

Docket: 2009-371(IT)I

BETWEEN:

SANDY RAWLINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 1, 2009
at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant: Wayne Brooks
Counsel for the Respondent: Rishma Bhimji, Student-at-Law
Brandon Siegal

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* (the “Act”) for the 2003 taxation year is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to claim additional motor vehicle expenses in computing her income for 2003 in the amount of \$6,254.

Signed at Toronto, Ontario, this 30th day of September, 2009.

“Wyman W. Webb”

Webb, J.

Citation: 2009TCC489

Date: 20090930

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BETWEEN:

SANDY RAWLINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The issue in this appeal is whether the Appellant is entitled to claim certain amounts as expenses in computing her income in 2003.

[2] The Appellant started work as a real estate salesperson in 2003 with Prudential Achievers Realty. She indicated that she had previously been a real estate salesperson, but had been out of the business for awhile and had to start all over again in 2003. When she initially filed her tax return for 2003, she claimed that her commissions were \$37,400 and her expenses were \$34,709 with the result that her net business income was \$2,691. She was reassessed for 2003 to include \$35,399 in unreported income from Achievers Real Estate Ltd. (which presumably was the company that was carrying on business as Prudential Achievers Realty). Following this reassessment the Appellant filed an amended income tax return claiming additional business expenses to reduce her net business income to \$12,107.

[3] Of the expenses that were claimed by the Appellant, the following amounts have been allowed as a deduction in computing her income for 2003:

<u>Item</u>	<u>Amount Claimed on Original Return</u>	<u>Amount Claimed on Amended Return</u>	<u>Amount Allowed</u>
Tax, fees, licences etc.	\$927	\$927	\$927
Insurance	\$516	\$516	\$516
Meals and entertainment at 50%	\$512	\$512	\$512
Telephone and utilities	\$1,654	\$1,654	\$1,654
Internet	\$238	\$238	\$238
Total:	\$3,847	\$3,847	\$3,847

[4] The following amounts that had been claimed as expenses on the original return (and in the amended return) filed by the Appellant have not been allowed:

<u>Item</u>	<u>Amount Claimed on Original Return</u>	<u>Amount Claimed on Amended Return</u>	<u>Amount Allowed</u>
Subcontracts	\$6,000	\$28,500	\$0
Advertising	\$3,527	\$5,782	\$0
Motor Vehicle	\$9,797	\$11,027	\$0
Office	\$2,622	\$2,622	\$0
Rent	\$6,115	\$6,115	\$0
Gifts	\$2,801	\$2,801	\$0
Total:	\$30,862	\$56,847	\$0

[5] The issue in this appeal is whether the Appellant is entitled to claim as expenses in computing her income for the purposes of the *Income Tax Act* for 2003 all or any part of these amounts that have been disallowed.

[6] In many appeals the difficulty that an appellant faces is the absence of documentation to support the expenses as claimed. In this particular case it is not the absence of documents but the authenticity of the documents that were produced that is a problem for the Appellant. Prior to the hearing the Appellant provided to the Respondent, a number of “invoices” for various items. These were purported to be

invoices that the Appellant had received from Prudential Achievers Realty, the Appellant's spouse, and the person who had printed flyers for the Appellant. Notwithstanding that the "invoices" were purportedly from various persons who would be dealing with each other at arm's length, all of these "invoices" have identical formatting (including layout and font) and all include the statement "paid in full" typed in the "invoice".

[7] In addition to the obvious identical appearance of the various "invoices", the following should also be noted:

- (a) The "invoice" that purports to be for the real estate fee charged by Prudential Achievers Realty states that it is from "Prudendal realty" *[sic]*. The amount shown in the "invoice" is \$4,578. The total amount claimed by the Appellant for tax, fees, licences, etc. was \$927 and this amount was allowed. It does not appear that any amount was claimed by the Appellant in relation to real estate fees.
- (b) The "invoice" that purports to be from the Appellant's husband for distribution of flyers identifies the person issuing the invoice as "L. Rawlinston" *[sic]*. Not only is the last name not spelled correctly, but also the Appellant's husband's name is Dennis Ross Rawlinson.
- (c) The "invoice" which, according to the accountant for the Appellant, supported the fact that the Appellant had paid rent for the office space that she had at the premises of Prudential Achievers Realty, identified the company issuing the "invoice" as "Prudential realty" *[sic]*. The description in the "invoice" was "FLYER DISTRUBUTION" *[sic]*. There is no reference to rent in this "invoice". Not only was "Prudential" not spelled correctly in either one of the "invoices" that purportedly were from "Prudential Achievers Realty", it was misspelled differently in each invoice. It seems logical to assume that if the invoices had been produced by Prudential Achievers Realty, that the name of the issuer would have been spelled correctly and the invoice would have included the full business name.
- (d) The "invoices" that were purportedly from N. Khan for printing flyers not only referred to printing, but also to "distribution" and to "flyer distribution". An amount was shown for "distribution" but no amount was shown for "flyer distribution". The Appellant stated that her husband had distributed the flyers.

[8] It seems obvious that these were not the original invoices that the Appellant had received from any of these persons. Not only do these invoices not support the claims for the amounts incurred by the Appellant but the actions of the Appellant in sending these to the Respondent as if they were such invoices (which has resulted in these invoices being introduced into evidence as such invoices) affects her credibility. As a result, the Appellant is not entitled to claim any expenses for subcontracts, real estate fees, advertising, or rent in computing her income for 2003.

[9] The Appellant's claim for the amounts claimed as office expenses is unsubstantiated. The Appellant introduced a photocopy of a spreadsheet showing two separate schedules identified as "office". Both schedules show a column of numbers without any indication of what may have been acquired for each particular amount. The total for one column is stated to be \$1,387 and the total for the other column is stated to be \$4,196, without any explanation for the discrepancy. It also appears that capital assets (a computer and a desk) may have been included in the amounts claimed as expenses. Neither of the two amounts in the schedule matches the \$2,622 amount that was claimed by the Appellant. The Appellant has not established that she incurred office expenses totalling \$2,622 or what other amount she actually incurred in 2003. No amount will be allowed for office expenses.

[10] Counsel for the Respondent in closing arguments stated that the Respondent was conceding that a portion of the motor vehicle expenses should be allowed. Counsel for the Respondent indicated that the Respondent would accept that the business use of the motor vehicle was 72% of the total use of the vehicle. The Appellant drove a Ford Focus in carrying on her business. The Appellant claimed the following amounts in relation to this motor vehicle in her original tax return and in her amended tax return:

<u>Item</u>	<u>Original Amount</u>	<u>Amended Amount</u>
Fuel	\$1,596	\$2,825
Insurance	\$3,576	\$3,576
Licence and registration	\$74	\$74
Lease payments	\$4,552	\$4,552
Total:	\$9,798	\$11,027

[11] Counsel for the Respondent stated that the receipts for gas submitted by the Appellant added up to \$812 and this is the amount the Respondent would accept as the amount spent on gas. The Appellant did not introduce any evidence to contradict

this finding of the Respondent. Therefore I accept that the Appellant incurred \$812 for gas in 2003.

[12] The Appellant claimed \$3,576 as the cost of insuring the vehicle. In support of this, the Appellant introduced a copy of an amended certificate issued by ING Insurance Co. of Canada. In this document, someone crossed out the two digits for the year in the part identified as “EFFECTIVE” and wrote in “03”. The date shown as the policy effective date on the right hand side (July 29, 2002) was unchanged but the year part of the expiration date was changed by pen to “03”.

[13] It appears that the effective date and the expiration dates were changed to suggest that this policy was in effect in 2003. It appears from the form that the cost of insuring the Ford Focus for the period from either July 29, 2002 to December 6, 2002 (or July 29, 2003 to December 6, 2003) was \$1,237 and counsel for the Respondent stated the Respondent would accept a claim for insurance costs of \$1,237 for 2003.

[14] The insurance amount of \$1,237 was for the period from July 29 to December 6. This would mean that the cost of insurance was approximately \$290 per month. The Appellant also submitted another amended certificate (in which only the first name of the insured was changed by pen) which indicated that the cost of insuring the Ford Explorer for the period from May 14, 2002 to December 6, 2002 was \$1,626 or approximately \$240 per month.

[15] In this case I accept that the Appellant incurred insurance costs of \$290 per month for 2003 in relation to the Ford Focus. Since as noted below, it appears that the vehicle may not have been leased for the full 12 months, $11.2 \times \$290 = \$3,248$ is the amount that will be accepted as having been spent on insuring this vehicle in 2003. It also seems to me that the licence and registration would have been required and the amount claimed to have been incurred (\$74) seems to be a reasonable amount and counsel for the Respondent acknowledged that the Respondent would accept that the licence and registration cost was \$74.

