Docket: 2006-2702(IT)I

BETWEEN:

RON MANN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on May 31, 2007, at Edmonton, Alberta

By: The Honourable Justice C.H. McArthur

Appearances:

Counsel for the Appellant:	David Skrypichayko
Counsel for the Respondent:	Carrie Mymko

JUDGMENT

The appeals from reassessments made under the *Income Tax Act* for the 2001, 2002 and 2003 taxation years are dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 7th day of December, 2007.

"C.H. McArthur"

McArthur J.

Citation: 2007TCC732
Date: 20071207
Docket: 2006-2702(IT)I

BETWEEN:

RON MANN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

McArthur J.

[1] These appeals are from reassessments of the Minister of National Revenue of the Appellant's 2001, 2002 and 2003 taxation years reducing the Appellant's claimed expenses in those years. Further, the Minister included in the Appellant's income for 2002 and 2003, additional amounts of $35,559 and $30,941, respectively.

[2] The Appellant was represented by counsel who sought that the reassessments be vacated on the basis that the Appellant, on a balance of probabilities, incurred expenses for his home, vehicle and management services, in good faith and with a view to earn income.

[3] These appeals were heard immediately following the hearing of the appeals of the Appellant's wife, Phyllis Jensen, and, upon consent, some of the facts testified to by the Appellant in her appeals are incorporated in these appeals.

[4] The Appellant is a semi-retired engineer who had been involved in multiple businesses over the years. His wife, Phyllis Jensen, was an elementary school teacher in several schools of Alberta over a period of 35 years. She retired in 2004, but remains involved in the education of children by preparing and selling curriculums to assist other teachers. She develops and markets her curriculum material throughout

Alberta and, to a limited extent, elsewhere in Canada. She first started her business, Rodeo Chaps, in 1991, on a part-time basis. Upon retirement, Rodeo Chaps clearly became a fulltime occupation for her and probably for the Appellant. It remains solely owned by the Appellant's spouse.

[5] The Appellant got involved in the management of the business from 1999 onward. He had an administrative role and considers himself a management consultant and not an employee which is accepted by the Minister. He operated small businesses ranging from engineering consultant to transplanting larger trees with heavy equipment prior to the relevant years.

[6] As compensation for his management services, The Appellant deposited all Rodeo Chap sales paid by way of Visa credit cards to his personal bank account and he paid income tax on these sale proceeds. He believed that this was the simplest accounting procedure. It saves the steps of having to deposit the Visa payments (to Rodeo) in Rodeo's account and having him invoice Rodeo for the hours he worked. He stated that he had no formal accounting training, but believed his record keeping and income tax filing methods were superior to those of at least some professionals. With regard to tax laws he stated at page 75 of the transcript:

> About every five years I might read the little book, and it's essentially the same. Once in a while the rate of something might change, but no, I - - spend not more than five minutes every five years updating.

The Appellant operated his own business known as "Mann Consultants". For the most part, he provided services only to Rodeo Chaps which is owned and operated by his wife. They shared the book and recordkeeping. In 2002 and 2003, the Appellant earned income from Rodeo of $35,559 and $30,941, respectively. There is little or no revenue from other sources.

[7] The comments of counsel for the Appellant were general in nature. He stated in the Notice of Appeal (paragraphs 20, 21 and 24) that the Appellant had decades of experience in management and administration and he should be well paid for his services.

[8] I do not believe the Minister is contesting the amount of compensation but questions the manner in which it was paid. The Visa sale amounts should have been included in Rodeo Chaps income and it should have paid (and expensed) a reasonable amount to the Appellant for his services. I do not believe the Minister objects to the quantum.

Motor Vehicle, Work Space in Home and Miscellaneous Expenses

[9] The next issue is whether the Appellant is entitled to deductions for various expenses in excess of the amounts allowed by the Minister in the taxation years under appeal.

[10] I will commence with travelling and motor vehicle expenses. The Appellant claimed that 80% of the kilometres travelled in 2001 and 90% of those travelled in 2002 and 2003 were for the purpose of earning income from a business.[1] He was allowed 50% for business purposes. He testified, in his wife's appeals, that he drives approximately 12,500 kilometres per year, including approximately 36 kilometres three or four times a week to have breakfast, and to Calgary three times a year on an average, being approximately 7,500 kilometres per year. I find that this mileage was not business-related and it is more than one-half his total yearly mileage and is a personal expense. The 50% business allocation assessed by the Minister is reasonable, if not generous.

[11] A taxpayer claiming work space in the home should keep organized records identifying the expense with the business purpose as well as a log book of automobile expenses. The Appellant conceded at trial that he only uses 50 square feet in a home of approximately 3,612 square feet, which represents 1.38% for his own personal business. Any amount claimed by the Appellant should reduce Ms. Jensen's claim since evidence suggests that the space used by Mr. Mann is located in the same rooms that were previously allocated for the business use of Rodeo Chaps. Over the course of these appeals, the Appellant was unable to prove any additional use of the home for the purpose of earning income from a business. No work space in the home is allowed in excess of the amounts allowed by the Minister.

Other Expenses

[12] Following the audit, the Minister disallowed most of the other expenses claimed by Mr. Mann for the period in issue. The main justification was that some of those expenditures were simply not incurred and, if incurred, they were personal in nature and not incurred for the purposes of earning income. The Appellant was unable to establish sources of revenue to support most of the expenses claimed. He is a self-employed consultant almost exclusively for Rodeo Chaps and, as such, he

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[1] Mr. Mann owns his own vehicle. Ms. Jensen owns an SUV.

included business income resulting from that activity, but he did not present other revenue from his former businesses such as engineering consulting or tree moving. He claimed expenses that are not for the purpose of earning income from consulting with Rodeo Chaps. For example, I cannot link expenditures for fuel used in machinery to the services rendered to Rodeo Chaps. To be allowed, an expense must be incurred for the purpose of producing income, (paragraph 18(1)(*a*)) and in accordance with section 67, it must be reasonable. The following statement of Chief Justice Bowman in the decision in *Chrabalowski v. The Queen*[2] applies equally to the present situation:

> One problem faced by an appellant in a case of this sort is that if there is a series of excessive, implausible or unreasonable claims it casts doubt on all of the claims. In other words, once a pattern of implausibility or excessiveness is established the court is inclined to scrutinize with greater care claims that, standing alone, might be sustainable. In other words, any gaps left in the evidence are filled in, and any doubts resolved, in a manner that is consistent with the pattern. …

[13] The Appellant in his testimony did not present any new evidence that would cast doubt on the accuracy of the Minister's assumptions in regard to the following expenses claimed:

Taxation year 2001	
Subcontract	$341.06
Business tax, fees	$2,733.97[3]
Fuel cost (equipment)	$168.28
Interests	$853.51
Telephone	$968.36
Advertising and promotion	$1,129.53
Meals and entertainment	$984.35
Office	$1,517.75
Supplies	$1,443.80
Travel	$1,138.90

Taxation year 2002

2 2004 TCC 644 – [2005] 1 C.T.C. 2054 at paragraph 12.

3 Business tax, fees include: life insurance, MasterCard fees, vehicle registration, renewal and insurance for his motor home.

Business tax, fees	$2,739.77
Interests	$160.02
Telephone	$358.66
Delivery freight and express	$40.00
Equipment	$255.01
Office	$1,466.91
Supplies	$5,513.37
Travel	$3,301.79[4]
Equipment rental	$820.18

Taxation year 2003	
Business tax, fees	$3,093.50
Fuel cost (equipment)	$439.51
Interests	$785.13
Office	$2,604.80
Supplies	$5,034.39
Travel	$1,631.34[5]
Equipment rental	$2,717.72[6]
Management meetings	$806.34

Business tax, fees set out above in the taxation years included business tax, life insurance, MasterCard fees, vehicle registration, renewals and insurance for his motor home. There was no evidence to substantiate the deductibility of these payments. Almost all of these expenses have no actual receipts. The credit card statements or receipts stand to be only a proof of payment offering no explanation on what was actually bought and for what purpose. Most expenses were incurred at Canadian Tire, Revy Home, UFA Coop, Rona and Sears. Again, there was no evidence to substantiate the deductibility of these payments.

[14] As stated, the Appellant did not establish that, during the relevant years, he operated any business activities other than his role with Rodeo Chaps as an independent contractor, he did not produce income from his former businesses and the prerequisite in paragraph 18(1)(*a*) of the *Act* is not met. It is not a prerequisite that there be income, but, at the very least, the taxpayer must demonstrate that he was

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4 Trip to Toronto, liquor store, restaurant, Safeway, bakery, etcetera.

5 Canadian Tire, Rona, Sears, etcetera.

6 L.A. Lube, tire shop, auto parts, equipment rental, UFA, COOP.

carrying on a business during the years for which he claims business expenses. A taxpayer must advance specifics with respect to income and related expenses.

[15] There is an exception. In 2002, I believe, he received a fee of $1,305 for his consultation work in the placement of an ATM (automatic teller machine). There is no evidence of specific expenditures in respect to this isolated contract, just generalities such as motor vehicle, business tax, interest, telephone, advertising, meals, etcetera. There was no evidence of specific expense for this activity.

[16] The Minister disallowed the Appellant's terminal losses in the taxation years in issue on the basis that these depreciable assets were not disposed of in any of the taxation years at issue. A terminal loss can be deducted when all depreciable property in a class is disposed of and there is still unused undepreciated capital cost. There was no evidence to establish that the Appellant met this requirement.

[17] Subsection 20(16) of the *Act* allows a taxpayer to obtain terminal loss under some conditions. Among the conditions, there must be a disposition of a depreciable property. In this case, the Appellant may have disposed of the assets, but not in any of the taxation years at issue. The Appellant's submissions were primarily anecdotal and made in generalities going back to work activities perhaps twenty years before the relevant years.

[18] To be depreciable property the Appellant must have been permitted to take a deduction for depreciation under paragraph 20(1)(*a*) for the assets. He was not able to since none of these assets were still being used to produce income, either at the time, or just before he claimed the terminal loss. Therefore, these assets were not depreciable property in the years where the terminal loss was claimed, nor in the preceding year.

[19] The Appellant's counsel suggested that Mr. Mann was phasing down his tree moving business. This argument is not supported by any evidence since phasing down usually refers to a business still operating but gradually reducing its activities. In this case, nothing suggests that Mr. Mann's tree-moving business was still operating or had operated shortly before 2001 with the exception of his benevolent work for neighbours at no cost to them.

[20] The Appellant claimed a deduction for capital cost allowance on numerous assets. The Minister disallowed such deductions since no evidence suggested that the assets were used for the purpose of gaining or producing income from a business. The Appellant was unable to prove that he actually earned any income with those

assets in the taxation years at issue. In fact, some of these assets may not have been acquired to gain a business income and *Regulation* 1102(1)(*c*) prevents the Appellant from claiming a CCA deduction on these assets. He claimed CCA on his motor home and on a garden tractor which were used for his personal benefit. He is stretching the exception in paragraph 18(1)(*a*) too far.

Conclusion

[21] Some of the issues of these appeals concern accounting errors. The *Act* does not provide any specific accounting method to be followed to calculate profit from a business but over the years courts have set guidelines to be followed. A taxpayer is not obligated to follow the generally accepted accounting principle ("GAAP"). See the Supreme Court of Canada decision in *Canderel Ltd. v. R.*[7] A taxpayer is free to adopt any accounting method which is not inconsistent with: (i) the provisions of the *Act*; (ii) established case law principles or rules of law; and (iii) well-accepted business principles. But one must keep in mind that the main object remains to have an accounting method that presents an accurate picture of a taxpayer's profit for a given year.

[22] The Appellant did not present an accounting method that was always consistent with the law and it did not reflect an accurate picture of his actual financial situation for the years under appeal. I believe his philosophy was closer to "if there is an expenditure even remotely related to a business, past or present, it is tax deductible."[8]

[23] Perhaps the humble approach in tax matters is to recognize that it is anything but simple, contrary to the generalizations and shortcuts relied on by the Appellant. There are resources available to taxpayers to assist with a sometimes complex task of completing tax returns.

[24]In the Appellant's Notice of Appeal and the final argument, his counsel presents equitable arguments, urging the Court to consider the whole situation going back long before the questions before us, with fairness and equanimity. This Court is not one of equity, and is very reluctant to grant relief based on widespread assertions

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7 [1998] 1 S.C.R. 147.

8 These words are mine and not those of the Appellant's.

unless extraordinary circumstances exist.[9] I cannot guess or conclude to the effect that, given past history of hard work and an entrepreneurial spirit, the Appellant must be deserving of the deductions requested given past performances. No doubt there are claimed expenses that should be allowed, but I cannot determine what they are because they are mixed in with so many unproved or implausible claims.

[25] The appeals are dismissed, with costs to the Respondent.

Signed at Ottawa, Canada, this 7th day of December, 2007.

"C.H. McArthur"

McArthur J.

[9] An example of this would be in circumstances where clearly there was current business income and activity and obvious expenditures although the taxpayer's books are inadequate.

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APPEARANCES:

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