Citation: 2015TCC184
Date: 20150723
Docket: 2013-316(IT)G

BETWEEN:

MELYNDA LAYTON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on November 6, 2014, in Ottawa, Ontario.)

V.A. Miller J.

[1] The issue in this appeal is whether the Appellant is entitled to deduct expenses of $6,630.03 and $9,987.66 for a home office in her 2007 and 2008 taxation years respectively.

Preliminary motion

[2] At the beginning of the hearing, the Respondent brought a motion to strike paragraphs 15(b), 15(d) and portions of paragraphs 14 and 16 in the Notice of Appeal. In those paragraphs, the Appellant sought relief from an assessment under the *Excise Tax Act* ("*ETA*").

[3] The Appellant's income tax liability for her 2007 and 2008 taxation years was reassessed by notices dated November 29, 2012. This is her appeal of that reassessment which has been brought pursuant to section 169 of the *Income Tax Act* ("*ITA*"). Any decision that I make in this appeal can only be with respect to the reassessment issued under the *ITA*. In accordance with section 171 of the *ITA*, I can dismiss the appeal or I can allow the appeal and vacate the reassessment or vary the reassessment or refer the reassessment back to the Minister of National Revenue (the "Minister") for reconsideration and reassessment. In other words, my decision in this appeal can only relate to the reassessment under the *ITA*.

[4] The Appellant was reassessed by notice dated October 30, 2012 under the *ETA*. In order to challenge that reassessment, the Appellant should have brought an appeal under section 306 of that *Act*, which she has not.

[5] In order to appeal reassessments from two separate *Acts*, the Appellant must file a notice of appeal pursuant to each of those *Acts*.

[6] I do not have jurisdiction under section 171 of the *ITA* to grant a remedy for an issue with respect to the *ETA*. As a result, the Respondent's motion is granted and the following parts of the Notice of Appeal are struck:

1. Paragraph 14 - …and File Number GB 112511841020 dated October 22, 2012 made under the *Goods and Services Tax/Harmonized Sales Tax Act* and include the period to which the assessment(s) relate(s).
2. All of paragraphs 15(b) and (d).
3. Paragraph 16 - …and section 306 of the *Excise Tax Act*.

Appellant's Position

[7] It was the Appellant's position that she had a home office in 2007 and 2008. During the hearing she conceded that she should not have claimed the cable and home telephone bills as an expense for her home office. The Appellant's testimony was as follows.

[8] She has been an employment lawyer since 1996. The Appellant started to practice law in Toronto and, in 2000, she and her spouse returned to Ottawa. She stated that she decided to open her own practice in 2006 so that she could control her hours of work. It was her hope that she would have more time to spend with her two children. She set up an office in her home in Stittsville. It was her evidence that in September, October and November 2006, she practiced fairly exclusively out of her home.

[9] In 2006, one of the Appellant's friends, with four other lawyers, rented an office space at 1400 Clyde Avenue. The Appellant wanted to share this office space but it was not large enough for her to have her own office. She shared an office with her friend until the fall of 2006 when the group was able to obtain an addition to the leased space. In the fall of 2006, she had her own office at Clyde Avenue.

[10] It was the Appellant's evidence that she had a home office in 2007 and 2008. It was not her principal office but it measured 20% of her home and consisted of an office on the main floor of her home which measured 15x16 and most of the area of her basement. There were no measurements on her sketch for the space in the basement but the sketch of the home which the Appellant produced showed that she claimed at least three quarters of the basement area as an office. She estimated that the area of the basement measured between 500 and 600 square feet. She described her basement office as being finished space with hardwood floors. She wrote on her sketch that the area of her house was 2200 square feet but she testified that the area was closer to 2700 square feet.

[11] The Appellant stated that her home office was outfitted so that she could access her files, emails and telephone calls from Clyde Avenue and vice versa. She saw clients at her home office – in both the upstairs office and the basement office. She emailed and telephoned her clients from her home office and accepted their calls and emails at her home. She had a separate business telephone line in her home office. In the basement office, she had a large table, a home computer and a telephone. She also stored 200 files in her basement office.

[12] It was her evidence that she frequently worked from home. She described the frequency as two or three times a week.

Respondent's Position

[13] The Respondent called no witnesses. The key assumptions of fact pled in the Reply were:

a) X
b) at all material times, the appellant maintained an office and rented office space located at the civic address of 1400 Clyde Avenue, Suite 208, Ottawa, Ontario ("the Business Address");
c) at all material times, the appellant's law practice address was listed at the Business Address;
d) at all material times, the appellant's personal residence was located at the civic address of 4 Cinnabar Way;
e) at all material times, the appellant did not maintain an office in her home;
f) at all material times, the appellant did not regularly and consistently meet clients or customers in her home;

Analysis

[14] The burden of proof in tax cases is that on the balance of probabilities. A taxpayer has the initial onus to "demolish" the assumptions of fact relied on by the Minister. She will have met that onus when she makes a *prima facie* case: *Hickman Motors Ltd v R*, [1977] 2 SCR 336. The Appellant need not necessarily produce documents to establish that *prima facie* case but it would assist her position: *House v R*, 2011 FCA 234. The Appellant must give cogent evidence which will allow me to find that she has presented a *prima facie* case. The onus will then shift to the Respondent to present evidence to prove the assumptions.

[15] One of the key assumptions made by the Minister in denying the expenses for a home office was that the Appellant did not meet clients in her home. The Appellant testified that she met clients in her home office. She was asked if she had a document to support her testimony. In particular, she was asked if she had brought her appointment calendar for 2007 and 2008. It was her testimony that she did not bring her annual calendars because she used the software PCLaw for her calendar and it "self-erased" every six months. She stated that she also used Outlook and it "self-erased". When it was suggested to her that Outlook did not "self-erase", the Appellant responded that she either did not have Outlook or that there had been server problems and the result was that records do not exist.

[16] It is my view that the Appellant's evidence defies common sense and is implausible. I do not believe that any professional, especially a lawyer, would use a computer program to maintain her records which self-erased after six months.

[17] The Appellant gave no details with respect to seeing any clients at her home. Her evidence consisted of the general statement that she saw clients in her home. Without more, it is clear that the Appellant has not presented a *prima facie* case and has not "demolished" the Minister's assumption that she "did not regularly and consistently meet clients or customers in her home".

[18] It is also my view that the Appellant's testimony was inconsistent with the statements in her Notice of Appeal and the documents she tendered as exhibits. At the hearing she stated that her basement was finished and she used it as her office. She described office equipment which she said she had in the basement as well as 200 files which she said were stored in her office. The first time that the Appellant stated she had an office in her basement was at the hearing. In her Notice of Appeal, the Appellant wrote that she "used the unfinished part of the basement exclusively to store closed client files". She made a similar statement in her letters

to the Canada Revenue Agency ("CRA"). On September 3, 2011, she wrote with respect to her home office:

> In 2007 and 2008 I had a home office at 4 Cinnabar Way within which I had a business telephone, a computer, photocopier and general office equipment. I virtually accessed my office at 1400 Clyde Avenue through the internet. The office was used exclusively for business where I regularly and continuously met clients. I also used the unfinished part of the basement to store files.

In letters from the Appellant to the CRA on September 24, 2012 and October 4, 2012, she repeated that she "used the unfinished part of the basement to store files". There was never a mention prior to the hearing that the Appellant used the finished portion of her basement as an office.

[19] It is my view that the Appellant adapted her testimony so that the total area of her alleged home office would approximate 20% of the area of her home. This is the percentage she claimed on her income tax returns.

[20] The Appellant's testimony in Court also contained inconsistencies. At one point in her testimony she stated that she had her own office at Clyde Avenue in 2006; later she stated that she first obtained her own office at Clyde Avenue in the fall of 2007; and then still later, she stated that office 8 at Clyde Avenue was exclusively hers starting in the fall of 2006.

[21] I have no doubt that the Appellant may have had an office in her home. However, because of the problem with her implausible statements, her conflicting statements and her inconsistent statements, she has not satisfied me that there was a work space in her home which was used exclusively for the purpose of earning income from business and used on a regular and continuous basis for meeting clients in respect of her business.

[22] The Appellant is required to present the best evidence available. At a minimum, as a lawyer, she could have provided a clear, consistent timeline of events to assist this Court in making a determination. Instead, her evidence was vague, imprecise and inconsistent.

[23] The appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 23rd day of July, 2015.

"V.A. Miller"

V.A. Miller J.

CITATION:	2015TCC184
COURT FILE NO.:	2013-316(IT)G
STYLE OF CAUSE:	MELYNDA LAYTON AND THE QUEEN
PLACE OF HEARING:	Ottawa, Ontario
DATE OF HEARING:	November 6, 2014
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	November 13, 2014
DATE OF ORAL REASONS FOR JUDGMENT:	July 23, 2015

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Christopher Kitchen

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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