

Docket: 2009-2924(IT)I

BETWEEN:

ONORIO ROTONDI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeals heard on June 30, 2010, at Toronto, Ontario  
and decision rendered orally by conference call on July 6, 2010

Before: The Honourable Justice Steven K. D'Arcy

Appearances:

Agent for the Appellant:

Thomas Rhoden

Counsel for the Respondent:

Khashayar Haghgouyan

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JUDGMENT

The appeals are allowed, without costs, and the matters are referred back to the Minister for reconsideration and reassessment on the basis that the Appellant is entitled to deduct, when determining his net business income for the 2003 and 2004 taxation years, expenses of \$16,709 and \$13,741, respectively.

Signed at Antigonish, Nova Scotia, this 13<sup>th</sup> day of July 2010.

“S. D’Arcy”

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D'Arcy J.

BETWEEN:

ONORIO ROTONDI,

Appellant,

and

HER MAJESTY THE QUEEN

Respondent.

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Before: The Honourable Justice Steven K. D'Arcy

Agent for the Appellant: Thomas Rhoden  
Counsel for the Respondent: Khashayar Haghgouyan

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**EDITED VERSION OF**  
**ORAL REASONS FOR JUDGMENT**

Let the attached edited version of the Reasons for Judgment, delivered orally by conference call on July 6, 2010, be filed. I have edited the oral Reasons for Judgment for style, clarity, and accuracy. I did not make any substantive changes.

Signed at Antigonish, Nova Scotia, this 13th day of July 2010.

“S. D’Arcy”  
\_\_\_\_\_  
D’Arcy J.

Citation: 2010 TCC 378  
Date: 20100713  
Docket: 2009-2924(IT)I

BETWEEN:

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and

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**EDITED VERSION OF**  
**ORAL REASONS FOR JUDGMENT**

**(Delivered orally by conference call on July 6, 2010)**

D'Arcy J.

[1] The Appellant has appealed notices of reassessment in respect of his 2003 and 2004 taxation years. These are my oral reasons for judgment.

[2] When filing his income tax returns for the 2003 and 2004 taxation years the Appellant reported the following net business income:

- For the 2003 taxation year, net business income of \$21,044 comprised of gross business income of \$46,188 and deductible expenses of \$25,144.
- For the 2004 taxation year, net business income of \$25,085 comprised of gross business income of \$51,950 and deductible expenses of \$26,865.

[3] When reassessing the Appellant, the Minister accepted the gross business income reported; however, he reduced the amount of deductible expenses for the 2003 and 2004 taxation years to \$4,449 and \$4,749, respectively.

[4] The Appellant has appealed the Minister's adjustments to the deductible expenses.

[5] The Appellant was the only witness at the hearing. I found him to be a credible witness.

[6] The Appellant carried on a drywall installation business. In the relevant years, he worked on a number of subdivision projects in the Greater Toronto area, including projects in Oakville, Mississauga, Newmarket, and other areas north of Toronto.

[7] The Appellant testified that he was required to provide the tools used to install the drywall, such as stepladders, drywall saw, general tools, scaffolding, hard hats, safety boots, etc.

[8] The Appellant retained a bookkeeper to prepare his tax returns. The bookkeeper advised the Appellant that he did not require receipts for all of the business expenses; rather, he could prepare the tax returns based upon copies of the Appellant's bank statements, Visa statements, and receipts for items not included in the bank and Visa statements.

[9] Unfortunately, once the CRA performed its audit, the bookkeeper disappeared. As a result, the Appellant was not able to obtain copies of the working papers and supporting documentation used by the bookkeeper to prepare his returns.

[10] The Appellant then retained Mr. Rhoden as his accountant. Mr. Rhoden also acted as the Appellant's agent at the hearing.

