

Docket: 2008-1006(IT)I

BETWEEN:

CHRISTOPHER BRACKSTONE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 7, 2009, at London, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Joanna Hill

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2002 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant did incur an expense for fuel in the amount of \$700.

The appeals from the reassessments for the 2003 and 2004 taxation years are dismissed.

It is further ordered that the filing fee of \$100 be refunded to the Appellant.

Signed at Ottawa, Canada, this 10th day of July 2009.

“V.A. Miller”

V.A. Miller, J.

Citation: 2009TCC361
Date: 20090710
Docket: 2008-1006(IT)I

BETWEEN:

CHRISTOPHER BRACKSTONE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller, J.

[1] The Appellant appeals the reassessment of his 2002, 2003 and 2004 taxation years in which the Minister of National Revenue (the “Minister”) disallowed the deduction of various amounts as expenses as follows:

Schedule “A”

2002	<u>As filed</u>	<u>Allowed</u>	<u>In dispute</u>
Advertising	1,000	--	1,000
Fuel	2,000	136	1,864
Interest	278	145	133
Motor vehicle	15,751	776	14,975
Legal and accounting	1,600	--	1,600
Telephone and utilities	75	--	75
Start Up costs	10,323	1,034	9,289
Balancing amount	200	--	--
Capital cost allowance	--	245	--
Expenses	<u>31,227</u>	<u>2,336</u>	<u>28,936</u>
2003	<u>As filed</u>	<u>Allowed</u>	<u>In dispute</u>

Advertising	350	--	350
Business tax, fees and dues	60	--	60
Fuel	1,909	364	1,545
Insurance	1,316	--	1,316
Interest	807	807	--
Maintenance and repairs	1,443	--	1,443
Management and administration fees	1,636	--	1,636
Motor vehicle	15,751	747	15,004
Race at Lake Elliot	325	--	325
Cell phone	1,416	231	1,185
Other expenses	3,374	365	3,009
Capital cost allowance	--	441	--
Expenses	<u>28,387</u>	<u>2,955</u>	<u>25,873</u>

2004	<u>As filed</u>	<u>Allowed</u>	<u>In dispute</u>
Business tax, fees and dues	148	88	60
Fuel	374	374	--
Delivery and freight	111	111	--
Interest	543	543	--
Supplies	13,289	--	13,289
Terminal loss	31,200	31,427	--
Expenses	<u>45,665</u>	<u>32,543</u>	<u>13,349</u>

[2] In 2002, 2003 and 2004 the Appellant was employed on a full time basis with Ford Motor Company of Canada Limited. During this period, he also operated "Chris Brackstone Race Cars" as a sole proprietorship ("the Business"). The Business of the proprietorship was to build race cars and to sell various automobile products. The Appellant operated this business from a shop located at his family residence.

[3] It was the Appellant's evidence that he raced cars for the past 13 years. According to exhibit R-1, the Appellant had prior experience in building a racing car as he had built one in 1995 as a hobby. The Appellant thought that a lot of people would like to race; but, they did not know how to build a car. In other words, the Appellant thought there was a demand for race cars but there were very few suppliers, so he started the Business in 2002. It was his intention that if he was successful, he would operate the Business on a full time basis.

[4] The Appellant stated that his speciality was to build the chassis, motor and driveline. He engaged others to build other parts of the race car. The car was

completed in the spring of 2003. However, on its first trip around the racetrack, there was mechanical failure that caused the car to crash and its body and chassis were destroyed.

[5] I note that exhibit R-1, which included the auditor's report, stated that the race car was completed in the spring of 2004 and that it was destroyed by a crash in July 2004. However, at the hearing the Appellant stated that the race car was completed in 2003 and that the crash occurred in July 2003.

[6] In 2004, the Appellant made the decision to shut the Business down and to claim a terminal loss.

[7] The Appellant kept no books for his Business. He kept some of the invoices to substantiate his purchases but these records were kept in an envelope in no particular order with the receipts for the goods that he sold.

[8] At the hearing of this appeal, the Appellant addressed some of the categories of expenses that were disallowed as follows:

a) *Advertising*

He stated that he advertised to get business. He had business cards printed; he advertised in the classified section of racing magazines; and, he produced flyers to pass out at car shows. At the hearing, he presented no documentation or invoices to substantiate the amounts claimed for advertising.

b) *Fuel*

The Appellant stated that he drove to Florida in March, 2002 to purchase the body of a 1967 Corvette Coupe (the "Corvette") which he hauled back to Ontario using his father's pick-up truck. He stated that it would have cost \$2,000 to have the Corvette shipped to Canada whereas it only cost him approximately \$700 for the fuel for the pick-up truck. He did not claim the costs incurred for meals.

It was also the Appellant's evidence that, in 2002, he drove to St. Louis to pick up parts for the chassis for his car and that he made numerous trips to Port Huron, Michigan to pick up parts.

He kept no logs of his trips but he did keep some of the invoices for the fuel; however, none were tendered as exhibits at the hearing.

c) *Interest*

In 2002, the Appellant obtained a small business loan from The Toronto-Dominion Bank in the amount of \$25,000. He submitted an exhibit which showed

the amount of interest that he paid for the 2003 taxation year. This amount had been allowed in full by the auditor.

d) *Motor Vehicles*

In April 2002, the Appellant purchased a pick-up truck, a F150. He found that it was not heavy enough to haul the race car and in September 2002, he traded it in for a F250. He was able to get a discount on each of these vehicles as he worked at the Ford Company. By June 2003, the Appellant found that he could not afford the F250 and he traded it for a Ford Escape. In cross examination, the Appellant admitted that the Ford Escape was his spouse's vehicle.

e) *Legal and Accounting - 2002*
Management and Administration Fees - 2003

The Appellant stated that he had no idea how these amounts were calculated. I gather from his response and the state of his records that these amounts were fictional and were not incurred.

f) *Telephone and Utilities – 2002*
Cell phone – 2003

The Appellant had no documentation to support the amounts that were disallowed.

g) *Start-Up Costs*

The Appellant stated that the amount of \$9,289 which was disallowed included the costs of various tools and parts which he had purchased.

h) *Maintenance and Repairs – 2003*

The Appellant assumed that the amount of \$1443 related to oil changes and the replacement of tools. However, he really had no idea how this amount was calculated or what it was for.

i) *Race at Lake Elliott – 2003*

It was the Appellant's evidence that he took part in this race to promote his business. The amount of \$325 covered the cost of the motel, food and the entrance fee for the race. He had intended to use the Business race car, but the week prior to the race he experienced problems with the race car and he had to use his personal car.

j) *Other Expenses – 2003*

The Appellant had no idea how the amount of \$3009 was calculated or what had been purchased that totalled this amount.

k) *Supplies – 2004*

The Appellant stated that after the race car crashed, he tried to salvage parts of it to build another car. However, it was not financially feasible and he closed the Business.

I note that the amount of \$13,289 was spent on supplies after the Business had ceased to operate.

[9] Kim Donald, an auditor with the Canada Revenue Agency, testified on behalf of the Respondent. She stated that the Appellant determined some of his expenses by adding the invoices, but he did not maintain them in groups. Other expenses claimed by the Appellant were estimates and no calculations were done. She stated that the amounts disallowed for advertising, interest, legal and accounting, telephone, insurance, and other expenses were not supported by documentation.

[10] She explained that the Appellant had claimed an expense for the amounts he spent on tools and parts. For instance, she stated that the amount of \$10,323 claimed as "Start-up Costs" related, for the most part, to the purchase of car parts. She examined all of the invoices and determined that the total purchases in 2002 were actually \$21,092. She added this amount to the closing inventory for the 2002 taxation year. It was her evidence that the amount of \$1,034 which was allowed as Start-up costs was supported by invoices and related to customs, food, hotels, chassis certification, advertising, tolls, and postage.

[11] When he filed his income tax returns for 2002 and 2003, the Appellant claimed that the F250 pick-up truck was used 100% for business. Ms. Donald stated that she tested this claim by using the available documentation. From this documentation she determined the number of trips to Port Huron; she calculated the number of kilometres driven for each trip and multiplied it by the number of trips; and, she compared the total kilometres driven on the truck for the period of ownership as indicated on the trade in documentation. According to her calculations, Ms. Donald estimated the business use of the F250 to be 15%.

[12] The evidence presented by the Appellant at the hearing did not persuade me that his use of the F250 exceeded that allowed by the auditor. The Appellant's oral evidence was that this truck was used either 100% or 70% for business; he presented absolutely no records to substantiate his use of the F250. His testimony concerning his use of the truck was not specific enough to allow me to vary the percentage of use assessed. If the Appellant wants to claim expenses for the use of a vehicle, he must be diligent in accounting for those expenses.

[13] On review of all the evidence, I have concluded that, in 2002, the Appellant did incur an expense in the amount of \$700 for the cost of fuel on his trip to Florida. I have also concluded that other than this amount, the Appellant has not established that he incurred any of the other disallowed amounts.

[14] The appeal for the 2002 taxation year is allowed. The appeals for the 2003 and 2004 taxation years are dismissed.

Signed at Ottawa, Canada, this 10th day of July 2009.

“V.A. Miller”

V.A. Miller, J.

CITATION: 2009TCC361

COURT FILE NO.: 2008-1006(IT)I

STYLE OF CAUSE: CHRISTOPHER BRACKSTONE AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: London, Ontario

DATE OF HEARING: July 7, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: July 10, 2009

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Joanna Hill

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada