Docket: 2011-959(IT)I

BETWEEN:

SHIRAZ VIRANI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 3 and March 19, 2014
in Vancouver, British Columbia

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Geraldine Chen

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2007 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that: (1) an income inclusion for investment income in the amount of $525 should be reduced to $231, and (2) the appellant is entitled to a deduction for business expenses in the amount of $1,148.

The appeal with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Each party shall bear their own costs.

Signed at Ottawa, Ontario this 12th day of June 2014.

"J.M. Woods"

Woods J.

Citation: 2014 TCC 195
Date: 20140612
Docket: 2011-959(IT)I

BETWEEN:

SHIRAZ VIRANI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] Shiraz Virani appeals in respect of assessments made under the *Income Tax Act* for the 2007 and 2008 taxation years. The issues to be decided are:

(a) Is a deduction in the amount of $8,481 available in the 2007 taxation year for business expenses in connection with a tax return preparation business?

(b) Are deductions for rental losses in the amounts of $19,517 and $13,147 available in the 2007 and 2008 taxation years, respectively?

Preliminary matters

[2] At the commencement of the hearing, Mr. Virani sought to raise a new issue that was not mentioned in the notice of appeal. He suggested that there was an arithmetic error in one of the assessments in taking into account income tax deductions at source in the amount of $4,876.26 (paragraph 10(d) of the Reply). Counsel for the Crown had not anticipated this being an issue and was not properly prepared to make submissions on it.

[3] I informed Mr. Virani that this Court generally does not have jurisdiction over source deduction issues, but I offered to adjourn the hearing with costs if Mr.

Virani wished to amend the notice of appeal to add this issue. Mr. Virani declined the offer.

[4] In written submissions, Mr. Virani submits that the Crown should not be able to raise a credibility argument because this was not raised as an issue in the Reply. I disagree with this submission. The argument concerning credibility relates to the weight that is to be given to the evidence introduced at the trial. It is not an "issue" that must be raised in the pleading. Further, it would not be possible for the Crown to raise this argument in the Reply because the concern only arises after evidence has been led at the hearing.

[5] In addition, two concessions were made for the 2007 taxation year. First, the Crown conceded that investment income received during the 2007 taxation year (paragraph 14(h)(ii) of the Reply) should be reduced from $525 to $231. Second, Mr. Virani conceded that a deduction in the amount of $513 for a desk rental should not be allowed.

Business expenses

[6] In the income tax return for the 2007 taxation year, Mr. Virani claimed a deduction for employment expenses in the amount of $8,481 in relation to a tax return preparation business operating under the name Smith, Virani and Co.

[7] By way of background, in a prior appeal by Mr. Virani under the *Employment Insurance Act* and the *Canada Pension Plan*, Justice Graham concluded that Mr. Virani was self-employed with respect to this business. The parties accept this finding for purposes of this appeal, but they agreed that nothing turns on it.

[8] For part of the 2007 taxation year, Mr. Virani operated a tax return preparation business from an apartment owned or rented by Ina Hansen.

[9] The expenses at issue are set out below:

Advertising and promotion	$ 975.00
Office supplies	1,016.00
Professional dues	679.00
Travelling and auto expenses	3,578.49
Telephone, fax and internet	789.00
Hydro and utilities	533.00

[10] In order to succeed on this issue, Mr. Virani has the burden to demolish, on a *prima facie* basis, the Crown's assumption that there were no business expenses (*Hickman Motors Ltd. v The Queen*, [1997] 2 SCR 336, para 93). If the onus is satisfied, the burden shifts to the Crown.

[11] Mr. Virani provided a list of the expenses in Exhibit A-11 and he stated that he had receipts available at the hearing for review.

[12] I will accept for purposes of this appeal that the expenses claimed were actually incurred. However, there are several difficulties with Mr. Virani's claim that these were expenses related to the Smith, Virani and Co. business.

[13] First, the evidence as a whole suggests that Mr. Virani lived in the apartment from which the business was conducted. Accordingly, some of the expenses are likely personal and living expenses rather than business expenses.

