

BETWEEN:

DARRELL HYSKA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 28, 2009 at Edmonton, Alberta

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Jack Isaman

Counsel for the Respondent: Robert Neilson

JUDGMENT

In respect of assessments made under the *Income Tax Act* for the 2004 and 2005 taxation years, it is ordered that:

1. the appeal in respect of the 2004 taxation year is allowed, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to an additional deduction in respect of advertising in the amount of \$2,000; and
2. the appeal in respect of the 2005 taxation year is dismissed.

Each party shall bear their own costs.

The Registry is directed to refund the Court's filing fee to the appellant.

Signed at Ottawa, Canada this 2nd day of February 2009.

“J. Woods”

Woods J.

Citation: 2009TCC71
Date: 20090202
Docket: 2008-2192(IT)I

BETWEEN:

DARRELL HYSKA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on January 30, 2009)

Woods J.

[1] These are reasons delivered orally in the matter of Darrell Hyska and Her Majesty the Queen.

[2] The appeal relates to income tax assessments for the 2004 and 2005 taxation years.

[3] Mr. Hyska is a full time firefighter in Edmonton who operates two businesses out of his home as well. One of the businesses is a lawn care business carried on under the name Trim Lawn and the other is a woodworking business called Emerald Heirlooms.

[4] This appeal relates to the disallowance of certain expenses claimed in relation to the two businesses. In the two years under appeal, the appellant claimed business losses of over \$20,000 for Trim Lawn and over \$40,000 for Emerald Heirlooms.

[5] The amounts that were disallowed by the Minister were just over \$12,000 for Trim Lawn and just over \$11,000 for Emerald Heirlooms.

[6] The appellant disputes some of the items that were disallowed and I will consider each of these separately.

Stone work and watering

[7] The first item concerns an expense for stones used in landscaping at the appellant's residence. In the income tax return for the 2004 taxation year, the appellant claimed a deduction for these stones as an advertising expense in the amount of \$13,187 in relation to the Trim Lawn business. The advertising expense also included small amounts for watering and flowers.

[8] According to the testimony of the auditor, which I accept, the appellant had submitted to her during the audit that this was the cost of a stone wall built around the home.

[9] A picture of the wall was entered into evidence. The appellant also submitted invoices for stone in the amount of \$13,187.

[10] The assessment for the 2004 taxation year disallowed approximately 90 percent of the expense claimed. It was considered that the stone wall was largely a personal expense.

[11] At the hearing, the appellant testified that he was not claiming the full cost of the wall but only eight percent. He was only claiming the cost of a retaining wall erected at the back of the house, he said. The auditor had no knowledge of this during the audit.

[12] The appellant explained that the back wall was being expensed because it was used as a learning tool to show potential customers how to work with stone themselves. He said he earned money from this activity by making plans for customers and by purchasing stones for them to build their own walls.

[13] Based on the evidence presented, I am not satisfied that the cost of the stones for the retaining wall at the back of the home was \$13,187 as submitted by the appellant. Even if that was the cost, I conclude that there was a predominant personal element to the expenditure.

[14] Since the appellant was in a lawn care business, I believe that an advertising expense somewhat higher than that allowed by the auditor would be in order. Somewhat arbitrarily, I propose to increase the deduction allowed by \$2,000.

[15] Before concluding on this issue, I wish to note that the appellant has not satisfied me that it would be appropriate to take a significant deduction for the use of the back wall as a learning centre. I am not convinced from the evidence that this business use was a significant aspect to the use of the wall.

Shop costs

[16] The next issue concerns expenses relating to the use of a garage. The appellant claimed costs in relation to an attached garage in the home which was used for both businesses.

[17] In the 2005 taxation year, the Minister disallowed most of the expense claimed for these costs in computing the loss from the Emerald Heirlooms business. The amount disallowed was \$2,116.98.

[18] One of the items in dispute is an expenditure for ceiling fans. The expense is about \$700. The assessment did not disallow the expense in its entirety but it considered the cost as a capital item. I agree with this categorization.

[19] The other items that were disallowed in respect of the garage space were utilities. For purposes of the assessment, these expenditures were treated as relating to a work space in the home. The effect of this categorization is that the deduction is deferred until a year in which income from the business is earned. The relevant provision is subsection 18(12).

[20] I agree with the treatment of the utilities by the Minister. It is consistent with other cases in this Court dealing with work space in a garage and it makes sense to treat expenses common to the entire home as subject to the restriction in s. 18(12).

[21] In the result, I agree with the treatment of shop costs in the assessment.

Cost of purchases

[22] The next item in dispute relates to the deduction for purchases of wood made by Emerald Heirlooms in the 2005 taxation year.

[23] The assessment reduced the deduction allowed by the amount of \$2,473.63.

[24] I agree with the Minister in respect of this adjustment.

[25] In filing its income tax return for 2005, the appellant deducted all wood purchases made in the year without taking opening or closing inventory into account. This was not a proper computation of profit.

[26] For purpose of the assessment, the auditor made an estimate of what the cost of goods sold in the year was likely to be based on the information provided to her. This was allowed as a deduction and she labelled the excess as ending inventory.

[27] The question here is what is the cost of goods sold in the year. The appellant's method of computing this was inaccurate and in the circumstances I think the approach taken for purposes of the assessment was appropriate.

Vehicles

[28] The last item in dispute relates to motor vehicles.

[29] According to the evidence, the appellant had three vehicles available: a truck, a van and a car.

[30] According to the testimony of the auditor, for purposes of the assessment truck expenses were allowed in full, van expenses were allowed to the extent of 25 percent, and no car expenses were allowed.

[31] The auditor's explanations for making these adjustments was reasonable. The appellant has not satisfied me that any adjustment in his favour is warranted.

[32] I would also specifically mention that the auditor testified that she similarly apportioned capital cost allowance that was claimed in relation to the van.

[33] The appellant testified that he did not deduct any capital cost allowance on the van. If this is true, then some adjustment to the assessment is justified. The problem that I have, though, is that the appellant did not provide any supporting documentation to show that he had not claimed capital cost allowance on the van. This should have been relatively easy to do and I conclude that the appellant has not dislodged the Minister's assumption in this regard. Without some supporting evidence, no adjustment is appropriate with respect to capital cost allowance.

[34] In the result, the appeal in respect of the assessment for the 2004 taxation year will be allowed, and the assessment will be referred back to the Minister to allow an

additional deduction for advertising in the amount of \$2,000. The appeal in respect of the 2005 taxation year will be dismissed.

[35] As for costs, each party shall bear their own.

Signed at Ottawa, Canada this 2nd day of February 2009.

“J. Woods”

Woods J.

CITATION: 2009TCC71
COURT FILE NO.: 2008-2192(IT)I
STYLE OF CAUSE: DARRELL HYSKA AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: January 28, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice J. Woods

DATE OF JUDGMENT: February 2, 2009

APPEARANCES:

Agent for the Appellant: Jack Isaman

Counsel for the Respondent: Robert Neilson

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: John H. Sims, Q.C.
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