

Docket: 2012-2738(IT)I

BETWEEN:

PETER MISEK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on June 27, 2013, at Victoria, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

Agent for the Appellant: Frank Misek
Counsel for the Respondent: Holly Popenia

JUDGMENT

The Appeals from the reassessments made under the *Income Tax Act* for the 2007, 2008 and 2009 taxation years are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

- a) in 2007, the Appellant is allowed additional deductions of:
- bank charges \$446.32
 - maintenance and repairs \$1,102.71
 - motor vehicle fuel \$4,370
 - vehicle insurance \$460
 - CCA \$2,422

- b) in 2008, the Appellant is allowed additional deductions of:
- maintenance and repairs \$1,022.19
 - motor vehicle fuel \$2,913.92
 - CCA \$1,034
- c) in 2009, the Appellant is allowed additional deductions of:
- motor vehicle fuel \$4,020.66
 - vehicle insurance \$426
 - CCA \$1,317
- d) a lump sum of costs of \$500 is awarded to the Appellant.

Signed at Toronto, Ontario, this 10th day of September 2013.

"Campbell J. Miller"

C. Miller J.

Citation: 2013 TCC 278
Date: 20130910
Docket: 2012-2738(IT)I

BETWEEN:

PETER MISEK,

Appellant,

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Respondent.

REASONS FOR JUDGMENT

C. Miller J.

[2] In 2007, 2008 and 2009, the Appellant, Peter Misek, was the proprietor of Van Isle Artesian Springs, a business selling and distributing bottled water. Due to poor health, Peter Misek left the running of the business to his son, Frank. After long, and what Frank Misek would no doubt describe as tortuous, dealings with the Canada Revenue Agency ("CRA"), on December 17, 2012, the Minister of National Revenue (the "Minister") reassessed Peter Misek. Instead of losses of \$9,002, \$8,284 and \$853 claimed by Peter Misek, the Minister assessed income of \$10,957, \$13,075 and \$12,834 for the 2007, 2008 and 2009 taxation years respectively.

[3] At trial, Frank Misek acknowledged that the gross revenue figures relied upon by the CRA were correct, but certain expenses remained in dispute.

[4] There are five main heads of disputed expenses as follows:

<u>Expense</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Bank Charges/ Interest expense	\$446.32		
Maintenance and repairs	\$1,102.71	\$1,022.19	
Motor vehicle Fuel	\$4,370.00	\$2,913.92	\$4,020.66
Vehicle insurance	\$460.00		\$426.00
Capital Cost Allowance	\$4,114.07	\$2,919.84	\$2,146.77
TOTAL	<u>\$10,493.10</u>	<u>\$6,855.95</u>	<u>\$6,593.37</u>

Although the Respondent conceded a number of these matters in subsequent written submissions, I wish to touch briefly on all of the issues as Mr. Misek spent considerable time going over each of them at trial.

Bank charges/interest expenses – 2007

[5] The Appellant used several credit cards. The Minister did not accept bank charges arising from two such cards, Mosaic and MBNA, and only accepted half of the outlays with respect to the Appellant's GM card, on the basis such expenses were not incurred to earn business income. Frank Misek explained that the Mosaic and MBNA cards had lower interest rates and were therefore used to pay off balances on the other cards that were accepted as being used for business purposes. Frank Misek presented copies of source documents showing the use of the Mosaic and MBNA cards for paying off the other cards. I accept the charges relating to these cards were indeed for business purposes. I also find the Minister's 50% denial of charges on the GM card was arbitrary based on some personal usage, though I am satisfied based on Frank Misek's explanation of the use of the card, that personal usage was minimal. I allow these bank charges of \$446.32 as a deductible expense.

Maintenance and repairs expense (\$1,102 in 2007 and \$1,022 in 2008)

[6] These expenses were supported by schedules identifying each expense, along with supporting invoices. The Minister disallowed the above amounts as not being incurred for the purpose of producing income.

[7] Frank Misek's schedules not only indicate the items purchased but the area in which they were used; for example, \$554 incurred in May of 2007 was shown as a

purchase from Corix Water Products for PVC piping used at the well. The following is a list of the type of items acquired: clamps, sealers, paint, stainless steel, pipe fittings, roofing, glue, nut and bolts, spools and nails...etc. I surmise from the auditor's and appeals officer's reports, produced as part of the Appellant's over 800 pages of documents, that the Government's concern was that part of the warehouse may have been for personal use or for future rental, and that some of these purchases, therefore, either did not qualify as being incurred in the water business or were capital expenditures. The Government did not call any witnesses.

[8] I have Frank Misek's evidence that the warehouse was solely for business purposes. He provided photos of the business premises. Yes, the Misek's installed a bathroom and a kitchen (no cooking facilities) in the warehouse (I will have more comments on this later) but, given their residence was within several hundred feet, I do not see this addition as personal. Further, given the nature of the dozens of small expenditures making up these expenses, I am unable to determine that any of them are capital in nature, but certainly appear more in the nature of current expenses. I allow these deductions.

Motor vehicle fuel

[9] Frank Misek provided a detailed calculation of mileage and gasoline prices in estimating fuel costs. More importantly, he provided a list of the actual costs, plus receipts, indicating the date and the gas station. The Minister did not allow the full amount of these fuel costs on the basis that the auditor's estimate was lower and that some percentage related to personal use. Frank Misek testified that the only personal use related to just one of the vehicles, the Buick, and that such costs had already been taken out of the business expenses sought. The Minister argues Mr. Misek has not provided sufficient supporting information to prove a breakdown between business and personal. On balance, I accept Frank Misek's explanation and his figures, and therefore allow the additional fuel costs of \$4,370, \$2,931.92 and \$4,020.60 in 2007, 2008 and 2009 respectively.

Motor vehicle insurance

[10] The additional insurance costs sought by the Appellant relate to the Buick, the only vehicle which appears to have served a dual business and personal use purpose. The insurance costs for the Buick (as proven by source documents) was \$919 in 2007 and \$850 in 2009, though the Appellant seeks only \$446.32 in 2007 and \$426 in 2009. I find the personal use has already been taken into account and therefore allow the additional \$446.32 and \$426 in 2007 and 2009 respectively.

Capital Cost Allowance

[11] Finally, I turn to the additional Capital Cost Allowance ("CCA") sought by the Appellant. There are two areas of dispute in this regard: first, with respect to motor vehicles which were not insured to drive, and therefore not included by the Minister in the CCA calculations, and second, with respect to renovations to the warehouse which the Minister maintains were for personal rather than for commercial use.

[12] Regarding the trucks not insured, it was Frank Misek's testimony, supported by photos, that such vehicles (a 1982 GMC truck, a 1981 International truck and 1988 International 6-ton truck) were used for storage. They were insulated and also easier to load and unload than storing in the warehouse. From the photos, it was also evident that storage space in the warehouse was limited. I accept Frank Misek's explanation and find these old trucks were properly added to capital cost of Class 10 assets, as valid capital assets of the business.

[13] With respect to capital additions to the warehouse, relating to a bathroom and kitchen renovation, I conclude that the warehouse was entirely devoted to the water business enterprise. The so-called kitchen area did not include any fridge or stove but a sink was added and an area established for eating lunch. The bathroom had a toilet and a shower. The auditor in one report describes one room as possibly serving as a bedroom. The photos and Frank Misek's testimony satisfy me that these were offices not bedrooms. I conclude the only use for this building was a business use and that any capital additions are properly added to Class 1.

[14] The Respondent did not question the Appellant's numbers in connection with the CCA other than an addition of \$29,149 back in 2003 to Class 10: the Appellant only sought an addition of \$9,798. This has the effect of reducing the additional CCA sought by the Appellant in 2007 from \$4,114 to \$2,422, in 2008 from \$2,219 to \$1,034 and in 2009 from \$2,147 to \$1,317. These reductions represent the difference between CCA calculated at the 30% rate on \$9,799 rather than \$29,149, as of 2003 (including a recognition of the 50% rule in 2003). In all other respects the Respondent simply relied on the above two bases for not including assets in Class 1 and Class 10. Given my finding, I accept the Appellant's CCA deductions, subject only to the changes indicated above.

[15] Frank Misek presented as thorough and detailed analysis of the disputed expenses as I have seen in a case without counsel. His documents were well organized and extensive. He wished to go into some detail of the roadblocks and

inappropriate treatment he believed he suffered at the hands of CRA officials. As I indicated to him, the Court is concerned only with the correctness of the assessment and therefore limited him to dealing with the real issues before the Court. It is regrettable that it was necessary to incur the time and expense to take this matter to trial. Frank Misek clearly has gone to considerable lengths to prove his position, which he has done. In these circumstances, I find it is in order to order a lump sum of costs in the amount of \$500.

[16] The Appeals are allowed and referred back to the Minister for reconsideration and reassessment on the following basis:

- a) in 2007, the Appellant is allowed additional deductions of:
 - bank charges \$446.32
 - maintenance and repairs \$1,102.71
 - motor vehicle fuel \$4,370
 - vehicle insurance \$460
 - CCA \$2,422

- b) in 2008, the Appellant is allowed additional deductions of:
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 - CCA \$1,034

- c) in 2009, the Appellant is allowed additional deductions of:
 - motor vehicle fuel \$4,020.66
 - vehicle insurance \$426
 - CCA \$1,317

As indicated, I also award a lump sum of costs in the amount of \$500 to the Appellant.

Signed at Toronto, Ontario, this 10th day of September 2013.

"Campbell J. Miller"

C. Miller J.

CITATION: 2013 TCC 278

COURT FILE NO.: 2012-2738(IT)I

STYLE OF CAUSE: PETER MISEK AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Victoria, British Columbia

DATE OF HEARING: June 27, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF JUDGMENT: September 10, 2013

APPEARANCES:

Agent for the Appellant:	Frank Misek
Counsel for the Respondent:	Holly Popenia

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	

For the Respondent:

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