

Docket: 2009-1097(IT)I

BETWEEN:

LINZI LI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on 23 September 2009, at Toronto, Ontario.

Before: The Honourable Justice François Angers

Appearances:

Agent for the Appellant: George Jiang

Counsel for the Respondent: Ian Theil

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2006 taxation year is allowed in part and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

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

"François Angers"

Angers J.

Citation: 2009 TCC 530
Date: 20091027
Docket: 2009-1097(IT)I

BETWEEN:

LINZI LI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Angers J.

[1] This is an appeal from an assessment of income tax for the appellant's 2006 taxation year. The Minister of National Revenue disallowed deductions claimed by the appellant as employment expenses. The amount disallowed totals \$36,073 and is broken down as follows:

	2006
Motor vehicle – fuel	\$ 3,322
Auto insurance	1,554
Commission for own insurance	7,200
Computer purchased in previous year	2,332
Promotion calendar	182
Office	220
Gifts	3,012
Entertainment	4,277
Other expenses	<u>13,964</u>
Total expenses	<u>\$36,073</u>

[2] The appellant's representative informed the Court at trial that he did not dispute the disallowed expense of \$2,332 relating to a computer purchased in the previous year, that \$125 of the \$220 claimed as office expenses was properly disallowed, leaving a balance of \$95, and that \$2,881 of the \$3,012 claimed under gifts was properly disallowed, leaving a balance of \$131. These two balances and the promotion calendar expense are now allowed by the respondent as deductions. All the other items are in dispute.

[3] The appellant was employed as a commission insurance salesperson for RBC Life Insurance Company (RBC). It is agreed that the appellant received from her employer a salary, wages and other remuneration, including commissions based on the volume of sales made or contracts negotiated.

[4] Her employment with RBC began on July 4, 2006. Prior to that, the appellant attended training sessions and became a licensed agent. She testified that she had spent time at RBC previous to her being employed and had arranged appointments before the date she was hired.

[5] The appellant did not provide with her tax return, a signed T2200 form from her employer, but two were actually presented in evidence: one signed and dated April 12, 2007 that the appellant later provided to the Canada Revenue Agency (CRA) and an unsigned one dated March 27, 2007 provided by RBC. Ms. Patricia Zannella, who, as director, Field Services, for RBC was the person responsible for T2200 forms at RBC, testified that the unsigned T2200 dated March 27, 2007 is a standard form with the answers typed in so that they cannot be changed. That form contains the conditions of employment applicable to the appellant in 2006.

[6] As for the signed T2200, Ms. Zannella does not understand how the form could have been changed, although certain answers are different on that form and are contrary to the terms of appellant's employment. She noted that the signed form indicates that the appellant's duties included selling investment funds, but RBC did not sell investment funds in 2006. The answers to question number 9 are also different in that the signed T2200 indicates that the employee is required to rent an office away from the employer's place of business and to pay for a substitute or an assistant. Ms. Zannella's evidence is that RBC, in 2006, did not require that the appellant rent an office away from RBC's place of business as there were offices available for RBC's sales staff. As for assistants, RBC provided administrative staff at its offices. There was no requirement that its sales representatives hire telemarketers to assist them.

[7] The other discrepancies between the two forms are with respect to question 6: the signed one indicates that the employee was obliged to pay expenses required to achieve production targets; the unsigned one indicates that the employee had to pay « various » expenses. In addition, at question 10, asking whether the contract of employment requires the use of a portion of the employee's home for work, the answer given on the signed copy is yes, and on the unsigned copy, no.

[8] The determination of these conditions of employment is particularly important because of the "other expenses" item in the amount of \$13,964 claimed by the appellant. These "other expenses" represent a salary the appellant paid her husband to work as a telemarketer. Her husband testified that his duties consisted of calling potential clients and setting up appointments with the appellant, that he worked 20 hours a week and made between 100 and 200 calls a day. He was paid \$15 an hour and worked 5 evenings a week.

[9] The appellant provided her husband with a T4 slip showing \$15,400 as employment income for 2006. The discrepancy in terms of employment income between the T4 and his evidence was explained by the fact that he was given a bonus of \$50 when he landed an appointment for the appellant.

[10] No deduction can be made in computing a taxpayer's income for a taxation year unless it is permitted by section 8 of the *Income Tax Act* (see subsection 8(2) of the *Act*). In order for the appellant to deduct the cost of a salary paid to an assistant or substitute, it must be established that the payment of the salary was required by the contract of employment, in accordance with subparagraph 8(1)(i)(ii) of the *Act*. The testimony of Ms. Patricia Zannella was very credible and reliable. I do believe that the appellant's conditions of employment with RBC in 2006 did not require her to hire and pay an assistant, nor can it be said that it was an implicit condition of her employment that she do so (see *Morgan v. the Queen*, 2007 TCC 475). Thus, the Minister properly disallowed this expense.

[11] The expenses claimed under the motor vehicle – fuel, auto insurance and entertainment items were disallowed by the Minister on the basis that the appellant failed to provide any documentation to support the expenses and that these expenses did not represent purchases used in her employment activities, nor were they incurred for the purpose of gaining or producing income from her employment as they were personal or living expenses.

[12] The receipts for gasoline purchases and for automobile insurance are found at Tabs 8 and 9 of Exhibit R-1. The total of \$3,332 in the first item (motor vehicle –

fuel) includes the insurance premium of \$1,554 for one car claimed as the second item shown in the table in paragraph one above.

[13] One difficulty with the gasoline expenses lies in the fact that many receipts predate the appellant's period of employment and that some of the gasoline purchases were made with credit cards she shared with her husband. The other difficulty lies in the fact that the name of the insured on the certificate of automobile insurance is not the appellant's. She is identified as driver number 5 with respect to automobile number 3. Her family has 4 automobiles with several drivers. The class description given for the vehicle in question is "pleasure and driven to work".

[14] The appellant did not keep a logbook of her kilometres driven and is unable to determine with any certainty the actual percentage of use for business purposes other than to say that it is close to 90%. Considering the fact that she began working for RBC in July, the insurance premium expense must be reduced by half and the gasoline purchases prior to July must also be excluded. This leaves a total of \$2,073.91 for the motor vehicle - fuel and automobile insurance items. The evidence is clearly insufficient to establish 90% business use. Considering all the circumstances, I can only arbitrarily determine an amount, which I set at \$1,000.

[15] The commission for her own insurance, claimed as an expense, was properly disallowed by the Minister. There are no provisions in section 8 that allow such a deduction.

[16] The last remaining expense claimed, namely entertainment, was not allowed by the Minister because many receipts were for meals for one person, were undated or were issued prior to the period of employment and others were for meals consumed on weekends. The appellant has acknowledged that she gave all her receipts to her accountant and left it to him to sort them out, as she did not know what she could claim. None of the receipts in question can be linked to clients or potential clients and the appellant has not taken the time to sort any of these receipts, nor has she produced any in evidence. In circumstances where a claim is clearly exaggerated, it is difficult if not impossible to allow the expense. These expenses were, therefore, properly disallowed.

[17] The appeal is allowed in part and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with these reasons.

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

"François Angers"

Angers J.

CITATION: 2009 TCC 530
COURT FILE NO.: 2009-1097(IT)I
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PLACE OF HEARING: Toronto, Ontario
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REASONS FOR JUDGMENT BY: The Honourable Justice François Angers
DATE OF JUDGMENT: October 27, 2009

APPEARANCES:

Agent for the Appellant: George Jiang
Counsel for the Respondent: Ian Theil

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada