Docket: 2008-2577(IT)I

BETWEEN:

DIANNE L. ROMPHF,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 9, 2008 at Saskatoon, Saskatchewan

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Brooke Sittler

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the reassessment made under the *Income Tax Act* for the 2004 taxation year is allowed and the penalties assessed under subsection 163(2) of the *Act* are vacated. The appeal of the reassessment of the 2005 taxation year is dismissed.

IT IS FURTHER ORDERED that the filing fee of $100.00 be refunded to the Appellant.

Signed at Ottawa, Canada, this 27th day of January, 2009.

"G. A. Sheridan"

Sheridan J.

Citation: 2009TCC55
Date: 20090127
Docket: 2008-2577(IT)I

BETWEEN:

DIANNE L. ROMPHF,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant is appealing the reassessment of her 2004 and 2005 taxation years. She represented herself at the hearing and was the only witness to testify.

[2] The issues are as set out in paragraph 18 of the Reply to the Notice of Appeal:

> 18. The issue to be decided are:
>
> (a) whether the Minister properly included unreported business income in the amount of $4,962.26 for the 2004 taxation year;
>
> (b) whether the Minister properly disallowed expenses in the amount of $9,167.18 for 2004 and $6,158.77 for 2005;
>
> (c) whether the Minister properly assessed a penalty in the amount of $405.50 on the unreported business income for the 2004 taxation year pursuant to subsection 163(2) of the *Act*; and
>
> (d) whether the Court can grant the relief sought by the Appellant, which is for the Court to instruct the Canada Revenue Agency (the "Agency") to compensate the Appellant for any misconduct that the Appellant alleges was committed against her by officials of the Agency.

…

[3] In respect of paragraph (d) above, the Appellant advised the Court at the commencement of the hearing that she was abandoning her claim for relief in respect of the behaviour of the officials.

[4] During the taxation years in question, the Appellant was providing bookkeeping services on a self-employed basis to one or two clients and had part-time employment as a bookkeeper. From her testimony, it would be an understatement to say that during the taxation years in question, she was struggling to make ends meet.

[5] The first question is whether the Appellant under-reported her income in 2004, the only year for which the Minister assessed penalties under subsection 163(2). Initially, the Appellant took the position that in calculating additional income of $4,962.26, the auditor might have inadvertently double-counted some cheque deposits. She explained that because of her financial difficulties, she was maintaining two bank accounts and moving various amounts back and forth between them. While the Appellant's theory is a possibility, to succeed as a basis for her appeal, it must be borne out by some sort of proof. Because the Appellant kept no books and records, she had neither bank statements nor cancelled cheques from which her allegations could be verified; accordingly, I am unable to conclude that the auditor's conclusions were incorrect.

[6] The next issue is whether the business expenses claimed by the Appellant in 2004 and 2005 were excessive. The Minister disallowed all of the deductions claimed except for the telephone, the only expense for which the Appellant had source documents to justify the deductions claimed. On cross-examination the Appellant admitted that her 2004 and 2005 income tax returns had been given to a tax preparer who, it seems, simply plugged in amounts he believed were typical of the Appellant's business. Relieved to be presented with returns showing no tax owing, the Appellant accepted them as prepared, signed and filed them. To her credit, the Appellant acknowledged at the hearing the foolishness of her actions. When confronted with the items claimed on cross-examination, the Appellant admitted that having had a chance to review them in detail, she could see that the amounts were higher than what she would have actually incurred. Unfortunately, because the Appellant had no records to show what the expenses actually were, I am unable to allow any additional amounts for business expenses.

[7] As mentioned above, the Appellant was also employed as a bookkeeper in 2004 and 2005. Although she had deducted certain expenses in respect of her employment, because these claims were not supported by the T2200 form required under section 8 of the *Income Tax Act*, the Minister was correct in disallowing them.

[8] The final issue is whether the Appellant ought to be liable for penalties in respect of under-reported income in 2004. The onus is on the Minister to show that penalties ought to be imposed under subsection 163(2) of the *Income Tax Act*. Because of the penal nature of subsection 163(2), the Minister is held to a higher standard of proof than would be required under subsection 152(4) of the *Act*[1]. The question is whether the Appellant "knowingly, or under circumstances amounting to gross negligence [made] a false statement or omission" in her 2004 income tax return.

[9] In support of its position that penalties are justified in the present circumstances, counsel for the Respondent referred to the fact that the Appellant was a bookkeeper and had education in accounting. With that background, she should have known of her obligation to keep books and records and to file an accurate return. Further, she had been earning income from the same sources in prior years and ought to have been generally aware of her income and expenses in 2004 and 2005.

[10] If humans were infallible, it would be very easy to accept the Respondent's characterization of the Appellant's conduct. Judged by a more pragmatic standard, the Appellant's actions were if not wise, at least understandable. She was struggling to earn a living in difficult circumstances. While she described herself as a "bookkeeper", her work was more akin to financial data entry; while she had tried to improve her accounting skills, the fact is that she had only one year of a certified general accountant course at a community college. She was by no means an expert in tax. Her failure to keep books and records and to review her 2004 return was foolish but is not, in itself, sufficient to trigger penalties under subsection 163(2). All in all, in the circumstances of this case, the Respondent has not satisfied me that the Appellant's conduct justifies the imposition of penalties under subsection 163(2). Accordingly, the penalties assessed pursuant to that provision for the 2004 taxation year are vacated.

[11] For the reasons set out above, the appeal from the reassessment made under the *Income Tax Act* for the 2004 taxation year is allowed and the penalties assessed

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[1] *Venne v. Her Majesty the Queen*, [1984] C.T.C. 223 (F.C.T.D.).

under subsection 163(2) of the *Act* are vacated. The appeal of the reassessment of the 2005 taxation year is dismissed.

Signed at Ottawa, Canada, this 27th day of January, 2009.

"G. A. Sheridan"

Sheridan J.

CITATION:	2009TCC55
COURT FILE NO.:	2008-2577(IT)I
STYLE OF CAUSE:	DIANNE L. ROMPHF AND HER MAJESTY THE QUEEN
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REASONS FOR JUDGMENT BY:	The Honourable Justice G. A. Sheridan
DATE OF JUDGMENT:	January 27, 2009

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Brooke Sittler

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
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