[16] The Appellant stated that she leased the vehicle in 2003 and that the lease payments were approximately \$405 per month. I accept that the Appellant leased the Ford Focus in 2003 and that the monthly lease payments were \$405. For 12 months the lease payments would be \$4,860. The total amount claimed on the tax return was \$4,552 as lease payments so it appears that the vehicle may not have been leased for the entire year. Based on \$405 per month for the lease, it appears that the vehicle was leased for 11.2 months. I accept that the Appellant incurred a total of \$4,552 as lease payments for the vehicle used in carrying on her business in 2003.

[17] As noted above, counsel for the Respondent stated that the Respondent would accept that 72% of the use of the vehicle was for business use. The Appellant was unable to provide any accurate evidence with respect to the actual number of kilometres driven for business purposes or personal purposes. She stated she would drive her vehicle from her home to the office and to meet her son for lunch. Therefore there would be some personal use of the vehicle. The Appellant did not introduce any evidence that would contradict a business use of 72% as proposed by the Respondent. Simply stating that the vehicle was only used for business when it was clearly used to drive from her home to the office is not sufficient to change the percentage of business use as proposed by the Respondent. I accept the percentage of business use as proposed by the Respondent.

[18] Therefore, the total amount that will be allowed as motor vehicle expenses is the following:

Item	Amount Accepted
Fuel	\$812
Insurance	\$3,248
Licence and registration	\$74
Lease payments	\$4,552
Total:	\$8,686
Business Use (72%):	\$6,254

[19] The Appellant also claimed a deduction for gifts in the amount of \$2,801. She also had very little evidence to support this claim. There are some receipts for items that she claimed she purchased as gifts but there was no reconciliation of the receipts to the total amount claimed of \$2,801. She stated that she bought a fridge for one person to complete a deal, but no receipts were provided for the purchase of the fridge and therefore it is impossible to determine whether that purchase occurred in 2003 or the amount that was spent on the fridge.

[20] Without adequate receipts and without an adequate explanation with respect to the amounts spent on gifts the Appellant cannot succeed with respect to her claim for \$2,801 for gifts in 2003.

[21] In *Chrabalowski v. The Queen*, [2005] 1 C.T.C. 2054, Associate Chief Justice Bowman (as he then was) stated as follows:

8 It boils down to this. I am sure that there are probably buried in the expenses claimed amounts that should be allowed, but I cannot determine what they are because they are mixed in with so many unproved or implausible claims.

...

12 One problem faced by an appellant in a case of this sort is that if there is a series of excessive, implausible or unreasonable claims it casts doubt on all of the claims. In other words, once a pattern of implausibility or excessiveness is established the court is inclined to scrutinize with greater care claims that, standing alone, might be sustainable. In other words, any gaps left in the evidence are filled in, and any doubts resolved, in a manner that is consistent with the pattern....

[22] In this case, it seems to me, the Appellant probably should have expenses that she incurred in relation to her activities as a real estate sales representative for Prudential Achievers Realty in addition to the amounts that have been allowed. However, in this case, as noted above, the Appellant put forward a number of “invoices” that obviously were not from the sources that the Appellant claimed that they were from. As noted, this affects her credibility and casts doubt on other claims that the Appellant is making. The Respondent has conceded that expenses related to the motor vehicle should be allowed. As a result, the Appellant will only be entitled to claim the expenses in relation to the motor vehicle. The expenses proposed by the Respondent are adjusted to reflect a greater amount incurred for insurance and the lease payments incurred by the taxpayer, but otherwise the Appellant is not entitled to claim any additional amounts.

[23] As a result, the appeal is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to claim additional motor vehicle expenses in computing her income for 2003 in the amount of \$6,254.

Signed at Toronto, Ontario, this 30th day of September, 2009.

“Wyman W. Webb”

Webb, J.

CITATION: 2009TCC489
COURT FILE NO.: 2009-371(IT)I
STYLE OF CAUSE: SANDY RAWLINSON AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
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REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT: September 30, 2009

APPEARANCES:

Agent for the Appellant: Wayne Brooks
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