[14] Mr. Virani testified that he lived elsewhere but I did not find this evidence to be reliable. First, the evidence as to Mr. Virani's living arrangements was lacking in sufficient detail to be convincing. Second, Mr. Virani was not consistent in his testimony as to the living arrangements. At one point in his testimony, Mr. Virani said that he lived with a neighbour, Mr. Kassam, throughout most of 2007. Later in his testimony, he stated that he lived with Mr. Kassam for a couple of months early in 2007 and that he then he lived with someone a few blocks away. Third, Mr. Virani's testimony conflicted with the evidence of Mr. Kassam who was called as a witness by the Crown. Mr. Kassam testified that Mr. Virani did not live at his apartment in 2007. I found Mr. Kassam to be a credible witness.

[15] I would conclude that Mr. Virani lived in the apartment where the tax preparation business of Smith, Virani and Co. was operated.

[16] Second, the evidence suggests that some of the same expenses were likely claimed in connection with another tax return preparation business. The Crown introduced evidence that suggests that Mr. Virani operated a tax return preparation business under the name Finn McCool Financial Inc. ("Finn McCool"). According to the decision of Justice Graham, Mr. Virani was an employee of this corporation.

[17] In his written submissions, Mr. Virani suggests that the Crown should have submitted more evidence that there was a duplication of expenses between Smith, Virani and Co. and Finn McCool. I disagree with this.

[18] Mr. Virani has the burden to make a *prima facie* case that these were business expenses, and not personal expenses or employment expenses related to Finn McCool. Mr. Virani relied to a great extent on his own uncorroborated testimony that these expenses were connected to Smith, Virani and Co. This evidence is not reliable enough to establish a *prima facie* case.

[19] With that background, the conclusions that I have reached regarding these particular expenses are:

(a) With respect to travelling and auto expenses, Mr. Virani originally claimed 100 percent of these expenses as on account of business. He later reduced his auto claim to 90 percent business and 10 percent personal. This figure cannot be verified on any reasonable basis because no contemporaneous mileage log was provided to the Court. In addition, auto expenses were also claimed for the Finn McCool business. Since there is no means of making a reasonable apportionment to Smith, Virani and Co., I would conclude that Mr. Virani has not satisfied the burden to establish any amount as on account of business. If this result appears to be harsh, it is a consequence of Mr. Virani failing to provide appropriate records.

(b) As for promotion and advertising expenses, I have a similar concern. The expenses appear to relate mostly to restaurant meals and I am not satisfied that there is a connection between these expenses and Smith, Virani and Co. I would note that the expenses listed in Exhibit A-11 have client names beside them to identify the nature of the expenditure. However, a different version of this list was provided to the Canada Revenue Agency (CRA) during the audit and it did not contain client names (Exhibit R-1, Tab 2). I am not satisfied that the client names in Ex. A-11 are reliable. In the absence of reliable evidence establishing that these are reasonable business expenses, they will be disallowed in their entirety.

(c) With respect to office supplies, I propose to allow $508, which is one-half the amount claimed. This amount appears to be reasonable in relation to the business income earned ($25,559.56) and takes into account that there was another tax return preparation business operated out of the same premises.

(d) As for professional dues, I also propose to allow one-half the amount claimed, to take into account the Finn McCool operation. The amount allowed will be $340.

(e) As for telephone, fax and internet, I propose to allow $200, which represents approximately 25 percent of the amount claimed. This takes into account that one-half of these expenditures may be personal and the remaining portion may be reasonably divided with Finn McCool.

(f) With respect to hydro and utilities, I propose to allow $100, which is approximately 20 percent of the amount claimed. I have not allowed more because Mr. Virani failed to establish what amount of time he spent on the Smith, Virani and Co. business.

[20] The total amount that will be allowed, therefore, is $1,148 (i.e., $508, $340, $200, $100).

