

Docket: 2006-252(IT)G

BETWEEN:

AAPEX DRIVING ACADEMY LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on February 25, 2008 at
Toronto, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Appellant: Jeffrey L. Goldman

Counsel for the Respondent: Suzanne M. Bruce

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the taxation years ending December 31, 1998 and December 31, 2000 are dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 8th day of January 2009.

“L.M. Little”

Little J.

Citation: 2009 TCC 11
Date: 20090108
Docket: 2006-252(IT)G

BETWEEN:

AAPEX DRIVING ACADEMY LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] Aapex Driving Academy Ltd. (“Aapex” or the “Appellant”) was incorporated under the laws of the Province of Ontario in 1994.

[2] At all material times, Christine Raby (“Raby”) and her brother, Michael Racine (“Racine”), owned 51% and 49% of the common shares respectively of Aapex.

[3] The Appellant owned and operated a driving school that offered both classroom instruction and in-car driving lessons to its customers.

[4] The classroom instruction and driving lessons were taught by driving instructors employed by the Appellant.

[5] Raby maintains that she was an employee of the Appellant.

[6] Raby maintains that she received a salary from the Appellant in the following amounts (Transcript, p. 110, lines 20 – 21):

- (a) 2000 - \$28,000;
- (b) 2001 - \$30,000; and
- (c) 2002 - \$0.

[7] Raby stated that she owned between 22 to 27 automobiles and one truck (the “Vehicles”) during the relevant taxation years.

[8] The Vehicles were registered and licensed in Raby’s name (Transcript, p. 103, lines 2 – 5).

[9] Raby said that she provided the Vehicles to the Appellant for its use in operating its business; the Vehicles were used by the driving instructors during driving lessons.

[10] The Minister of National Revenue (the “Minister”) determined that Raby charged the Appellant a fee for the use of the Vehicles based upon a per kilometre rate (“Vehicle Fees”).

[11] The Vehicle Fees for each of the 2000, 2001 and 2002 taxation years were calculated based on rates prescribed under Regulation 7306 of the *Income Tax Regulations* (“Regulations”).

[12] At the end of each taxation year, the Appellant credited the Vehicle Fees in a shareholder account shared by Raby and Racine (the “Shareholder Account”). The following amounts were used in the respective taxation years:

- (a) 2000 - \$273,991;
- (b) 2001 - \$343,959; and
- (c) 2002 - \$431,946.

[13] The Minister determined that the Vehicle Fees credited in the Shareholder Account were divided equally between Raby and Racine.

[14] The Appellant paid all of the operating expenses relating to the use of the Vehicles including gas, loan payments, license payments, insurance, maintenance and repairs (the “Vehicle Operating Expenses”).

[15] At the end of the 2000, 2001 and 2002 taxation years the Appellant made an adjusting entry in its books to reverse most of the Vehicle Operating Expenses for the year by debiting the amount of the Vehicle Operating Expenses in the Shareholder Account.

[16] The following Vehicle Operating Expenses were not adjusted in the books of the Appellant (the “Unadjusted Operating Expenses”):

- (a) 2001 - \$19,914 for insurance;
- (b) 2001 - \$34,383 for maintenance and repairs; and
- (c) 2002 - \$7,619 for interest on loan payments for the Vehicles.

[17] Raby maintains that her portion of the Vehicle Fees credited in the Shareholder Account was never received by her. Instead, Raby maintains that she received cash payments of approximately \$580 a week from the Appellant for the use of the Vehicles (“Cash Payments”).

[18] Raby maintains that the Appellant made the following Cash Payments to Raby for the use of the Vehicles:

- (a) 2000 - \$31,660;
- (b) 2001 - \$48,010; and
- (c) 2002 - \$30,160.

[19] The net of the amounts debited and credited in the Shareholder Account that were in excess of the Cash Payments remained in the Shareholder Account.

[20] In computing its income, the Appellant:

- (a) sought to carry-back a non-capital loss of \$62,541 from its 2001 taxation year to its 1998 taxation year; and
- (b) sought to carry-back non-capital losses of \$17,816 and \$33,457, respectively, from its 2001 taxation year and 2002 taxation year to its 2000 taxation year.

B. ISSUES TO BE DECIDED

[21] The issues are as follows:

- (a) whether the Appellant is entitled to claim non-capital losses of \$62,541 in computing its income for its 1998 taxation year;
- (b) whether the Appellant is entitled to claim non-capital losses of \$17,816 and \$33,457 carried over from the 2001 and 2002 taxation years, respectively, in computing its income for the 2000 taxation year.

C. ANALYSIS

[22] The Minister determined that the Appellant did not incur the Unadjusted Operating Expenses of \$54,297 and \$7,619 in the respective 2001 and 2002 taxation years.

[23] The Minister also determined that it was not reasonable for the Appellant to pay for any Vehicle Operating Expenses in addition to the Vehicle Fees that it paid to its shareholders.

[24] The Minister reassessed the Appellant's 1998 and 2000 taxation years and reduced Apex's available non-capital loss carry-back in each of Apex's 1998 and 2000 taxation years.

[25] The Minister stated that the reassessments and the revised amounts are as follows:

| Taxation Year | Apex Assessed Income Tax | | |
|---------------|----------------------------------|--|--|
| | <i>Losses Originally Claimed</i> | <i>Reduction in Application of Losses from 2001 and 2002</i> | <i>Available non-capital loss carry-back</i> |
| 1998 | \$ 62,541 | \$ 36,481 | \$ 26,060 |
| 2000 | 51,273 | 25,435 | 25,838 |

[26] During the hearing, neither counsel for the Appellant nor counsel for the Respondent made any submissions or arguments with respect to the Notices of Reassessment issued by the Minister of Apex's income tax under this appeal.

[27] Canadian courts have established that the onus is on the taxpayer to prove that the reassessments are incorrect. Based on the lack of any evidence and

argument regarding available carry-back or carry-forward of losses, I reject the Appellant's position on the issues under appeal.

[28] The appeals are dismissed, without costs.

Signed at Vancouver, British Columbia, this 8th day of January 2009.

“L.M. Little”

Little J.

CITATION: 2009 TCC 11

COURT FILE NO.: 2006-252(IT)G

STYLE OF CAUSE: Aapex Driving Academy Ltd. and
Her Majesty the Queen

PLACE OF HEARING Toronto, Ontario

DATE OF HEARING February 25, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT January 8, 2009

APPEARANCES:

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Counsel for the Respondent: Suzanne M. Bruce

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