

Docket: 2016-4210(IT)I

BETWEEN:

BRIAN L. NORRIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on August 16, 2017 at Nanaimo, British Columbia and on
November 14, 2017 by teleconference

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Kayla Baldwin

AMENDED JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 2005, 2006, 2007 and 2008 taxation years are **allowed in part**, without costs, in accordance with **the Respondent's concessions in the attached Amended Reasons for Judgment**.

Signed at **Vancouver, British Columbia**, this 11th day of **December** 2017.

“B. Paris”

Paris J.

Citation: 2017 TCC 236
Date: 20171211
Docket: 2016-4210(IT)I

BETWEEN:

BRIAN L. NORRIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Paris J.

[1] These are appeals in the informal procedure from reassessments of the Appellant's 2005, 2006, 2007 and 2008 taxation years. The Appellant is disputing the inclusion of amounts in his income in those years as shareholder benefits received from his corporation "Golden Hinde Cable Services Ltd." (the "Corporation"). The amount included as shareholder benefits was \$63,808 in 2005, \$50,887 in 2006, \$51,524 in 2007 and \$30,730 in 2008.

[2] It is not disputed by the Appellant that he received those amounts from the Corporation, but he maintains that he received them as reimbursements of business expenses of the Corporation that he paid personally.

[3] The applicable statutory provision is subsection 15(1) of the *Income Tax Act* (the "Act") which reads as follows:

15. (1) Benefit conferred on shareholder – Where at any time in a taxation year a benefit is conferred on a shareholder, by a corporation otherwise than by

(a) . . .

(b) . . .

(c) . . .

(d) . . .

the amount or value thereof shall, except to the extent that it is deemed by section 84 to be a dividend, be included in computing the income of the shareholder for the year.

[4] None of the exceptions in paragraphs 15(1)(a) to (d) are relevant to the Appellant's situation in this case.

Facts

[5] The Appellant was at all times the sole shareholder and director of the Corporation. According to the Appellant, the Corporation ceased operations some time in 2011.

[6] The Appellant did not file personal tax returns for the taxation years in issue until April 20, 2012 after the Minister of National Revenue (the "Minister") issued arbitrary assessments to the Appellant for those years under subsection 152(7) of the *Act*.

[7] The Corporation did not file tax returns for its taxation years ending on the last day of February 2006, 2007, 2008 and 2009 until June 12, 2014. The Canada Revenue Agency (the "CRA") subsequently audited the Corporation and determined that the Appellant had made substantial cash withdrawals from the Corporation's bank account throughout 2005, 2006 2007 and 2008 and that the Corporation had also made payments on the Appellant's personal credit card in those years.

[8] The cash withdrawals totaled \$44,388.75 in 2005, \$45,988.00 in 2006, \$42,699.95 in 2007 and \$26,331.00 in 2008.

[9] The credit card payments totaled \$23,644.09 in 2005, \$4,898.70 in 2006, \$8,827.23 in 2007 and \$4,398.63 in 2008.

[10] The Appellant was reassessed to include those amounts in his income as benefits conferred on him by the Corporation in his capacity of shareholder of the Corporation.

[11] The only employment income reported by the Appellant from the Corporation was in 2005, in the amount of \$4,225. It also appears that he had RRSP income of \$23,813 in 2005, \$2,023 in 2006 and \$3,000 in 2008.

[12] In the course of the audit of the Corporation, the Appellant was asked to provide records to show the amount of the expenses which he said he had incurred for the Corporation. He gave the auditor three grocery bags of unsorted receipts. When he was asked to organize the receipts into some sort of coherent order, he said that he was unable to do so. The Appellant admitted in cross-examination that his record keeping was “shoddy”.

[13] At the hearing, the Appellant testified that he worked away from home for the Corporation for 99% of the time during the years in issue, and that he paid the expenses for meals and lodging with his credit card. He said that the Corporation reimbursed him by paying his credit card bills. He also said he withdrew money from the Corporation’s bank account to make the payments on the mortgage on his house and to pay utility and motor vehicle expenses because he used much of his house and the property surrounding it for business purposes, both for his office and for storage of tools, equipment and work vehicles. He also said that he maintained a shareholder loan record but that it was “not written down”. The Appellant was unable to produce any records and gave no details or particulars of the expenses he said he incurred on behalf of the Corporation.

Appellant’s Position

[14] The Appellant said that he was intimidated and bullied during the audit and objection process and felt that he had not been treated fairly. He argued that he had been unable to prepare for the hearing because his requests for an explanation of the reassessments had gone unanswered by the auditor, the appeals officer and by Justice counsel prior to the hearing. He also said that he only received a copy of the audit working papers a month before the hearing.

[15] However, the appeals officer who handled the Appellant’s objection testified that she provided the audit working papers to the Appellant on two occasions (in January, 2015 and again in February, 2016) and attempted to explain the reassessments to him but that he did not understand them. She also told him that he would need to organize his receipts and to demonstrate the connection between the expenditures and the corporation's activities. She said she received nothing from the Appellant.

Decision

[16] In an appeal of a reassessment of tax, the taxpayer bears the onus of showing that the assumptions of fact made by the Minister in making the reassessment are incorrect.

[17] I find that the Appellant has not met that onus. His testimony concerning the alleged business expenses was vague and perfunctory. His evidence consisted largely of general, self-serving assertions that the amounts in issue were received by him as repayments of expenses he incurred on behalf of the Corporation, and excuses for his lack of preparation for the hearing. He did not provide any documents whatsoever to support his claim that the amounts in issue were reimbursements of expenses of the Corporation that he had paid. I also question the overall reliability of the Appellant's testimony, given that his complaints about not having been provided an explanation of the reassessments and a copy of the audit working papers in a timely fashion were clearly refuted by the appeals officer. Her testimony was corroborated by a letter she sent to the Appellant, a copy of which was produced at the hearing, and I accept her testimony.

[18] In my view, the comments of the Federal Court of Appeal in the case of *Njenga v. Canada*, [1996] F.C.J. No. 1218 (QL) at paragraphs 3 and 4 are applicable here:

3 The income tax system is based on self monitoring. As a public policy matter the burden of proof of deductions and claims properly rests with the taxpayer. The Tax Court Judge held that persons such as the Appellant must maintain and have available detailed information and documentation in support of the claims they make. We agree with that finding. Ms. Njenga as the Taxpayer is responsible for documenting her own personal affairs in a reasonable manner. Self written receipts and assertion without proof are not sufficient.

4 The problem of insufficient documentation is further compounded by the fact that the Trial Judge, who is the assessor of credibility, found the applicant to be lacking in this regard.

[19] **At the hearing, counsel for the Respondent conceded that the amounts assessed to the Appellant should be reduced by \$375 in his 2006 taxation year, \$316 in his 2007 taxation year, and \$651 in his 2008 taxation year, based on additional information provided by the Appellant. The appeals are therefore allowed in part to reflect those concessions.**

Signed at **Vancouver, British Columbia**, this 11th day of **December** 2017.

“B. Paris”

Paris J.

CITATION: 2017 TCC 236
COURT FILE NO.: 2016-4210(IT)I
STYLE OF CAUSE: BRIAN L. NORRIS AND HER MAJESTY
THE QUEEN

PLACE AND DATES OF HEARING: Nanaimo, British Columbia
August 16, 2017
Teleconference
November 14, 2017

AMENDED REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris

AMENDED DATE OF JUDGMENT: December 11, 2017

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Kayla Baldwin

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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