

Docket: 2007-3220(IT)G

BETWEEN:

CYNTHIA NGAI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on March 2, 2009, at Toronto, Ontario.

Before: The Honourable Gerald J. Rip, Chief Justice

Appearances:

Counsel for the Appellant: John David Buote  
Stella Kyriacou  
Counsel for the Respondent: Laurent Bartleman

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**JUDGMENT**

The appeals from assessments made under the *Income Tax Act* (the "Act") for the 1999, 2000 and 2001 taxation years are allowed and referred back to the Minister of National Revenue for reconsideration and reassessment in the manner described in paragraphs 41, 46, 47, 52, 53, 54, 55, 56, 57, 58 and 59 of the reasons for judgment.

The appeals from the assessments made under the *Act* for the 2002 and 2003 taxation years are dismissed.

The respondent shall be entitled to 66  $\frac{2}{3}$  per cent of her costs.

Signed at Ottawa, Canada, this 21st day of July 2009.

"Gerald J. Rip"

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Rip C.J.

Citation: 2009 TCC 370  
Date: 20090721  
Docket: 2007-3220(IT)G

BETWEEN:

CYNTHIA NGAI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Rip, C.J.

[1] These are reasons for judgment in appeals by Cynthia Ngai from assessments of income tax for 1999, 2000, 2001, 2002 and 2003 in which the Minister of National Revenue (the "Minister") disallowed the appellant's claim for expenses on the basis she was not carrying on a business. In the alternative, the Minister questions whether, if the appellant were carrying on a business, the expenses claimed, a) were laid out to earn income from a business, as required by paragraph 18(1)(a) of the *Income Tax Act* (the "Act"); and b) were reasonable in the circumstances, in accordance with section 67 of the *Act*. The Minister also alleges that some of the expenses claimed by the appellant were personal, contrary to paragraph 18(1)(h) of the *Act*.

[2] Prior to trial, the appellant and respondent's counsel agreed on the amounts in dispute in the event I found a business was carried on in any of the years under appeal. The amounts are listed in Schedule "A" to these reasons.

[3] In 1998, Ms. Ngai purchased refurbished Chinese style Ming wood furniture from China for resale in North America. The furniture was purchased with the help of Ms. Ngai's sister in Hong Kong who "had experience with China" from working for a trading company. Her sister had shown her pictures of furniture and recommended which pieces to purchase.

[4] Ms. Ngai's sister financed the purchase for Ms. Ngai. There was no formal agreement as to when the loan for the purchase price would have to be paid back; there was no interest on the loan.

[5] The venture was carried on by Ms. Ngai in the Toronto area. The "business" name "Things U Select" was registered by the appellant in December 1998. Shipment from China to Toronto was expected in Spring 1999. Ms. Ngai also applied for a bank loan in 1999; she received an operating line of credit.

[6] Before the inventory arrived Ms. Ngai looked for a location from which it could be sold. She attended flea markets and antique markets in the Toronto region. She also designed a web page, hoping to sell in the United States.

[7] Ms. Ngai had no prior experience selling Chinese furniture. As a child she worked in her parents' store in Hong Kong. She said she also ran a graphic design and typesetting business in England from 1974 to 1987. In Canada, Ms. Ngai sold life insurance and advertising. She also sold sewing machines and books at various exhibitions, including the Canadian National Exhibition. She said she took a "few weeks" business course. In cross-examination she was unable to disclose what income she would have to generate for the venture to break even.

[8] When Ms. Ngai was laid off from her employment in 1998 she went to Hong Kong to attend a parent's funeral. It was then that she decided to get into the furniture business because it sounded "interesting and exciting". Her preparations for the venture included interviewing people in Hong Kong and researching the internet. From "Googling" Chinese furniture, she discovered that there was a dealer in the Yorkville area of Toronto selling "very expensive" furniture. She did visit the dealer.

[9] Inventory arrived at different times during Spring 1999 and later. About 200 pieces of furniture, all assembled, as well as over 1,200 lap tables or trays, each measuring 11 inches by 14 inches, were received by the appellant. In all 2,178 units were shipped to the appellant for sale. These were the only shipments of inventory received. She described some furniture as a "very awkward size". Some pieces were "huge" and heavy, not the standard American style. Later on she also purchased some accessories to make the furniture more attractive.

[10] During Spring 1999, Ms. Ngai rented four booths at a flea market in Pickering. Each booth was 10 feet by 10 feet; one booth was used to sell the furniture, three booths were used for storage. Later on she stored some furniture in self-storage facilities to keep her "costs as low as possible".

[11] Ms. Ngai rented a booth in mid July 1999 at the Harbourfront Antique Market in the tourist area of downtown Toronto. Harbourfront was open seven days a week, from 9:00 a.m. to 9:00 p.m., and Ms. Ngai said she "was there every day". During 1999, Ms. Ngai sold nothing at Harbourfront.

[12] Harbourfront required a one year lease, Pickering was rented on a weekly basis.

[13] A sister, Patricia Ngai, also living in Toronto, would attend at one of the premises when Ms. Ngai was at the other premises. Ms. Ngai said that she could not attend at two locations at the same time. She could not recall the portions of time she spent at each. Ms. Ngai explained that Harbourfront was an antique market and "high class". Pickering was a flea market selling "cheap stuff". People go to a flea market for bargains, she declared. However, she sold essentially the same quality at both sites.

[14] Ms. Ngai reported sales for the four years were \$31,104<sup>1</sup>. Forty-four per cent of the total sales took place in 1999. About 40 per cent of the sales, \$12,504, were in one four-week period from July 18, 1999 to August 8, 1999<sup>2</sup>. All of these sales took place on Sundays, a "busy day", according to Ms. Ngai. In 2000, Ms. Ngai had sales of \$11,017, approximately 30 per cent of total sales.

[15] Ms. Ngai explained that sales were higher in 1999 because people were curious. Potential customers also were asking for pieces of furniture of a design she had already sold. Based on her estimate of cost of goods, her margin was almost tenfold. But she did not reorder any furniture, partly because she did not have money to reorder. She also complained it took a long time to sell one item. Her line of credit, \$14,250, was being used to pay rent and there was no money to purchase more inventory, she stated on several occasions.

[16] The appellant realized she was having problems selling the furniture as early as late Summer in 1999. The furniture she purchased was made of natural wood and with the temperature change in Toronto, the wood started cracking. This made it difficult to sell. Also, because of the weight of the furniture, she could not deliver it

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<sup>1</sup> Ms. Ngai reported sales (including tax) in 1999 of \$10,502.31, in 2000 of \$12,527.28, in 2001 of \$3,083.69, in 2002 of \$2,637.62 and in 2003 of \$2,353.82. These amounts vary slightly from the amounts suggested by the Canada Revenue Agency.

<sup>2</sup> In 1999, Ms. Ngai's sales were 44.5 per cent of all sales.

herself; she "needed some manpower". She "found the business is not what I thought it as simple, and then my expense is getting larger, but income was not as comparable." She also testified that people in Toronto told her the market had changed for the worse. These are things that she said she did not foresee when she started the venture.

[17] No other inventory was ordered by Ms. Ngai because she was trying to get rid of the problems. People wanted bargains and she had to sell for less than what she originally thought she could get for the furniture. After the first year, or even during the first year — her evidence is contradictory — she decided that business was not good. Ms. Ngai acknowledged that after the first year she wanted to "get rid" of the inventory. In the first year, she said she realized that "I didn't think I can carry on anymore." She started to look for a job.

[18] Ms. Ngai was not prepared for the challenges she incurred. She acknowledged that she did not research the venture sufficiently before she started: "But sometimes you have to start after some research. You cannot just keep researching and not doing things, so you don't know when to start doing and when to start ordering and when to stop. Then what is the point in business? In business you have to try everything until you see if there is light, then you have to stop."

[19] In 2000, Ms. Ngai found a job selling automobiles. As a sales agent the hours of work varied and she was able to attend daily at Pickering and Harbourfront. She said she made arrangements with persons selling from booths close to her booths at both locations. The persons were to contact her pager or cell phone if anyone expressed interest in purchasing any furniture. If a neighbour sold an item for the appellant, Ms. Ngai would pay a commission of 10 per cent. Ms. Ngai tried to avoid having a neighbour sell items; she tried to have the potential client return to the booth in the evening so that she could make the sale. She also would use the pager and cell phone to take messages during the day, returning the calls in the evening when there was no charge.

[20] Ms. Ngai closed her booths at Pickering in July 2000 and at Harbourfront in April 2003. She closed Pickering even though that was the location where she had all her sales in 1999. However, she said that security was superior at Harbourfront, people were better behaved at Harbourfront, the "right clientele" was at Harbourfront. She explained that she preferred an antique market to a flea market where she had to discount "too much". Also, at Harbourfront there were people working who could oversee her inventory when she was not on the premises. Items, similar to the purported quality she was selling, were more available at Harbourfront. In 2000 she

also sold the furniture at a location at Queen and Dufferin. At the latter location, her presence was not necessary. As I understand her evidence, the proprietor of the premises agreed to sell the furniture for her and deduct any proceeds of sale from the rent. If sales exceeded rent, she would get the excess.

[21] In the latter years Ms. Ngai also tried to sell the furniture to furniture retailers but without any success. She made modest sales selling the furniture at cost at garage sales. She was disposing of the lap tables by giving one free to a purchaser buying over \$400 in merchandise or, when she was selling cars, as a gift to persons who bought a car from her.

[22] Patricia Ngai testified on behalf of Ms. Ngai. Patricia Ngai helped her sister sell the furniture in Pickering when needed. She said the appellant would pick her up after work and treat her to dinner after hours.

[23] Patricia Ngai confirmed that Ms. Ngai leased a car during the years in appeal and that Patricia Ngai's car was used for personal matters.

[24] When she worked at Pickering, Patricia Ngai "did not sell much", mainly "little items" having a value of \$20 to \$30 each. She also worked at Harbourfront. In cold weather she did not work every day. She could not recall the year she worked in the summer. Patricia Ngai recalled her sister was at Harbourfront every day, more frequently than at Pickering.

[25] *Stewart v. The Queen*<sup>3</sup> put to rest the "reasonable expectation of profit" test to determine whether a taxpayer's activities constituted a source of income for the purpose of section 9 of the *Act*. The Supreme Court suggested a two-stage approach to determine if a taxpayer has a source of income: 1) is the activity undertaken in pursuit of profit or is it a personal endeavour that is, to distinguish between personal and commercial activities, and secondly, if it is not a personal endeavour, is the source of income business or property? (Here the issue is if Ms. Ngai's activities were a business.) The first stage assesses whether a source exists and the second distinguishes between business and property<sup>4</sup>. Notwithstanding that an activity could have a personal pursuit, if it is undertaken in a sufficiently commercial manner, the activity will be considered a source of income for purposes of section 9.

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<sup>3</sup> [2002] 2 S.C.R. 645, 2002 SCC 46.

<sup>4</sup> *Supra*, para. 50.

[26] Iacobucci and Bastarache J.J. cautioned that the pursuit of profit test should only be considered when there is a personal element to the activity<sup>5</sup>. Once it is determined that the activity is commercial, the Court need not analyze the taxpayer's business decisions. They state that for an activity to be classified as commercial the taxpayer must have the subjective intention to profit and there must be evidence of businesslike behaviour to support that intention. The determination of subjective intention can be made by looking at a variety of objective factors. Reasonable expectation of profit is a factor to be considered at this stage, but it is not the only factor and it is not conclusive<sup>6</sup>. Objective factors listed by Dickson J. in *Moldowan v. M.N.R.*<sup>7</sup> are to be considered: (1) the profit and loss experienced in past years; (2) the taxpayer's training; (3) the taxpayer's intended course of action; and (4) the capability of the venture to show a profit.

[27] The appellant's counsel described Ms. Ngai as unsophisticated. I agree. She was also inexperienced and perhaps headstrong, the latter not necessarily a fatal flaw in business.

[28] That one is unsophisticated or naïve does not absolve that person from otherwise having to establish that he or she had the intention to profit from a venture. *Stewart* cautioned that there must be businesslike behaviour to support that intention. In analyzing evidence that may support a taxpayer's intention to carry on an activity for profit and what is businesslike behaviour, one at least ought to consider what a reasonable person carrying on a business may have done in circumstances similar to the facts at bar.

[29] In 1998, Ms. Ngai started making plans to sell the furniture with the intention of making a profit. I can find no personal benefit to Ms. Ngai in exercising this activity. Waiting around for customers at a booth day after day is not a hobby or gives one personal enjoyment.

[30] Prior to starting the venture Ms. Ngai arranged for financing to pay current expenditures such as rent. She rented booths from which to sell the furniture and arranged for storage of furniture later on in 1999.

[31] There was a commercial character to her preparation and planning for the sale of the furniture.

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<sup>5</sup> Supra, para. 53.

<sup>6</sup> Supra, para. 54.

<sup>7</sup> [1978] 1 S.C.R. 480, p. 486.

[32] The respondent says that Ms. Ngai never carried on the furniture business. I disagree. She carried on business in 1999 and at least to the end of Summer 2000. She purchased inventory to sell at a profit and put the furniture up for sale. That she was overly optimistic in the venture's future or that she may have been inexperienced to carry on such a venture does not mean that she was not operating a business: she had a business location, customers and sales. That the number of customers and sales were less than modest again does not mean that there was no business.

[33] During 1999 and up to at least July 2000 when she left Pickering, Ms. Ngai was carrying on business of selling furniture. In 2000 she finally or definitely concluded that the business was not successful and decided to end it. However, she would require time to dispose of the remaining inventory and close the business. The inventory consisted of damaged furniture and lap tables. Ms. Ngai had no idea in 2000 of the inventory's value. Arguably, a reasonable business person may have concluded it more economically viable to junk the furniture than to pay storage fees and incur other expenses during the next three years.

[34] However, this was not what Ms. Ngai decided. Perhaps due to her inexperience in carrying on business or due to wanting to dispose of the furniture at what she thought would be a good price, she took her time until 2003 to find alternate means of disposing of the furniture.

[35] It is only the period after Ms. Ngai decided that the business must be terminated that it is questionable whether she carried on a business. Once a person decides to terminate a business, that person must be given time to close the business in an ordinary manner. Ms. Ngai's business was very modest. The question is whether, bearing in mind no new inventory was being purchased and the existing inventory was damaged, she required approximately two and a half years to close the business.

[36] There is no evidence before me that a reasonable business person in circumstances similar to Ms. Ngai would require from mid-2000 to 2003 to orderly liquidate the business. Notwithstanding her research and efforts in planning for a business, Ms. Ngai had absolutely no prior experience in either buying furniture for sale or in selling furniture. She relied on her sister in Hong Kong to recommend what type and pieces of furniture to purchase for sale in Canada. She relied on her sister because her sister worked for a trading company. Ms. Ngai did say that Chinese furniture was "hot" at the time and this was an influence on her decision to sell furniture. However, there is no evidence that her sister knew anything about

furniture, the reaction of the furniture to Canadian weather conditions and the market for the furniture in Canada. The only research or preparation Ms. Ngai undertook for the proposed business was talking to people in Hong Kong, checking the internet and visiting an antique furniture store in Yorkville.

[37] Ms. Ngai said that from the end of 1999 on she wanted to get rid of the furniture. In 2000, she started making alternate plans realizing the business she started in 1999 was doomed to failure. She got a job selling cars. But she continued to try to dispose of the furniture. No reasonable businessperson in her situation would have attempted to continue in business after August 2000, when the last sales for the year were made, for the following reasons, at least:

- a) Ms. Ngai did not have the financial wherewithal to finance the business for any extended period. She relied on her sister purchasing the furniture for her and paying the shipping costs to Canada; there were no terms for repaying the loan. The operating line of credit she received from the bank was applied to paying day-to-day expenses, such as rent. She did not have funds to purchase additional inventory, for example.
- b) There is no evidence of the cost in Hong Kong of the furniture delivered to Canada. In the Statement of Business Activities in the 1999 income tax return, Ms. Ngai reported the opening inventory as \$21,206.70 and sales of \$10,502. In her 2000 tax return, Ms. Ngai reported opening inventory at \$19,342.75. This would include the cost of accessories purchased in 1999. Ms. Ngai could not explain with any confidence how the costs of goods in each year were determined. I will assume the cost of the furniture was \$21,206.70 and this was for furniture in good condition.

There is no evidence that the furniture was in damaged condition when it left Hong Kong or arrived in Toronto. The furniture became cracked and damaged once in Canada. It would be reasonable to conclude that, once damaged, the value of the furniture had declined. Yet even though Ms. Ngai acknowledged damage to the furniture — a key consideration in realizing selling furniture was a major problem — she was not ready to consider the fact that its value may have deteriorated or may be a harder sell.

- c) She closed Pickering, where she had all her sales in 1999, to concentrate on Harbourfront which had no sales in 1999. In her view Harbourfront

was a higher end antique market as opposed to Pickering's flea market. However the furniture she had for sale was damaged goods, having an obvious value of less than cost and if Harbourfront were "higher end", would damaged merchandise attract such a clientele?

- d) Ms. Ngai continued to offer goods for sale at a higher end market. There is no evidence that she considered reducing her prices to meet changed circumstances. In fact, she continued to pay rent for storage and for booths. During the years in appeal she paid \$58,994 in rent for storage and booth rental. She never gave any thought to having the inventory valued to determine whether it would be worth spending more money to keep the furniture. She did not consider — or want to consider — that the furniture may possibly have a value considerably less than cost and, based on her sales experience, continuing the venture would be a waste of time and money.

[38] Nevertheless, on the basis the business terminated in August 2000, Ms. Ngai should be allowed at least six months to otherwise liquidate her business. Thus I would allow her to deduct expenses incurred from a business for 1999, 2000 and January and February 2001.

[39] However, the expenses claimed by Ms. Ngai were, in some cases, excessive and ought to be reduced accordingly. Some of the expenses were simply not *reasonable* in the circumstances. Ms. Ngai had an exaggerated idea as to what expenses she was entitled to deduct. For example, she deducted an amount in respect of rent for the basement of the home, a bungalow, in which she lived with her sister, as an office. The basement included laundry facilities, furnace, hot water tank, etc. Ms. Ngai said she had an office in the basement and used the office to issue receipts to customers, read business books and think. She claimed 50 per cent of the expenses for the house as a business expense.

[40] The portions of the amounts still in dispute at the commencement of trial for 1999, 2000 and January and February 2001 ought to be allowed or disallowed as explained in the following paragraphs 41 to 59 inclusive<sup>8</sup>.

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<sup>8</sup> I have considered that costs incurred in January and February 2001 represent 16.67 per cent of all costs in 2001 and I have made adjustments accordingly. For example, where Ms. Ngai is entitled to 100 per cent of her claims, only 16.67 per cent of the amount claimed for 2001 will be allowed since she did not carry on a business after February 2001.

## Rent

[41] The rent paid by Ms. Ngai was for the booths at Pickering and Harbourfront as well as for the storage of the furniture. Ms. Ngai used the booths from which to sell the furniture and related items. Because of the quantity of pieces she acquired, she also required a place to store inventory. These are reasonable expenses laid out to earn income in 1999 and 2000. I would allow 16.67 per cent of rent paid in January and February 2001. There is no question that the rent was at arm's length. I would deny any rent that she may have paid to her sister or may have deducted for office space.

