

Date: 20080124

Docket: A-425-06

Citation: 2008 FCA 29

**CORAM: LÉTOURNEAU J.A.
SEXTON J.A.
PELLETIER J.A.**

BETWEEN:

JAMES W. LANG

Appellant

and

HER MAJESTY THE QUEN

Respondent

Heard at Vancouver, British Columbia, on January 21, 2008.

Judgment delivered at Vancouver, British Columbia, on January 24, 2008.

REASONS FOR JUDGMENT BY:

SEXTON J.A.

CONCURRED IN BY:

**LÉTOURNEAU J.A.
PELLETIER J.A.**

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REASONS FOR JUDGMENT

SEXTON J.A.

[1] This is an appeal of the decision of Beaubier J. of the Tax Court of Canada (the Tax Court judge) who determined that certain expenses of the appellant claimed for the 2002 and 2003 taxation years could not be deducted as business losses pursuant to section 18(1)(a) of the *Income Tax Act* R.S.C. 1985, c. 1 (5th Supp) (the Act). The expenses in question included, among other things, the cost of purchasing certain war artifacts, Legion and Genealogical Society membership dues, trips to attend gun shows, trips to visit veterans, and the purchase of supplies including bookcases, display cases, a computer monitor, a photo printer and scanner. The appellant states that these expenses are for the business purpose of writing and publishing a reference book about medals

and awards of all the countries involved in the Korean War. The appellant, himself, is a veteran of the Korean War.

[2] The Minister of National Revenue pleaded a number of assumptions. They included the following:

- the appellant did not commence a business as an author or trader in collectibles;
- the appellant has not produced any literary works for the period from 1998 to 2003;
- the appellant does not have a marketing/promotional plan for any literary work, if and when it is complete;
- the appellant's primary purpose of acquiring war items (artifacts) was to enhance his private collection and not to sell for profit;
- expenditures incurred in 2002 and 2003 for the purchase of pins in respect of the Canadian Parachuting Association were not incurred for the purpose of earning income from a business but were personal expenses of the appellant;
- expenditures for meals and entertainment in 2002 and 2003 were not incurred for the purpose of earning income from a business but were personal expenses of the appellant;
- expenditures claimed as office expenses in 2002 and 2003 included bookcases, display cases, a computer monitor, a photo printer and scanner that were personal expenditures of the appellant and not incurred for the purpose of earning income from a business;

- trips to attend guns shows in Texas, Kamloops, and Penticton in 2002 were not incurred by the appellant for the purpose of earning income from a business;
- international trips in 2003 to Louisville-Nashville, and Omaha in the USA, Argentina, Uruguay, and Greece were not incurred by the appellant for the purpose of earning income from a business;
- trips to Calgary, Edmonton and Burnaby in 2003 were not incurred by the appellant for the purposes of earning income from a business;
- the appellant did not use any portion of his home in 2002 and 2003 to earn income from a business.
- the appellant did not have a reasonable expectation of profit from his alleged business activity.

A taxpayer's assessment is deemed to be valid under section 152(8) of the Act and the onus is on the taxpayer to refute the Minister's assumptions.

[3] The Tax Court judge, as a finding of fact, found that these assumptions had not been refuted. A finding of fact will only be reviewed by an appellate court where there has been an overriding and palpable error: *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235 at paragraph 23. In this case, I am unable to find such an error.

[4] The Tax Court judge further found that the appellant was not in any business in 2002 or 2003.

[5] The Supreme Court of Canada has established a two stage approach to be used to determine whether a particular activity constitutes a source of income from business or property from which expenses may be deducted.

- a) Is the activity of the taxpayer undertaken in pursuit of profit, or is it a personal endeavour?
- b) If it is not a personal endeavour, is the source of the income a business or property?

Stewart v. Canada [2002] 2 SCK 645 at para 50.

[6] It is clear from the facts before the Tax Court judge that the appellant had not established that he had a source of income within the meaning of those words in the Act.

[7] The appellant argued that the trial judge had made an error of natural justice by failing to review a number of the documents presented at the hearing, namely a letter and a number of reference books on the subject of medals. With respect to the letter, the respondent correctly points out that because the letter was read aloud to the Tax Court judge, the letter has formed part of the record as part of the transcript of proceedings. With respect to the books, I fail to see how marking them as exhibits would have led the Tax Court judge to come to a different conclusion. Judging from the transcript, the books in question appear to be a compilation of medals and awards from wars. The appellant apparently wished to introduce these books as evidence to suggest that there is a business in making books about medals. However, the trial judge did not conclude that there does not exist a potential business in making books about medals; he simply concluded that the appellant was not engaged in such a business. I can find no error as argued by the appellant.

[8] For these reasons I would dismiss the appeal with costs limited to one counsel fee on the appeal.

“J. Edgar Sexton”

J.A.

“I agree

Gilles Létourneau J.A.”

“I agree

J.D. Denis Pelletier J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-425-06

STYLE OF CAUSE: JAMES W. LANG v. HMQ

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 21, 2008

REASONS FOR JUDGMENT BY: SEXTON J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
PELLETIER J.A.

DATED: January 24, 2008

APPEARANCES:

Mr. James W. Lang ON HIS OWN BEHALF

Ms. Pavanjit Mahil. FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Deputy Attorney General of Canada