

[OFFICIAL ENGLISH TRANSLATION]

2001-1988(IT)I

BETWEEN:

OMER G. LÉGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 15, 2002, at Moncton, New Brunswick, by

the Honourable Judge François Angers

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Dominique Gallant

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1996 and 1997 taxation years are dismissed.

Signed at Ottawa, Canada, this 8th day of March 2002.

"François Angers"

J.T.C.C.

Translation certified true
on this 20th day of May 2003.

Sophie Debbané, Revisor

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Date: 20020308
Docket: 2001-1988(IT)I

BETWEEN:

OMER G. LÉGER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers, J.T.C.C.

[1] These are appeals, which the appellant instituted under the informal procedure, from assessments made for his 1996 and 1997 taxation years. The Minister of National Revenue (the "Minister") disallowed the appellant expenses totalling \$22,705 and \$15,302 respectively on the ground that they were not incurred for the purpose of gaining or producing income from the business or, in the alternative, on the ground that the appellant never earned income against which he could declare those amounts as expenses.

[2] The appellant is now semi-retired but works as an insurance agent for Assomption-Vie. He told the Court the ideas he had had and the steps he had taken in 1996 to start up a business. He was aware that Quebec bus operators knew little about the Francophone regions of New Brunswick and Prince Edward Island. Motor coach buses departed mainly from Montréal and Québec, with stops in Edmundston or Grand Falls, New Brunswick. The next day, the buses would reach Prince Edward Island. On the return, they would pass through the Gaspé region without making another stop in New Brunswick.

[3] The appellant therefore had in mind to change the destinations by organizing bus trips himself. In this way, he wanted to ensure that passengers spent at least four evenings in New Brunswick and one in Prince Edward Island. Originally from the Acadian region, the appellant wanted to benefit from the various tourist attractions in his area and promote them at the same time. It should be pointed out that the appellant is a former minister of tourism for New Brunswick.

[4] He therefore registered a certificate of business on January 1, 1996, under the name [TRANSLATION] "Destination Acadia", the objects of the business being to organize trips and activities and to promote tourism. He wanted to manage his business from Moncton, New Brunswick.

[5] The appellant explained the steps he had taken to promote his business in the province of Quebec and the difficulties he had encountered. He filed correspondence confirming some of the steps he had taken. One letter confirms that he had four or five consultations with a Québec lawyer concerning his business plan. Other letters confirmed that he had approached certain travel agencies in Montréal and Charlesbourg. There is no doubt that his plan had the support of tourist stakeholders in New Brunswick, as indicated by the correspondence filed in evidence.

[6] A letter dated March 28, 1996, from the Office de la protection du consommateur du gouvernement du Québec appears to have diminished the appellant's resolve. The letter was in response to a letter from the appellant's lawyer inquiring into Quebec's requirements with respect to soliciting customers residing in Québec for the purpose of selling organized tour packages to Acadia. The appellant was informed in the letter from the Office de la protection du consommateur that he had to hold a Quebec travel agent's licence and register with the clerk of the Superior Court of Québec under the *Act respecting the legal publicity of sole proprietorships, partnerships and legal persons* (S.Q. 1993, c. 48). We may conclude from the evidence that the appellant did not comply with those requirements.

[7] The appellant informed the Court that he had nevertheless continued his efforts by visiting travel agencies in Quebec, although there was no specific information regarding the results of his efforts. He admitted that his business had generated no income during the two taxation years. Since he had not realized initially how complex his plan was, he eventually decided to abandon it. The appellant still believes in his plan and is convinced that it would have succeeded.

[8] All those efforts resulted in expenses. Those expenses are the ones that he deducted from his other income for the two years in issue. The appellant filed no receipts in support of those expenses, although the evidence shows that he had produced receipts for the Minister's auditor. The appellant had drawn no distinction between receipts for expenses incurred in selling insurance and those incurred in carrying out the "Destination Acadia" activities.

[9] On cross-examination, he admitted that the information he had given his accountant in order to prepare his income tax returns had been based on approximate figures, which he himself had calculated. Since he had combined the expenses, it was therefore impossible for him to distinguish between those incurred for insurance sales and those incurred for his business activities.