## Telephone / Utilities

[42] Ms. Ngai had two cell phones and two land phones, one of each, she said, for business and the other for personal use. She also had a pager. Her position is that the personal phones were used for personal use only and the business phones for business purposes only. Ms. Ngai testified that the business phones were used to call Hong Kong to find out about freight deliveries and to communicate with her sister in Hong Kong about the business and products, and locally, to deliver product to customers, to communicate with people watching her booths, to solicit sales and other daily business activities. The pager was used to reduce cell phone costs.

[43] That Ms. Ngai required two phones for business as well as a pager was a business decision that she made and I am loath to disallow it.

[44] However, as mentioned earlier, I have found that there was a tendency by Ms. Ngai to exaggerate her needs for the business. The evidence is that a great portion of sales took place on Sundays in the summer months and in 1999, only from Pickering.

[45] Ms. Ngai was making numerous calls on the business phone to her sister, Patricia, who would frequently spend evenings gambling at the casino in Orillia. Ms. Ngai testified that these calls to a person she shared a home with were business related, for example if Patricia Ngai would be available to attend at a booth. I find it difficult to accept that costs of these calls were laid out to earn income from a business.

[46] I would allow Ms. Ngai 50 per cent of expenses she claimed for telephones and the pager as described in Schedule "A" for 1999 and 2000 and 8½ per cent for 2001.

[47] I would allow Ms. Ngai internet expenses, described as Advertising in Schedule "A". When she started the business she was optimistic that she would succeed and she saw the internet as a mean of generating income. She had a website advertising the furniture, among other things. She should be entitled to these expenses in the adjusted amount she now claims for 1999 and 2000 in Schedule "A" and 16.67 per cent of the amount in 2001.

### Motor Vehicle

[48] Ms. Ngai's motor vehicle expenses to and from her work places and her home are not deductible expenses. Similarly the expenses from Ms. Ngai's home to storage facilities are not deductible.

[49] In *Henry v. M.N.R.*<sup>9</sup> the Supreme Court denied the automobile expenses of an anesthetist carrying on a business on his own account for trips between his home and the hospital in the morning and in the afternoon during the year and capital cost allowance for the automobile.

[50] As far as Ms. Ngai attending at the booths and storage facilities every single day, bearing in mind the amount of sales generated, I believe Ms. Ngai and her sister have exaggerated Ms. Ngai's frequency of attending these facilities. I would have preferred evidence in this regard from independent witnesses, people who had booths at Pickering or Harbourfront and, preferably, were in contact with Ms. Ngai during the day when potential customers approached Ms. Ngai's booth and expressed interest in purchasing furniture.

[51] That is not to say I do not believe that Ms. Ngai did not attend the facilities on a regular basis, simply that it was not on a daily basis. Automobile expenses incurred between Pickering and Harbourfront and storage facilities are deductible. However, I do question whether any reasonable business person would visit a storage facility every single day.

[52] I would permit Ms. Ngai to deduct 25 per cent of her automobile expenses in 1999 and 2000, described in Schedule "A". I would round off at 8½ per cent of the portion of automobile expenses she be allowed to deduct in 2001. This is the fairest and most efficient manner of determining automobile expenses; to go on a daily trip

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<sup>9</sup> [1974] S.C.R. 155. See also *Libera v. M.N.R.*, 81 DTC 276, *Zolghadr v. The Queen*, 2008 TCC 669, par. 15.

by trip allocation, including leasing costs, over 1999, 2000 and 2001 would not be to anyone's benefit.

### Interest Expenses

[53] Interest expenses claimed include interest on a line of credit and on unpaid balances due on credit card purchases. I would not disallow the claim of \$318.95 in 1999 on Ms. Ngai's line of credit.

