

Citation: 2009 TCC 550
Date: 20091112
Docket: 2009-181(IT)I

BETWEEN:

IGNATIUS CUDJOE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

**(Delivered orally from the bench on
September 3, 2009, in Toronto, Ontario.)**

D'Arcy J.

[1] The Appellant, Ignatius Cudjoe, has appealed income tax assessments in respect of his 2003 and 2004 taxation years.

[2] The first issue in this appeal is whether the Appellant had a source of business income during the relevant taxation years. If the Appellant did have a source of business income, then the issue of what is the amount of any allowable business losses will have to be considered.

[3] The Appellant testified during the hearing. He was very forthright and obviously passionate about his music and the operation of a recording studio. He was a credible witness and I accept his testimony as reliable.

[4] During the 2003 and 2004 taxation years, the Appellant claimed business losses of \$6,930.30 and \$9,982.32 respectively. These business losses related to a recording studio that the Appellant operated in Scarborough in 2003 and in his home in 2004.

The Law

[5] In circumstances such as this, I must first consider whether the operation of the recording studio constituted a source of income from a business.

[6] The Appellant has a love for music. His purpose in establishing a music studio was to provide an opportunity for musicians to record music at a low cost. He also used the studio to record CDs of his own music. It is clear from the evidence that there was some personal or hobby element to the operation of the recording studio by the Appellant.

[7] The approach to be taken in making a determination of whether the operation of the recording studio constituted a source of income is mandated by the 2002 decision of the Supreme Court of Canada in *Stewart v. Canada*, [2002] 2 S.C.R. 645.

[8] The Court noted, at paragraphs 52 to 55 of its decision that “where there is some personal or hobby element to the activity in question, one must apply a “pursuit of profit” source test”.

[9] The Court described the test as follows at paragraph 54:

... “Does the taxpayer intend to carry on an activity for profit and is there evidence to support that intention?” This requires the taxpayer to establish that his or her predominant intention is to make a profit from the activity and that the activity has been carried out in accordance with objective standards of businesslike behaviour.

[10] The Court provided the following objective standards: the profit and loss experienced in past years, the taxpayer's training, the taxpayer's intended course of action, and the capability of the venture to show a profit.

[11] The Court also noted that this list is not intended to be exhaustive and that the factors will differ with the nature and extent of the undertaking.

[12] For the following reasons, it is my view that the Appellant has not established that his predominant intention was to make a profit, and in particular, he has not established that the activities relating to the recording studio were carried out in accordance with objective standards of businesslike behaviour.

[13] During the relevant period, the Appellant had a full-time job as a machine operator. He worked from 7:15 in the morning to 3:45 in the afternoon. He began

operating the recording studio in 2003. At first, the studio was located in rented space in Scarborough, however due to financial concerns it was moved to his home in 2004.

[14] The studio was operated in the evenings, after the Appellant returned from work.

[15] Prior to operating the recording studio, the Appellant tried to start a business as a custom tailor. The business incurred significant losses in 1999 and 2000 and had very little income. It appears to have been discontinued sometime in 2001.

[16] When considering the source issue the first objective factor is the profit and loss experience in past years.

[17] The evidence on the record was that the recording studio was operating in 2003, 2004 and 2005. During this period, the only revenue received by the Appellant was a \$520 forfeited deposit received in 2003. The deposit was paid by a potential customer who visited the studio on one occasion and did not return.

[18] The Appellant noted that he devoted a great deal of effort to getting people in the door but was not able to obtain any paying customers.

[19] The expenses incurred by the Appellant during each of these years were substantial. On his tax return, he claimed current expenses of \$7,450.30 in 2003 and \$9,982.32 in 2004. Further, his agent, who prepared and filed the Appellant's tax return, noted that the Appellant had incurred additional current expenses that were not claimed on the tax return. In addition, the Court was provided with receipts that evidenced substantial purchases of capital equipment.

[20] The Appellant did not have a business plan and did not keep any books and records with respect to the operation of the recording studio.

[21] In short, no profit was realized and the Appellant did not appear to have any plan with respect to steps that needed to be taken in order for the operation of the recording studio to become profitable.

[22] The Appellant had no training as a sound engineer. His only knowledge of how a recording studio operated was the knowledge he had acquired over the years as a musician. As a result, he was required to engage a third party to help him set up and originally operate the studio. He paid this person over \$5,000 in 2003 and

2004. It was not clear from the evidence exactly what he received in return for these payments.

[23] The Appellant presented very little evidence to support his position that he intended to carry on a business. His studio was not listed in any business directory or phone book. He did not have a list of clients. In fact, it appears that he only had one customer during the three-year period he operated the studio. He did not maintain books and records.

[24] The Appellant did undertake some limited advertising, which consisted of flyers and some free advertising on radio. However, it was clear from the evidence that this advertising was very limited and was not successful.

[25] As counsel for the Respondent noted, the Appellant hoped that one day he could make a profit, but he did not carry out any organized effort to make a profit. In fact, it appears from the evidence that the Appellant did not have any idea of how one operates a recording studio in a businesslike manner.

[26] It is clear from the evidence that the recording studio as operated by the Appellant had no capability of showing a profit.

[27] As noted previously, the Appellant has a passion for music and the operation of a recording studio. However, this passion does not equate to the carrying on of a business.

[28] Based upon the evidence, it is the Court's finding that the operation of the recording studio was in the nature of a hobby and did not constitute a source of income from a business.

[29] As a result, the appeal is dismissed.

[30] Each party shall bear their own costs.

Signed at Ottawa, Canada, this 12th day of November, 2009.

“S. D’Arcy”

D’Arcy J.

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COURT FILE NO.: 2009-181(IT)I

STYLE OF CAUSE: IGNATIUS CUDJOE and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: August 30 and September 3, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Steven K. D'Arcy

DATE OF JUDGMENT: September 10, 2009

APPEARANCES:

Agent for the Appellant: Michael Channer (no one appeared
September 3, 2009)

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COUNSEL OF RECORD:

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Firm:

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