[11] Using the Appellant's bank statements as a source document, Mr. Rhoden was able to prepare schedules of expenses incurred by the Appellant in 2003 and 2004. While Mr. Rhoden was not able to account for all of the expenses reported on the Appellant's return, he was able to detail expenses of \$14,053 for the 2003 taxation year and \$10,990 for the 2004 taxation year. Mr Rhoden referenced each amount reported to the bank statements of the Appellant.

[12] The Appellant, during his testimony, discussed most of the items on the schedules.

[13] The Respondent argued that the Appellant should not be entitled to deduct the amounts noted on the schedules since he did not provide receipts for the expenditures. I do not agree with this position.

[14] Certainly, the Appellant bears the onus of proving that the facts upon which the Minister based the reassessments are wrong.

[15] While the task of proving the expenses is made more difficult when a taxpayer does not provide the Court with records or receipts, it is still open for him or her to provide oral evidence relating to these expenses. As the Supreme Court of Canada noted in *Hickman Motors Ltd. vs. Canada*, [1997] 2 S.C.R. 335 at para. 87:

... where the ITA [*Income Tax Act*] does not require supporting documentation, credible oral evidence from a taxpayer is sufficient notwithstanding the absence of records.

[16] In the current case, the Appellant described in some detail each of the expenses categories noted on the schedules prepared by his agent. He explained the nature of each item and how the expense related to the earning of income from the drywall installation business.

[17] Based upon the testimony of the Appellant, I find that the schedules prepared by the Appellant's agent set out expenses incurred by the Appellant to earn income from the drywall installation business and that all amounts noted on the schedules are reasonable.

[18] I note, however, that the Minister allowed a deduction for a portion of the motor vehicles expenses contained in the schedules prepared by the Appellant's agent. In particular, the Appellant was allowed to deduct \$1,793 in his 2003 taxation year and \$1,998 in his 2004 taxation year. I have deducted these amounts from the motor vehicle expenses shown on the schedule prepared by the Appellant's agent when determining the total deductible expenses incurred by the Appellant.

[19] When filing his return, the Appellant claimed \$10,748 and \$12,042 for the 2003 and 2004 taxation years under the heading Purchases. These amounts appear to be in addition to the expenses included in the schedules prepared by the Appellant's agent.

[20] The Appellant was not able to describe to the Court what expenses were included in the Purchases. The amounts were arrived at by the missing bookkeeper and the Appellant has no idea what purchases the bookkeeper included in his calculation.

[21] The Appellant's agent argued that the amounts noted under the Purchase heading must relate to the purchase of tools required by the Appellant to carry on his business and that I should allow for the deduction of all or a portion of the \$10,748 and \$12,042.

[22] I cannot agree with the Appellant's agent. There is no evidence before me with respect to the nature of the items included under the Purchase heading. I have no way of knowing if the items the bookkeeper included in his calculation of purchases were incurred to earn income from the drywall installation business, were incurred on account of income or capital, or were reasonable.

[23] In short, with respect to these amounts, the Appellant has not discharged the evidentiary burden placed on him.

[24] In summary, the Appellant is entitled to claim, in addition to the amounts allowed by the Minister, expenses of \$12,260 and \$8,992 for the 2003 and 2004 taxation years, respectively.

[25] For the foregoing reasons, the appeals are allowed, without costs, and the matters are referred back to the Minister for reconsideration and reassessment on the basis that the Appellant is entitled to deduct, when determining his net business income from the drywall installation business for the 2003 and 2004 taxation years, expenses of \$16,709 and \$13,741, respectively.

D'Arcy J.

CITATION:	2010 TCC 378
COURT FILE NO.:	2009-2924(IT)I
STYLE OF CAUSE:	ONORIO ROTONDI AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	June 30, 2010 July 6, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice Steven K. D'Arcy
DATE OF JUDGMENT:	July 13, 2010
APPEARANCES:	
Agent for the Appellant:	Thomas Rhoden
Counsel for the Respondent:	Khashayar Haghgouyan
COUNSEL OF RECORD:	
For the Appellant:	N/A
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada