

Citation: 2005TCC206
Date: 20050506
Docket: 2004-2721(IT)I

BETWEEN:

WILLIAM G. ROSA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(delivered orally from the Bench at
Kamloops, British Columbia, on January 27, 2005)

[1] This appeal pursuant to the Informal Procedure was heard at Kamloops, British Columbia on January 17, 2005. The Appellant was the only witness.

[2] The particulars of this matter are set out in paragraphs 3 to 11 of the Reply to the Notice of Appeal which read as follows:

3. In computing income for the 2002 taxation year, the Appellant deducted moving expenses in the amount of \$3,590.99 comprised of the following amounts (the “Expenses”):

Mortgage interest	\$2,283.26
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BC Hydro –electrical	\$ 982.73
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House and Fire Insurance	<u>\$ 325.00</u>
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Total	<u>\$3,590.99</u>
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4. The Minister of National Revenue (the “Minister”) initially assessed the Appellant for the 2002 taxation year by Notice dated June 2, 2003 and allowed the deduction of the Expenses.

5. By Notice dated October 14, 2003, the Minister reassessed the Appellant's 2002 taxation year to disallow the Expenses (the "Reassessment").
6. The Appellant objected to the Reassessment by serving on the Minister a Notice of Objection dated November 6, 2003.
7. By Notice dated March 19, 2004, the Minister confirmed the Reassessment.
8. In reassessing the Appellant's 2002 taxation year and in confirming the Reassessment, the Minister relied on the following assumptions of facts:
 - a) prior to moving to Vancouver British Columbia, the Appellant, his wife and their son, Timothy Rosa, resided at 1160 Scotch Creek Wharf Road, Chase, British Columbia (the "Old Residence");
 - b) the Appellant and his wife moved from the Old Residence to Vancouver, British Columbia in April 2001;
 - c) the Appellant was employed as a resident caretaker of a property located at 2409 West 43rd Avenue Vancouver, British Columbia (the "Property") from May 1, 2001 to September 30, 2003;
 - d) during his employment as the resident caretaker, the Appellant and his wife resided in a suite located at the Property (the "New Residence");
 - e) the Appellant's son continued to reside at the Old Residence throughout the period that the Appellant was living at the New Residence;
 - f) the Appellant paid all the expenses of maintaining the Old Residence;
 - g) the Appellant's insurance policy on the Old Residence did not reflect any changes after he Appellant's move to the New Residence;

- h) the Appellant did not take any reasonable steps to sell the Old Residence; and
 - i) the Appellant and his spouse moved back to the Old Residence from the New Residence in 2003 upon their retirement.
9. The assumptions of fact outlined in paragraphs 8 c), d), e), g), h) and i) were first made by the Minister in confirming the Reassessment.

B. ISSUE TO BE DECIDED

10. The issue is whether the Appellant is entitled to deduct the Expenses in the 2002 taxation year.

C. STATUTORY PROVISIONS RELIED ON

11. He relies on section 62 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the “Act”).

[3] This appeal must be dismissed because the Appellant’s son resided in the old residence before the Appellant moved and when they were away. As a result the appeal must fail as paragraph 62(3)(g) was not complied with when the Appellant’s son continued to reside in the old residence.

[4] This Court, pursuant to the request of the Appellant, has waived the filing fee because of the circumstances of the Appellant.

[5] In these circumstances it is recommended that the Appellant apply under the Fairness Package for the waiver of any interest that might be due on account of any taxes he may owe.

[6] The Appellant further raises in his testimony his financial problems in light of his age and pension circumstances and it is recommended to Revenue Canada

that he be allowed to pay in instalments as requested in whatever manner the parties determine are reasonable.

Signed at Saskatoon, Saskatchewan, this 6th day of May 2005.

"D.W. Beaubier"

Beaubier, J.

CITATION: 2005TCC206
COURT FILE NO.: 2004-2721(IT)I
STYLE OF CAUSE: William G. Rosa v. The Queen
PLACE OF HEARING: Kamloops, British Columbia
DATE OF HEARING: January 27, 2005
REASONS FOR JUDGMENT BY: The Honourable Justice Beaubier
DATE OF ORAL REASONS: May 6, 2005

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Bruce Senkpiel

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada