

Docket: 2006-3354(IT)I

BETWEEN:

KEN R. DREAVER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 30, 2007, at Edmonton, Alberta

By: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gregory Perlinsky

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed.

Signed at Ottawa, Canada, this 22nd day of January, 2008.

“C.H. McArthur”

McArthur J.

Citation: 2008TCC39
Date: January 22, 2008
Docket: 2006-3354(IT)I

BETWEEN:

KEN R. DREAVER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

McArthur J.

[1] This appeal is from a reassessment by the Minister of National Revenue for the Appellant's 2003 taxation year. It concerns the deductibility of expenses incurred by the Appellant in his efforts to write two books dealing with the environment. One is intended to be technical and the other, a coffee table type of book.

[2] The Appellant was born and educated in New Zealand where he received degrees in Environmental Science including a Master of Science in 1970. More recently in 2001, he obtained a Doctor of Philosophy in Environmental Engineering from American West University. He has been living in Alberta for 20 years working as a Consultant Resource, Water & Environment Specialist, a writer, a landscaper and a ski instructor. He is 64 years old.

[3] In recent years and in particular, 2003, his income came solely from his work as (a) as a landscaper for the City of Edmonton earning \$13,592; (b) a ski instructor at the Edmonton Ski Club earning \$729; (c) other employment income in the amount of \$551 (I believe this was from environmental consulting and building a fence); and (d) employment insurance in the amount of \$4,335, for a total of \$19,325.

[4] The following are his reported business income/(losses) for the period 1998 to 2002:

<u>Taxation Year</u>	<u>Gross income</u>	<u>Net Income/(Loss)</u>
1998	\$265.00	\$8.00
1999	\$1,394.00	\$32.00
2000	\$107.00	(\$11,077.00)
2001	\$399.00	\$9.00
2002	\$152.00	(\$15,313.00)

In the 2003 taxation year, the Appellant reported a loss from business of \$15,163.45.

[5] Over the years, he has written many technical articles on the environment, I believe for technical publications. In 2002, his application for a \$12,000 grant from the Alberta Foundation for the Arts to write a book entitled “Experiences of an Environmental Field Man” was turned down, and I do not believe he has pursued this book. Previously he had written two technical handbooks, one of which was “Environmental Contingency Plan” for Transport Canada. The expenses in relation to the environment guide for Transport Canada were incurred prior to the commencement of his writing, which is the subject of this appeal. No commencement chapters or pages were put into evidence.

[6] In 2003, he claimed expenses which were charged to his personal credit cards because he could not qualify for a business loan. The credit cards were:

Westpac Trust Visa
Westpac Trust MasterCard
ANZ MasterCard
American Express

And he claimed the following amounts for supplies:

Photo processing and film	\$1,187.70 (coffee table photo book)
VCR tapes	\$1,968.35
Recordable CD	\$64.37
Digital camera memory sticks	\$144.42
Books	<u>\$848.27</u>
Total	<u>\$4,213.11</u>

Stating that he was a field scientist doing ground work for his books, he also claimed the following travel expenses:

April 23 to 25	Edmonton to Jasper & Return	\$462.96
May 28	Edmonton to Calgary & Return	62.08

Oct 19 to Nov 8	Alberta to the Maritimes & Return	<u>3,576.01</u>
	Total	<u>\$4,101.05</u>

[7] The Appellant's position in his own words included the following:

Relating to this audit from the IT Officers here in Edmonton; - there seemed to be a lack of understanding of my business. The fact that my business comprises both short term and long term divisions of the work, and the fact that, in particular small businesses need to adapt and change over time to meet current and changing demands / 'markets' for their services. There seemed to be a general lack of appreciation and respect for small and micro-businesses, particularly ones engaged in developing intellectual property. This has been confirmed by other colleagues in my and related fields. Edmonton IT management seem to have an arbitrary policy of discounting this type of small business as irrelevant, and reversing legitimate receipts, loan information, CCA, etc, related to the operation of the same. Even examples of ignoring Revenue Depts own stated 'Fairness Provisions' in some cases. As the summaries of my records showed, I was more than conservative in any business expense claimed; i.e. contributing much of &/or a high percentage of the business expense from my own resources, with several expenses not even claimed!

The Minister concluded that the Appellant's activity was a personal endeavour and was not undertaken in pursuit of profit or undertaken in a commercial manner. Further, the Minister stated that the activity did not constitute a source of income on the basis that it was personal and it was not incurred to gain income from a business within the meaning of paragraph 18(1)(a) of the *Income Tax Act*.

18(1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) 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;

[8] The question narrows down to was the Appellant in the business of writing books in the 2003 taxation year. Can it be said that he had a commercial organization which makes it a business?

[9] No doubt the Appellant had the intention to make money but this subjective factor does not answer the question of whether he operated a business. One test is to ask would a reasonable person, the person on the street, having all the facts and applying commercial common sense, say "yes, this is a business". In answering this question, the reasonable person would look at such things as the Appellant's

writing history, success or failures, his capitalization, his organization skills, his dealings with potential publishers, examples of his writing and photography, recommendations from successful professional writers and, is an investor, private or public prepared to advance necessary capital.

[10] The Minister pleaded, in the alternative, section 67 of the *Act* which assumes the existence of a business and before considering it, the question of whether the Appellant was operating a business must be answered.

[11] It boils down to an examination of the facts and the weight to be given them. The Appellant was 60 years old in 2003. He is highly educated in environmental science. He has a history of writing articles¹ and two environmental guidebooks which I did not see. I do not believe he has ever had a book published. He has spoken to one or two publishers who were not interested in pursuing his questions with respect to publishing until he has the written books. One is intended to be a coffee table book using photographs which he demonstrated in an album, but which was not put into evidence, probably because he had no copies. There were about 12 or 14 landscape style scenes taken while he and his wife were traveling in the maritime provinces from October 19 to November 8, 2003, for which he claims a travel deduction of \$3,576.

[12] In 2003, it appears the Appellant earned less than \$500 from his profession as an environmental scientist, and no income as a writer. His business history is not encouraging with losses in five previous years although it is not clear for what activity these losses were incurred. There was no evidence with respect to the business earnings or the progress of his books since 2003. The later years will have to be considered on their own.

[13] I will now look at his capitalization. The bank understandably will not capitalize his venture and it is difficult to believe that he could obtain private capital and I do not believe he has made any attempts. His application for funding from the Province of Alberta was denied. He financed his expenditures through personal credit cards paying interest at about 18%, totaling \$3,158 in 2003. This is a difficult way to carry on a business.

[14] The interest claimed was 78% of the interest charged on the credit cards together with bank service charges. There was no evidence with respect to how this was arrived at. He claimed \$4,213 for supplies including \$1,187 for film

¹ I do not know for whom these articles were written or whether or not the Appellant was remunerated.

processing and \$1,968 and \$848 for books. Apart from the photographs of his Maritime provinces trip, I am unclear as to the business purpose for the other expenditures.

[15] The Appellant's organizational skills in presenting this appeal were not impressive. Granted he is a scientist, landscaper and ski instructor, not a lawyer or accountant, but his material was disorganized and he had no books or records which would connect the claimed expenditures to a business. In fairness, he cannot be criticized for not knowing how to present a tax appeal. Our informal procedure welcomes unrepresented Appellants and the trial judge must take some responsibility for assisting the Appellant in presenting the relevant facts.

[16] He had no relationship, let alone a contract, with a potential publisher. He presented no letters or words of recommendation from his peers or anyone else. He had no financing in sight nor any budget proposal. In 1997 he took a course in commencing a small business yet did not present a viable business plan. His lack of bookkeeping is inconsistent with a business being carried on.

[17] I believe Mr. Dreaver was acting in good faith and that he is honest and sincere, but I do not accept that a valid business existed in 2003. The person on the street would not be inspired by this history. There has to be more evidence of business activity than was presented. This does not mean that a business did not exist in subsequent years, and that will have to be considered separately.

[18] The appeal is dismissed.

Signed at Ottawa, Canada, this 22nd day of January, 2008.

“C.H. McArthur”

McArthur J.

CITATION: 2008TCC39

COURT FILE NO.: 2006-3354(IT)I

STYLE OF CAUSE: KEN R. DREAVER and
HER MAJESTY THE QUEEN

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REASONS FOR JUDGMENT BY: The Honourable Justice C.H. McArthur

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APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gregory Perlinsky

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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