not a hobby. Everything he did was done with the intention of creating revenue. Therefore, he had a source of income. The Respondent argues that Mr. Sennaike's participation in Amway was predominantly a personal endeavour, and that this conclusion is sufficient to find that he did not have a source of income.

[11] For the reasons below, I find Mr. Sennaike's participation in Amway contained a significant personal element and it was not undertaken in a sufficiently commercial manner. As a result, it was not a source of income for him for either the 2019 or 2020 taxation year.

Personal Element

[12] The first stage of the *Stewart* approach is determining whether Mr. Sennaike's participation in Amway was undertaken in pursuit of profit or whether it was undertaken as a personal endeavour. He argues everything he did was done to drive revenue for his Amway business. This is at odds with what the evidence shows. The Respondent characterized Mr. Sennaike's activities as a hobby with a business flair, which is an apt description.

[13] I find Mr. Sennaike's participation in Amway had a significant, if not predominant, personal element because it is clear from his testimony and evidence that he wanted to develop as an entrepreneur and businessperson in the broad sense,

and that Amway was his vehicle for doing so. It is this personal development aspect that is the personal element. Mr. Sennaike put significant effort into Amway and, in particular, Amway's LTD program. I conclude that he put at least as much time on the personal development aspects as he did in pursuing actual sales.

[14] In 2019 and 2020 combined, he earned total revenue of \$8,706 on about 70 sales to fewer than 40 customers. This is a modest sales and customer base. Yet, during the same period:

- He devoted 15 to 20 hours per week to Amway.
- He had a monthly subscription for his LTD membership. The subscription gave him access to messaging and podcasting apps that would improve his entrepreneurship mindset and help him with managing his business.
- He attended numerous weekly workshops. They were organized by people who were successful in the Amway business, mainly in Kitchener. He attended quarterly functions, which were generally held in Toronto. He also attended two business seminars/conferences in the United States.
- He ordered several books, primarily aimed at self-improvement (e.g., *Think and Grow Rich* and *An Enemy Called Average*), through Amway. These were recommended by Amway business coaches to develop the skills and mindset to grow the business.
- He claimed his cellular phone was used 70% of the time for business. It was used for emailing, texting and calling customers, prospective customers, business coaches, mentors, business partners and prospective business partners, and for networking online.
- He claimed over 6,000 kilometres as the business portion of his motor vehicle use. He used it to meet customers and prospective customers, to deliver products to customers, and to attend weekly workshops, business coaching, and business, and business networking, meetings.
- He hosted meetings with business partners at his residence.

[15] The level of activity Mr. Sennaïke described is far in excess of what would be needed to acquire and support his modest sales but is consistent with his activities having a significant personal element. It is evident that Mr. Sennaïke was very interested in business networking and developing business partners, and that he was an active participant in the LTD program. He was much clearer and more concrete in his testimony with respect to broader business development and dealing with business partners and coaches, as he referred to them, than with respect to the products he sold or the customers he sold them to. Similarly, his LTD-related expenses were recorded and calculated in a detailed way while his revenue and sales-related records were minimal and contained significant errors.

[16] My finding that there was a significant, if not predominant, personal element in Mr. Sennaïke's participation is supported by the way he determined his own profit/losses. It was so ill-advised that it undermines the contention that he was operating in the pursuit of profit. Mr. Sennaïke did not include the cost of the Amway products he sold in computing his income. That is, there was no cost of goods sold in his financial statements. He argues this was appropriate because he was a business owner sharing infrastructure with Amway and he did not produce any of the products. Since he was partnering with Amway, it would be wrong for him to include the products he purchased from Amway as an expense.

[17] I disagree. He purchased products and sold them to customers. His gross profit would be the difference between those amounts, regardless of his relationship with Amway. I note in passing that in *Ankrah v The Queen*, 2003 TCC 413 at para 5, the gross profit of an Amway distributorship was calculated using cost of goods sold. I find it implausible that if he were acting in pursuit of profit, without any other motive, he would ignore the cost of the goods he sold.

[18] As well, the monthly revenues reported in his financial statements did not match the revenues determined using the sales receipts provided by Mr. Sennaïke. Sometimes the monthly revenues in the financial statements were higher and sometimes they were lower. What was shown as monthly revenues were actually his monthly purchases from Amway. He said the use of credit card purchases instead of sales receipts was an error.

[19] The credit card purchase amounts were generally very close to the sales receipt amounts (i.e., there did not seem to be the premium he had referred to) and Mr. Sennaïke said that when ordering for customers, he would at times order

products for personal use. The amount shown on the receipts is what was sold to customers, including the mark up, and any missing premium was explained by his purchase of products at the same time for personal use. No documentary evidence was provided to support this contention. The consistency between the credit card purchase amounts and the sales receipt amounts makes this explanation unlikely.

[20] In a case considering participation in Amway (*Keeping v Canada*, 2001 FCA 182), the Federal Court of Canada — Appeal Division cautioned against second-guessing the business acumen of an appellant, which is not the place of the courts. In that case there was no indication that the Amway distributorship at issue was being operated for any non-business motive. My comments are not meant to second-guess Mr. Sennaike’s business acumen; but rather are made for the purpose of determining if Mr. Sennaike was engaged in the pursuit of profit or in a personal endeavour.

[21] The present appeal can also be distinguished from cases, such as *Ankrah* and *Anderson v The Queen*, 2016 TCC 106, where the issue at hand was whether particular expenses were deductible.

[22] The Respondent argues that Mr. Sennaike’s participation in Amway was predominantly personal in nature, like a hobby, and once it is classified as a personal endeavour, is the end of the analysis and there is no source. However, *Stewart* recognized that an activity with personal or hobby elements could still be a source of income if it was “undertaken in a sufficiently commercial manner”.

Sufficiently Commercial Manner

[23] Having found there are personal elements, I now consider whether Mr. Sennaike’s activities were undertaken in a sufficiently commercial manner so as to be considered a source of income. To establish a source of income, the taxpayer must demonstrate a subjective intention to profit supported by objective factors (*Stewart* at para 55). These may include:

- profit and loss experience in past years;
- the taxpayer’s training;

- the taxpayer's intended course of action; and,
- capability of the venture to show a profit.

[24] This additional test does not assist Mr. Sennaïke. In spite of his testimony that his activities were intended to be profitable, the objective factors demonstrate he did not undertake them in a commercial manner.

[25] He commenced activities in 2019 and consequently there is no prior profit or loss experience to consider. With respect to training, Mr. Sennaïke was an account administrator for a property management company. I accept he had sufficient training to successfully operate an Amway business.

[26] There was no specific evidence regarding Mr. Sennaïke's intended course of action and how he would become profitable over time, although he did testify in a general way about business networking and developing business partners. The most successful Amway businesspersons became successful by engaging others to sell Amway products and then receiving commission on their sales.

[27] Mr. Sennaïke's customer base was fewer than 40 customers. He was vague on how to meet and develop prospective customers. Essentially, they could be met anywhere, and he would have a conversation to introduce them to Amway's offerings. He did not outline any plans to recruit other persons to sell for Amway. Recruiting others to sell Amway was central to the business plans of the taxpayer in *Nordstrom v The Queen*, [1999] 3 CTC 2253 at para 4.

[28] In this regard, Mr. Sennaïke also claimed he directed clients to his page on the Amway website and if they purchased there, he would get a commission, but there was no evidence that this actually occurred.

[29] The capability of the venture to show a profit is a factor that weighs heavily against Mr. Sennaïke. Above, I outlined some of the problems with his approach. In particular, he ignored the cost of the products he sold. In itself, this is an indicator of non-commerciality. Including the cost of goods sold in computing income would mean that for 2019 and 2020 combined he would have had gross revenue of about \$9,000, a gross profit of less than \$1,000 (based on a 10% mark up) and other expenses of more than \$25,000. The quantum of the resulting losses relative to the

level of sales, combined with the lack of any real plan to move to profitability, is a major indicator of non-commerciality.

[30] Finally, why were sales only transacted in cash? No real reason was given. I would have expected a sales business like that Mr. Sennaike purports to have, operating in a reasonable commercial manner, would have had at least some facility to accept non-cash payments. I take the failure to have any transactions by cheque, credit card, e-transfer or debit as an indicator of non-commerciality.

Disposition

[31] The appeals are dismissed without costs.

Signed on this 3rd day of September 2025.

“Ted Cook”

Cook J.

CITATION:	2025 TCC 122
COURT FILE NO.:	2024-570(IT)I
STYLE OF CAUSE:	TEMITOPE SENNAIKE AND HIS MAJESTY THE KING
PLACE OF HEARING:	Oakville, Ontario Ottawa, Ontario
DATE OF HEARING:	May 21, 2025 June 6, 2025
REASONS FOR ORDER BY:	The Honourable Justice Edward (Ted) Cook
DATE OF JUDGMENT:	September 3, 2025
APPEARANCES:	
For the Appellant:	The Appellant
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COUNSEL OF RECORD:	
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