

Citation: 2003TCC368
Date: 20030521
Docket: 2002-2647(GST)I
2000-3207(IT)I

BETWEEN:

JACQUES DIEP,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Beaubier, J.T.C.C.

[1] These appeals pursuant to the Informal Procedure were heard together on common evidence at Vancouver, British Columbia on January 10, 2003. The Appellant testified. The Appellant's agent, Fareed Raza, also testified. The Respondent's auditor, Dal Jawandha testified for the Respondent.

[2] The particulars of the Goods and Services Tax ("GST") matter in appeal number 2002-2647(GST)I are set out in paragraphs 3, 4, 7 and 8 of the Reply to the Notice of Appeal. They read:

3. The Appellant filed Goods and Services Tax ("GST") returns for the period from January 1, 1998 to December 31, 1999, and claimed a net refund totaling \$3,285.28 (see attached Schedule "A").
4. By Notice of Assessment dated October 9, 2001, the Minister of National Revenue (the "Minister") assessed the Appellant for additional GST totaling \$1,326.16, interest of \$199.45 and penalties of \$231.83 (the "Assessment").

7. In so assessing the Appellant, the Minister relied on the following assumptions:
 - a) the facts admitted and stated above;
 - b) the Appellant was registered as a sole proprietorship under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the "Act"), effective April 13, 1994, and was assigned GST No. 137929964;
 - c) the Appellant is required to remit net GST on a quarterly basis;
 - d) the Appellant is a courier driver for Van City Courier Service Inc.;
 - e) the Appellant claimed Input Tax Credits ("ITCs") totaling \$3,285.28 during the period January 1, 1998 to December 31, 1999 (see Schedule "A" attached);
 - f) the Appellant overstated ITCs claimed by \$1,326.16 during the period January 1, 1998 to December 31, 1999; and
 - g) the Appellant failed to provide sufficient documentation to substantiate any further eligible ITCs for the period under appeal.

B. ISSUES TO BE DECIDED

8. The issue is whether the Appellant is entitled to additional ITCs for the period under appeal.

[3] The essence of the GST dispute is the statement that from January 1, 1998 to December 31, 1999, the Appellant over claimed a total of \$1,326.16 in Input Tax Credits ("ITC's"). The decision respecting GST will follow mathematically from the decision in the Income Tax appeal.

[4] The particulars of the Income Tax appeal number 2002-3207(IT)I are set out in paragraphs 3, 5, 8 and 9 of the Reply to the Notice of Appeal. They read:

3. In computing income for the 1998 and 1999 taxation years, the Appellant reported net business income of \$11,051.27 and \$14,924.72, as detailed in the attached Schedule "A".

...

5. On November 20, 2001, the Minister reassessed the Appellant's 1998 and 1999 taxation years to revise the Appellant's net business income from \$11,051.27 and \$14,924.72, respectively, to \$27,893.47 and \$31,878.92, respectively, as detailed in the attached Schedule "A".

...

8. In so reassessing the Appellant, the Minister relied on the following assumptions of fact:
 - a) the facts as admitted and stated above;
 - b) at all material times, the Appellant was self-employed as a courier driver for VanCity Courier Service Inc. ("VanCity Courier");
 - c) the fiscal year end of the Appellant's courier business is the calendar year end;
 - d) the Appellant was responsible for picking up and delivering packages, parcels and letters but not the collection of payment for the services rendered;
 - e) VanCity Courier handled all the billings and collecting;
 - f) VanCity Courier paid the Appellant on a commission basis;
 - g) in 1998 and 1999, the Appellant earned self-employed commission income from VanCity Courier of \$31,875.32 and \$35,976.34, respectively, before deducting expenses;
 - h) the Appellant is only entitled to deduct expenses against commission income earned at VanCity Courier of \$3,981.85 and \$4,097.42 for the 1998 and 1999 taxation years, respectively, as detailed in the attached Scheduled "A";
 - i) the Appellant failed to provide documentation to substantiate that expenditures incurred in excess of the amounts allowed, if any, were incurred to earn income from his courier business and were not

personal expenses for the 1998 and 1999 taxation years;

- j) the Appellant did not maintain a log book to support his claimed automobile business usage;
- k) the Appellant did not maintain a reconciliation of the rent expense related to his courier business for the 1998 and 1999 taxation years;
- l) the Appellant failed to provide an entertainment diary to support his claimed meals and entertainment expenses for the 1998 and 1999 taxation years;
- m) the Appellant failed to document the capital cost of property in respect of capital cost allowance claimed for the 1998 and 1999 taxation years; and
- n) claimed expenses in excess of the amounts allowed by the Minister were not incurred or made for the purpose of gaining or producing income from a business, but rather were his personal or living expenses;

B. ISSUES TO BE DECIDED

- 9. The issues are whether the Appellant is entitled to deduct:
 - a) expenses in excess of the amounts allowed by the Minister; and
 - b) capital cost allowance as claimed.

[5] Thus, for the 1998 and 1999 calendar years, there are disputes over expenses and capital costs allowance.

[6] All of the assumptions in the Income Tax appeals except 8 h) and i) were confirmed by the evidence. Respecting 8 l), the Appellant did have trip slips respecting his courier business which he gave to VanCity Courier in order to get paid.

[7] Schedule "A" to the Reply to the Income Tax Notice of appeal contains a detailed outline of the assessment. The Respondent conceded the following concessions respecting these appeals:

| | <u>1998</u> | <u>1999</u> |
|----------------------|--|-------------|
| Office Expenses | | \$209.75 |
| Supplies | \$14.21 | |
| CCA | \$892.54 (Based on 60% business allocation) | \$937.00 |
| Motor Vehicle (fuel) | \$266.83 (Based on 60% business allocation) | \$1,996.00 |

[8] The Appellant merely gave all of his receipts to his accountant "Somjee Valough, Tax Consultant" in a box. The accountant prepared and filed the tax returns. The accountant made false expense claims on a giant scale with no supporting evidence. The Appellant is a quiet rather simple man who relied completely on his accountant to do the proper thing. The accountant did not do that and the Appellant did not know the difference. When in Court he relied completely on his agent and it was apparent that he did not understand everything that was happening. It was perfectly clear that he had no comprehension of the meaning of what was going on, except that it was about paying more tax.

[9] The Court finds that the only question that was not established in favour of the Respondent after the concessions was the amount of business use of the Appellant's only vehicle, a four door 1997 Metro. The auditor calculated its business use at 5/7 based on a five day work week. This came to 71%. He then reduced it by 11% to 60% based upon personal use by the Appellant, his wife (who does not drive) and their two small children. However, the Appellant testified that he also worked in the courier business, on average for 1/2 day every Saturday or Sunday, each alternate weekend. He is believed. He is also believed in particular when he testified that on weekdays he usually worked from 6:45 a.m. until 5:30 or 7:00 p.m. For this reason, the Court finds that there was little or no personal use of the Metro on week nights and some business use on weekends. The results is that the Court finds the business use of the vehicle to be 71%, not 60%.

[10] These appeals are referred to the Minister of National Revenue for reconsideration and reassessment pursuant to these reasons respecting the income tax, the GST and penalties.

[11] Because of the obvious innocence of the Appellant respecting what he was entitled to deduct and the fact that it was necessary for him to rely on his accountant and it was clear that he did so, the Court recommends that he apply under the Fairness Package to be relieved from liability for any interest that he may owe arising from these assessments. He is a family man with a small income and very little means.

[12] Finally, it is equally clear that the Appellant's accountant inflated the claims for deduction with no basis for such claims. Despite the fact that the Appellant did not understand this, any accountant using the title "Tax Consultant", as the Appellant's accountant did, would know this. Based on the evidence before the Court, the accountant should be liable for any penalty that the Appellant may be required to pay.

These Reasons for Judgment are issued in substitution for the Reasons for Judgment dated January 15, 2003.

Signed at **Ottawa, Canada**, this **21st** day of **May**, 2003.

"D. W. Beaubier"

J.T.C.C.

SCHEDULE "A"

Jacques Diep - Tax Court of Canada Appeal #2002 - 3207(IT)I

Summary of business income claimed and revised in respect of the Appellant's courier business for the 1998 and 1999 taxation years.

| | <u>1998</u> | Revised by | <u>1999</u> | Revised by |
|---------------------|--------------------|--------------------|--------------------|--------------------|
| | <u>Claimed</u> | <u>Audit</u> | <u>Claimed</u> | <u>Audit</u> |
| Commissions | \$31,875.32 | \$31,875.32 | \$35,976.34 | \$35,976.34 |
| Less: Expenses | | | | |
| Bus. Tax/fees | 25.00 | 25.00 | 25.00 | 25.00 |
| Interest | 189.45 | 0.00 | n/a | n/a |
| Meals/entertainment | 892.68 | 0.00 | 771.18 | 0.00 |
| Motor vehicle | 11,951.75 | 1,482.73 | 12,056.93 | 1,555.78 |
| Office expenses | n/a | n/a | 235.49 | 0.00 |
| Supplies | 304.56 | 0.00 | n/a | n/a |
| Legal/acctng. | 270.00 | 270.00 | 400.00 | 400.00 |
| Rent | 2,995.00 | 0.00 | 3,200.00 | 0.00 |
| Other expenses | 3,178.81 | 2,204.12* | 2,713.99 | 2,116.64* |
| CCA - Cl. 10 | <u>1,016.80</u> | <u>0.00</u> | <u>1,649.03</u> | <u>0.00</u> |
| Total Deductions | \$20,824.05 | \$3,981.85 | \$21,051.62 | \$4,097.42 |
| Net Business Inc. | <u>\$11,051.27</u> | <u>\$27,893.47</u> | <u>\$14,924.72</u> | <u>\$31,878.92</u> |

Note: * Disallowed expenses include Work clothes and shoes totalling \$974.69 and \$587.49 for the 1998 and 1999 taxation years, respectively.

CITATION NO.: **2003TCC368**

COURT FILE NO.: 2002-2647(GST)I and 2002-3207(IT)I

STYLE OF CAUSE: Jacques Diep v. The Queen

PLACE OF HEARING Vancouver, British Columbia

DATE OF HEARING January 10, 2003

REASONS FOR JUDGMENT BY: The Honourable Judge D. W. Beaubier

DATE OF AMENDED REASONS **May 21, 2003**

APPEARANCES:

Agent for the Appellant: Fareed Raza

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COUNSEL OF RECORD:

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Name:

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