

Docket: 2015-3701(IT)I

BETWEEN:

VIJITHARAN KANDASAMY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 23, 2016 at Toronto, Ontario

Before: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Christopher M. Bartlett

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2010 and 2011 taxation years is allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that expenditures totalling \$5,000 for 2010 and \$2,400 for 2011, which were treated by the Minister as on capital account, should be treated as fully deductible current expenses.

Signed at Toronto, Ontario this 1st day of April 2016.

“J. Woods”

Woods J.

Citation: 2016 TCC 78
Date: 20160401
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BETWEEN:

VIJITHARAN KANDASAMY,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] This appeal under the *Income Tax Act* concerns business expenses claimed by Vijitharan Kandasamy in respect of a cleaning business that he operated as a sole proprietor. The deductions resulted in business losses that, if proper, could be used to reduce other income.

[2] The Minister of National Revenue disallowed a large portion of the deductions claimed, mainly on the basis that there was not sufficient supporting documentation.

[3] The taxation years at issue are 2010 and 2011.

Overview

[4] Mr. Kandasamy operated a cleaning business in the Toronto area from 2009 to 2011. He testified that he had plans to expand but the business never became profitable and it was discontinued near the end of 2011.

[5] The business charged cleaning fees of approximately \$60 for a “basic clean” and up to \$300 for a “deep clean.” Mr. Kandasamy did the work himself, and mainly on weekends.

[6] In the reassessments at issue, the Minister:

- accepted the gross revenues as reported by Mr. Kandasamy - \$3,458 in 2010 and \$7,251 in 2011; and
- reduced deductions claimed for business expenses - in 2010 from \$32,792 to \$7,723, and in 2011 from \$32,552 to \$7,740.

[7] At the hearing, Mr. Kandasamy provided receipts to support part of the deductions claimed. He explained that he did not have all of them because the other receipts were with an ex-girlfriend who had done the bookkeeping for the business.

[8] The receipt evidence was organized into bundles, separated by taxation year and by the categories below. Mr. Kandasamy did not provide the total amounts for each bundle:

- office expense,
- meals and entertainment,
- storage and utilities,
- telephone,
- car expense,
- equipment,
- gas expense,
- auto insurance, and
- hair loss treatment.

[9] Further support for the appeal was provided by testimony from Mr. Kandasamy's cousin and a friend of his sister.

[10] The friend, Romashini Thanikasalan, testified that she charged Mr. Kandasamy \$165 every six weeks for allowing him to store cleaning

equipment in her garage. She said that Mr. Kandasamy paid her in cash and that she had issued the receipts that were entered into evidence.

[11] It is worth mentioning that this was one of three storage rental arrangements that Mr. Kandasamy testified that he had entered into. He also stored some equipment in his own apartment. Hand-written receipts were provided for all the rentals totalling \$6,000 for 2010 and \$4,250 for 2011.

[12] The other witness at the hearing was Mr. Kandasamy's cousin, Shiyamini Thaneeswaran. She testified that Mr. Kandasamy's cell phone was in her name and that Mr. Kandasamy reimbursed her for charges of around \$82 per month. Hand-written receipts for the cash reimbursements were entered into evidence. The original cell phone invoices were not provided.

[13] The Crown called no witnesses.

Discussion

[14] In an appeal of an income tax assessment in this Court, the taxpayer has the initial burden of proof to overcome the assumptions pled by the Minister. The burden is to make a *prima facie* case. The assumptions in this case can be found at paragraph 9 of the Minister's Reply to the Notice of Appeal.

[15] Overall, I find that the evidence in support of the appeal is very weak and that the burden of proof has not been satisfied.

Purchases of equipment

[16] Although I have found Mr. Kandasamy's case to be weak, I would make one adjustment in his favour. This is due to a problem with the Reply.

[17] The matter relates to purchases of equipment, totalling \$5,000 in 2010 and \$2,400 in 2011 (Ex. R-3). The Minister treated the purchases as on capital account and allowed capital cost allowance instead of a full deduction.

[18] The problem that the Crown has is that this issue was not clearly raised in the Reply. There are no assumptions with respect to the capital issue, and the term "capital" does not appear in the Reply. The only reference to this issue is to a paragraph number in the *Income Tax Act*, paragraph 18(1)(b).

[19] A reference to a section number in the *Income Tax Act* is not sufficient notice to Mr. Kandasamy that the Crown intends to raise this as an issue. Accordingly, adjustments should be made to the reassessments to reverse the capital treatment.

[20] This is the only adjustment to the assessments that is warranted. As for the other items in dispute, the reassessments in my view provide a fair result based on the evidence before me. My reasons are set out below.

Insufficiency of receipts

[21] I would first comment concerning the receipts. One problem, as mentioned earlier, is that the receipts do not match the amounts claimed on the income tax returns. Even if I were to accept that additional receipts were with an ex-girlfriend, this explanation does not justify allowing further deductions.

[22] The second problem with the receipts is that the items purchased are not always described on the receipts and, if they are described, many of the items may have been purchased for personal use. Examples are office expenses of airbed, webcam, stamps, and “car-multi-freq.fm.” Included in meals and entertainment are receipts from Hotel Le Prestige in Quebec, the LCBO, and Stars Mens Shop. Such receipts do not instill confidence in the reliability of the evidence presented.

[23] Except to the extent that the receipts are for items that clearly relate to a cleaning business, I have no confidence that the receipts are related to the business.

Testimony of Mr. Kandasamy

[24] I would also comment concerning Mr. Kandasamy’s testimony. In general, his testimony was very brief and vague. When he was asked for detail on cross-examination, some of his explanations were far-fetched and not at all convincing.

[25] For example, Mr. Kandasamy testified that he made a claim for a business expense for a hair loss treatment costing \$4,400. He said that this was on the advice of his accountant on the basis that he is meeting the public. In another case, Mr. Kandasamy attempted to justify a claim for a purchase of juice at Costco on the basis that if a customer came to his residence he would provide them with a glass of juice. These claims are so far-fetched that it does call into question the reliability of Mr. Kandasamy’s testimony as a whole.

Large claims

[26] Some of the expenditures were for very large amounts relative to the size of the business. For example, Mr. Kandasamy claimed storage expenses for three storage facilities with three individuals for a total of \$4,250 in 2010 and \$6,000 in 2011. These amounts are almost as much as the total revenue for the business in these years. It is unlikely that such large expenditures would be incurred for this fledgling business.

Hand-written receipts

[27] Receipts for storage rentals and reimbursement of cell phone charges were provided in the form of hand-written receipts from a typical receipt book. These receipts could easily have been fabricated. Two of the four individuals who prepared the receipts testified, as mentioned earlier.

[28] As for the storage receipts, some of the receipts evidenced an arrangement with Mr. Kandasamy's sister. She did not testify. These receipts refer to a storage facility at an apartment at 2405 Finch Avenue West. The apartment was used by Mr. Kandasamy for a brief period during the relevant taxation years and the sister did not live there. No satisfactory explanation was given for the use of this apartment and there was not sufficient detail concerning the purported storage arrangement.

[29] As for the cousin and friend who testified about storage rental and cell phone charges, neither of these witnesses' testimony was convincing. The testimony was brief, and the explanations provided on cross-examination concerning non-sequential receipt numbers were not at all convincing.

[30] I have concluded that none of the hand-written receipts or the testimony of the two witnesses is reliable and that this evidence should be given no weight.

Motor vehicle

[31] The allocation of motor vehicle expenses to the business was very high, and it was not supported by contemporaneous documentation such as a vehicle log.

[32] Mr. Kandasamy allocated 100 percent of his motor vehicle expenses to the business in 2010 and over 80 percent to the business in 2011. These are large proportions for such a small business.

[33] Even more problematic was the fact that the business allocation for 2011 was supported by figures for kilometers driven for business and in total, and yet no good explanation was provided for how these figures were obtained.

[34] There is no reasonable basis to allow further deductions for motor vehicle expenses. In particular, the Minister's allocation to business use, which was 10 percent in 2010 and 16 percent in 2011, is reasonable in the circumstances.

Conclusion

[35] In general, the evidence to support this appeal for further business deductions was very weak. The only adjustment that should be made to the reassessments is for the capital items, as discussed above.

[36] The appeal will be allowed, and the reassessments will be referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the only adjustment should be for expenditures in the amounts of \$5,000 for 2010 and \$2,400 for 2011, which were assessed as on account of capital, and should be treated as on current account.

[37] As Mr. Kandasamy was unsuccessful in most of his claims, there will be no order as to costs.

Signed at Toronto, Ontario this 1st day of April 2016.

“J. Woods”

Woods J.

CITATION: 2016 TCC 78
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DATE OF HEARING: March 23, 2016
REASONS FOR JUDGMENT BY: The Honourable Justice Judith Woods
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APPEARANCES:

For the Appellant: The Appellant himself
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