[10] The receipts provided to the auditor refer solely to gasoline purchases and restaurant meals. Most of the receipts come from businesses in the Moncton area. The appellant explained that he would buy a full tank of gas in his area before leaving. According to the auditor, the receipts under the heading "Entertainment" do not state the name of the person with whom he was meeting.

[11] The respondent had the Minister's auditor, Jean-Luc Gagnon, testify in this case. After reviewing the appellant's file and financial statements, Mr. Gagnon communicated with the appellant and obtained additional information in order to complete his audit.

[12] Mr. Gagnon explained the analysis he had conducted of the expenses reported by the appellant. He had divided the expenses under various headings, based on the information gathered. The table he prepared is reproduced below:

| 1996 | Claimed | Allowed | Disallowed |
|--|------------------|-----------------------|-------------------------|
| Advertising | \$5,500.00 | \$825.00 | \$4,675.00 |
| Meals and entertainment* | \$300.00 | | \$300.00 |
| Automobile | \$16,741.80 | \$2,462.00 | \$14,280.00 |
| Office | \$500.00 | \$75.00 | \$425.00 |
| Accounting and legal fees | \$713.60 | \$614.00 | \$100.00 |
| Travel* | \$4,300.00 | \$588.00 | \$3,711.00 |
| Telephone and utilities | <u>\$ 840.00</u> | <u>\$ 126.00</u> | <u>\$ 714.00</u> |
| <i>Assessment of November 18, 1999</i> | \$28,895.40 | \$4,690.00 | **\$24,205.00 |
| <i>Assessment of January 4, 2001</i> | | <u>\$1,500.00</u> | <u>(\$1,500.00)</u> |
| | | \$6,190.00 | **\$22,705.00 |

* The Minister included meals, hotel and entertainment under the "Travel" item.

** Differences due to figures rounded-off.

| 1997 | Claimed | Allowed | Disallowed |
|---|--------------------|-------------------|---------------------|
| Advertising | \$2,306.50 | \$347.00 | \$1,960.00 |
| Taxes, licence and fees | \$20.00 | \$3.00 | \$17.00 |
| Meals and entertainment | \$1,239.09 | \$375.00 | \$864.00 |
| Automobile | \$14,154.36 | \$2,072.00 | \$12,082.00 |
| Office | \$268.99 | \$41.00 | \$228.00 |
| Accounting and lawyer's fees | \$220.00 | \$110.00 | \$110.00 |
| Travel* | \$800.37 | \$279.00 | \$521.00 |
| Telephone and utilities | <u>\$ 1,200.00</u> | <u>\$180.00</u> | <u>\$ 1,020.00</u> |
| <i>Assessment of November 18, 1999</i> | \$20,209.31 | \$3,407.00 | **\$16,802.00 |
| | | | |
| <i>Assessment of January 4, 2001</i> | | <u>\$1,500.00</u> | <u>(\$1,500.00)</u> |
| | | \$4,907.00 | **\$15,302.00 |

** Differences due to figures rounded-off.

[13] The auditor stated that he had disallowed the appellant's expenses for the two taxation years primarily because there were no supporting documents. Furthermore, it was impossible for him to distinguish between the appellant's expenses relating to his commissions as an insurance agent and those relating to the steps he had taken to start up his business. In addition, as mentioned, most of the expenses had been incurred in the Moncton area.

[14] The auditor therefore disallowed the appellant's advertising, office, telephone and utilities expenses because no supporting documents had been filed; however, he allowed 15 percent of that amount as reasonably incurred by the appellant in his efforts to start up his business.

[15] Under the item "Travel", which includes meals and entertainment, the appellant supplied receipts totalling \$3,954 for the year. Most of the receipts came from commercial establishments in the Moncton area and no explanation about them was given. On the whole, the auditor allowed 25 percent of half of the total receipts as expenses incurred by the appellant in his efforts to establish his business.

[16] Under the item "Automobile", the appellant declared expenses of \$16,741.80, whereas the receipts provided totalled \$3,543. The receipts in question were for gasoline purchases and repairs. Under those two sub-headings, the appellant had expenses of \$7,500 in gas and \$450 in repairs. The receipts therefore did not correspond to the amount reported. The auditor therefore allowed an amount equal to 25 percent of the appellant's commission income of \$1,324.09,

that is, \$331. Of the balance of \$16,741.80, less \$331, he allowed 15 percent in respect of expenses relating to the steps taken by the appellant to set up his business.

[17] The last item concerns accounting and legal fees. The auditor was given two receipts. The first, made in respect of a payment of \$513.60, dealt with the preparation of a pro forma document and was allowed. The second receipt, for \$200, concerned the preparation of the appellant's 1996 income tax returns. The auditor disallowed half of that amount on the ground that it was a personal expense. He therefore allowed \$614 in respect of expenses relating to the appellant's efforts to establish his business.

[18] For 1997, the auditor proceeded in the same manner with the expenses that were reported, the receipts that were provided, and the percentages of expenses incurred for steps taken by the appellant to set up his business that were allowed. Of the \$20,209 reported by the appellant, \$3,405 was allowed and \$16,802 was disallowed. In a subsequent assessment dated January 4, 2001, the Minister allowed the appellant to deduct an additional amount of \$1,500 for each of the taxation years in appeal.

[19] In his summation, counsel for the respondent acknowledged that the appellant had incurred expenses for the purpose of gaining or producing business income. She argued, however, that the onus was on him to prove that his expenses were indeed related to business income. She submitted that the evidence adduced by the appellant on that point was clearly insufficient. Having kept no books of account or records that could show the number of trips, the destinations, the expense amounts and so forth, it was impossible to analyze the evidence. Furthermore, the receipts provided dealt mainly with expenses incurred directly in the area where the appellant resided. The appellant had provided no details on his meetings with certain stakeholders in Quebec. The appellant admitted that the amounts unsubstantiated by receipts were in fact estimates of his expenses.

[20] The appellant, for his part, argued that the expenses reported had been incurred. He admitted that he could not prove all the efforts he had made, but he contended that he had taken a number of steps. He acknowledged that he did not have the necessary receipts but that the figures had not been chosen randomly. The expenses relating to his activities were justified, and he noted that nowadays he keeps his receipts.

[21] In her Reply to the Notice of Appeal, the respondent contends, *inter alia*, that the expenses the appellant was denied are not allowable since they are not expenses incurred by the appellant for the purpose of gaining or producing income from the business in accordance with paragraph 18(1)(a) of the *Income Tax Act* (the "Act"), which reads as follows:

SECTION 18: General limitations.

(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) **General limitation** — an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

[22] In actual fact, however, the Minister arbitrarily allowed the appellant to deduct a percentage of reported expenses since he agreed that some of the expenses reported had been incurred for the purpose of earning business income. The Minister allowed the appellant to deduct only a percentage of his expenses on the ground that no supporting documents had been filed.

[23] The appellant admitted that he had not recorded his travels and had very few receipts in support of the expenses reported. He acknowledged that most of the expenses were estimates that he had made, and he claimed that he had indeed incurred expenses in the course of his efforts.

[24] The onus was on the appellant to show that the Minister's assessments for the two taxation years were incorrect. Although I found the appellant to be a highly credible person, he was unable to demonstrate that the expenses he had deducted in his income tax returns were real. The little evidence that the appellant adduced respecting his trips and their frequency and his outside meetings cannot justify the amounts he reported as expenses. The comments by Reid J. in *421229 Ontario Ltd. v. The Queen*, [1995] 1 C.T.C. 305, at page 308, are worth recalling:

"I note, however, that the income tax system is a self-assessment system. All the information concerning the taxpayer's affairs is in the knowledge of the taxpayer. In such circumstances, once the Minister has proven the facts which exist in this case, there can be no complaint about the onus of proof to disprove the conclusions which arise therefrom being on the taxpayer."

[25] It should also be kept in mind that, throughout this entire affair, the appellant earned no income. In fact, the requirements of the Office de la protection du

consommateur du gouvernement du Québec of March 28, 1996, and the lack of evidence that the appellant complied with them lead the Court to wonder why the appellant reported so many advertising, travel and automobile expenses after that date. I find that the position taken by the Minister's auditor in the circumstances regarding the expenses reported by the appellant was very reasonable.

[26] For these reasons, the appeals instituted from the assessments for the 1996 and 1997 taxation years are dismissed.

Signed at Ottawa, Canada, this 8th day of March 2002.

"François Angers"

J.T.C.C.

Translation certified true
on this 20th day of May 2003.

Sophie Debbané, Revisor