[54] In 2000, she claimed interest expenses of \$1,487 on her line of credit as well as \$3,118 from credit card balances. Some of the charges on the credit cards include expenses that appear to be personal: occasional Cineplex costs, frequent service station charges as well as at least one charge from Holt Renfrew, although this may be in respect of accessories she purchased for the business. The bulk were restaurant charges. The only evidence at hand with respect to restaurants was that Ms. Ngai did not cook and she and her sister ate out almost every night; the credit card invoices reflect this. Costs of eating at restaurants were not business expenses. There were some highlighted items that appear to be for business, for example, Business Depot and Pagenet. Many charges are not identified. I would disallow 90 per cent of interest on credit balances in 2000 and for January and February 2001, I would leave 1999 alone. I would also allow interest on the line of credit as well as bank charges for 1999, 2000 and the first two months of 2001.

### Management Fees

[55] Management fees were purportedly incurred in 2000. There is no evidence supporting these expenses and therefore they ought not be allowed.

### Office Expenses, Supplies and Other Expenses

[56] Ms. Ngai claimed office expenses. The amounts are not significant; they include Royal Bank monthly activity fees and such items as rent for a VISA computer. I would allow these items.

[57] I would also allow her to deduct the cost of office supplies in 1999 and 2000.

[58] Other expenses incurred in 1999 are not fully explained and ought to be disallowed.

[59] Business taxes paid in 1999, 2000 and for January and February 2001 are deductible in computing income from business.

[60] Therefore, the appeals for 1999, 2000 and 2001 are allowed but the amounts of expenses claimed in each year shall be reduced in accordance with paragraphs 41 to 59 of these reasons. The appeals for 2002 and 2003 are dismissed. The respondent shall be entitled to  $66\frac{2}{3}$  per cent of the costs.

Signed at Ottawa, Canada, this 21st day of July 2009.

"Gerald J. Rip"

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Rip C.J.

## SCHEDULE "A"

TABLE OF AMOUNTS STILL IN DISPUTE

	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Advertising</b>	\$ 1 249.76	\$ 87.37	\$ 250.00	\$ 854.70	\$ 537.90
<b>Business Taxes</b>	65.00	412.75	147.25	687.90	265.90
<b>Freight</b>	5 928.41	NIL	500.00	503.34	NIL
<b>Interest &amp; credit cards</b>	318.95	2 793.99	3 760.90	2 622.48	1 238.28
<b>Management Fees</b>	NIL	817.79	NIL	NIL	NIL
<b>Motor Vehicle</b>	7 503.00	7 280.58	5 153.34	4 011.01	4 898.45
<b>Office Expenses</b>	516.69	90.00	35.00	NIL	NIL
<b>Other</b>	511.00	NIL	NIL	NIL	NIL
<b>Rent</b>	13 009.00	19 551.75	14 585.29	10 141.15	1 706.67
<b>Telephone/Utilities</b>	736.81	1 965.36	1 784.52	1 417.77	1 638.01
<b>Supplies</b>	3 426.28	293.27	NIL	NIL	NIL
NOTE: The interest and motor vehicle amounts above are the revised claim amounts, i.e. amounts revised at opening.					
<b>TOTAL</b>	33 264.90	33 292.86	26 216.30	20 238.35	10 285.21
<b>Less Income</b>	<u>7 925.23</u>	<u>7 617.03</u>	<u>2 460.89</u>	<u>2 637.62</u>	<u>2 353.82</u>
<b>Amount (Loss) at issue</b>	\$25,339.37	\$26 312.53	\$23 765.41	\$17 600.73	\$ 7 931.39

CITATION: 2009 TCC 370  
COURT FILE NO.: 2007-3220(IT)G  
STYLE OF CAUSE: CYNTHIA NGAI  
v. HER MAJESTY THE QUEEN  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: March 2, 2009  
REASONS FOR JUDGMENT BY: The Honourable Gerald J. Rip, Chief Justice  
DATE OF JUDGMENT: July 21, 2009

APPEARANCES:

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Counsel for the Respondent: Laurent Bartleman

COUNSEL OF RECORD:

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