Rental expenses

[21] Mr. Virani purchased a three bedroom condominium in September 2007. He testified that it was purchased solely as an investment property.

[22] Mr. Virani submits that, despite great efforts to rent the property, he was largely unsuccessful until 2009. He testified that the property was rented for a short period in December 2007 and that he had no tenants in 2008 so he moved into the premises.

[23] Mr. Virani claimed rental losses in the amounts of $19,517 and $13,147 for the 2007 and 2008 taxation years, respectively. He testified that this claim is for 100 percent of condominium expenses in 2007 and 2/3 of the expenses for 2008 when he occupied one of three bedrooms.

[24] In making the assessments, the Minister made these assumptions:

(a) for 2007, Mr. Virani had gross rental income of $600, as reported, and incurred no more than $600 in rental expenses, and

(b) for 2008, Mr. Virani did not rent or attempt to rent the premises.

[25] I have concluded that it is not appropriate to give Mr. Virani greater relief in respect of condominium expenses than the $600 allowed by the Minister.

[26] With respect to the 2007 taxation year, the evidence as a whole suggests that Mr. Virani did not rent the premises at all. There was no corroborating evidence that the property was rented, such as a lease agreement, or evidence of rent cheques. Even more troubling was the fact that the details provided about the tenant (Mark Spencer from England) were almost identical to details provided to the CRA regarding a proposed tenant in 2008 (Michael Spencer from England).

[27] If the property was not rented, Mr. Virani had the availability of the entire property for his own personal use. Even if Mr. Virani's purpose was to earn some rents, the availability of the entire property for personal use suggests that the expenses should all be apportioned to personal use. Mr. Virani testified that he did not live at the property in 2007 but I was not convinced by this vague, self-interested testimony.

[28] As a final comment with respect to 2007, even if someone by the name of Mark Spencer did rent the premises in December 2007, the expenses allowed by the Minister were a reasonable allocation of expenses to this rental operation.

[29] In this regard, Mr. Virani testified that Mr. Spencer caused $15,000 of damage to the property when he lived there in December 2007. There is no corroboration of this expense other than a non-detailed invoice for $15,000, purportedly paid in cash. It is more plausible that this expenditure, if incurred, related to construction related to Mr. Virani's own personal use of his recently-acquired condominium.

[30] The balance of the rental expenses claimed would have to be apportioned between personal and rental use. Mr. Virani likely occupied the residence for three or four months. If he shared it with Mr. Spencer for one month, a reasonable apportionment of expenses to the rental operation, assuming there was one, would be no more than the $600 allowed by the Minister.

[31] With respect to the 2008 taxation year, Mr. Virani testified that he tried to rent the premises but was not successful. However, he testified that he earned income from the rental operation in later years.

[32] I am also not convinced by this testimony. For the 2011 taxation year, Mr. Virani introduced his tax return to establish that he earned a rental profit for that

year. As pointed out by the Crown, Mr. Virani appears to have manipulated the tax return to make it appear that there was a rental profit. However, if one factors in interest expense relating to the condominium that was deducted elsewhere in the return, there was no rental profit.

[33] Even if Mr. Virani did try to rent the premises, it is not reasonable to allocate any expenses to a rental operation in 2008. The entire property was available for Mr. Virani's use, and the expenses should be attributed to personal use.

Conclusion

[34] The appeal with respect to the 2007 taxation year will be allowed to permit the deduction of business expenses in the amount of $1,148 and to reduce an item of investment income from $525 to $231.

[35] The appeal with respect to the 2008 taxation year will be dismissed.

[36] Each party shall bear their own costs.

Signed at Ottawa, Ontario this 12th day of June 2014.

"J.M. Woods"

Woods J.

CITATION:	2014 TCC 195
COURT FILE NO.:	2011-959(IT)I
STYLE OF CAUSE:	SHIRAZ VIRANI and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
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REASONS FOR JUDGMENT BY:	The Honourable Justice Woods
DATE OF JUDGMENT:	June 12, 2014

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Geraldine Chen

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario