

Docket: 2010-1220(IT)I

BETWEEN:

BUD SAGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 15, 2010, at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Rob R.S. Whittaker

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2006 and 2007 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 6th day of May 2011.

“L.M. Little”

Little J.

Citation: 2011 TCC 249
Date: 20110506
Docket: 2010-1220(IT)I

BETWEEN:

BUD SAGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] The Appellant commenced a business in 1971.

[2] The business sells sports uniforms, choir uniforms, T-shirts, golf shirts, sweatshirts, jackets, sweaters, hats and other types of clothing to schools, corporations and businesses.

[3] The Appellant said that he buys the products from various suppliers and sells the products to the customers.

[4] In 1997, the Appellant incorporated a company by the name of B. Sage Team and Corporate Wear Ltd. (the “Corporation”) under the British Columbia *Company Act*, R.S.B.C. 1996, c. 62. The Appellant said that he incorporated the Corporation to save the name of the business.

[5] In his Notice of Appeal, the Appellant said:

C) iv) Mr. Sage [i]ncorporated his business to protect his personal assets, from any potential liability incurred through the operation of the business.

[6] The Appellant said that all sales that were made by him were reported as business income of the Corporation.

[7] The Appellant said the shares of the Corporation are owned as follows:

Bud Sage - 50 per cent
Susan Sage (the Appellant's wife) - 50 per cent.

[8] The Appellant is the President of the Corporation and the Appellant and his wife are the Directors of the Corporation.

[9] The Appellant is the only salesperson of the Corporation.

[10] The Minister of National Revenue (the "Minister") maintains that the Appellant received the following amount of employment income from the Corporation:

2006 - \$29,000
2007 - \$32,000.

[11] The Appellant admitted that the Corporation has a bank account, it files a tax return and owns or leases various assets.

[12] The Appellant also admitted that he was responsible for all aspects of running the Corporation and that his wife was the bookkeeper of the Corporation.

[13] During the argument, the Appellant said:

... I really believe that my strongest argument is that Bud Sage is self-employed.

...

And I realize we have the company that is separate.

(Transcript, page 47, lines 4 to 6 and 11 to 12)

[14] When the Appellant filed his income tax returns for the 2006 and 2007 taxation years, he claimed a number of expenses. The Minister took the following position with respect to the claims made by the Appellant:

2006 Taxation Year

	Claimed/ Reported	Post Review (Disallowed)	Appeals (Allowed)	Total Disallowed
Expenses				
Advertising and Promotion	\$911.33	\$911.33	\$0.00	\$911.33
Mortgage Interest	\$3,363.51	\$3,363.51	\$949.52	\$2,413.99
Work-Space-in-the- Home	<u>\$2,474.66</u>	<u>\$2,348.06</u>	<u>\$513.77</u>	<u>\$1,834.29</u>
Total Employment Expenses	\$6,749.50	\$6,622.90	\$1,463.29	\$5,159.61

(See Schedule "A" of the Reply)

2007 Taxation Year

	Claimed/ Reported	Post Review (Disallowed)	Appeals (Allowed)	Total Disallowed
Expenses				
Advertising and Promotion	\$1,158.53	\$1,158.53	\$0.00	\$1,158.53
Mortgage Interest	\$5,823.75	\$5,823.75	\$691.52	\$5,132.23
Work-Space-in-the- Home	<u>\$2,119.38</u>	<u>\$2,010.29</u>	<u>\$442.70</u>	<u>\$1,567.59</u>
Total Employment Expenses	\$9,101.66	\$8,992.57	\$1,134.22	\$7,858.35

(See Schedule "B" of the Reply)

[15] The Minister issued Notices of Reassessment to disallow the amounts as shown in paragraph [14] above.

[16] The Appellant filed Notices of Objection to the said Reassessments and after the Reassessments were confirmed by the Minister, the Appellant filed Notices of Appeal to the Tax Court.

B. ISSUES

[17] The issues are whether the Appellant:

- (a) was an employee of the Corporation for the 2006 and 2007 taxation years; and
- (b) is entitled to claim employment expenses in excess of amounts allowed by the Minister in computing his employment income for the 2006 and 2007 taxation years.

C. ANALYSIS AND DECISION

[18] With respect to the status of the Appellant, I have concluded that he was an employee of the Corporation in the 2006 and 2007 taxation years. He was not an independent contractor. I have also concluded that he was not a commission sales person as that term is defined in paragraph 8(1)(f) of the *Income Tax Act*.

[19] I have reached this conclusion based on the testimony of the Appellant and based upon the fact that the Corporation is a separate legal entity. Counsel for the Respondent noted that any monies generated by Mr. Sage's activities were monies that went to the Corporation. Counsel for the Respondent also noted that all profits and losses would accrue to the Corporation and not the Appellant.

[20] At page 211 of the transcript, Counsel for the Respondent said:

The appellant sought the benefits of incorporation by incorporating the company to in part protect his personal assets from potential liability. He cannot now turn around, in my submission, and claim the activities he was carrying out on behalf of the company was really him carrying out his own business for the company.

(Transcript, page 211, lines 3 to 9)

I agree with the comments of Counsel for the Respondent.

[21] I will now deal with the deductions claimed by the Appellant.

[22] Counsel for the Respondent said:

The mortgage interest, the issue in my submission comes down to the approach to calculating the deduction, and hence a quantum. The taxpayer sought to deduct the amounts he paid in 2006 and 2007 as interest on the sum of \$54,000 and

\$56,000, plus in 2007 he sought to deduct principal as well, but the taxpayer has conceded that was an error. The appeals officer allowed deductions in both years, but he did so by looking at the shareholder loan account and looking at how much of that money, the \$50,000, was actually in the account in '06 and '07 and then applied the interest against that sum.

(Transcript, page 185, lines 5 to 15)

[23] During the hearing, Counsel for the Respondent called Peter Leong (the Appeals Officer) as a witness. Mr. Leong said:

... And with those (sic) information, I came up with the average amount that is due to a shareholder, and that is \$16,093.50 for 2006, \$12,348.50 for 2007.

(Transcript, page 112, lines 2 to 4)

[24] During cross-examination of the Appellant, Counsel for the Respondent referred to the Appellant's claim of mortgage interest of \$5,823.75 in 2007. Counsel for the Respondent said:

... You will see that you were attempting to deduct \$5,823.75?

A Mm-hmm.

Q And I'm going to ask you to turn now to tab 12, which is your mortgage statement from the Investor's Group. And you'll see total of all payments made is \$5,823.75. Correct?

A That is correct, and I would say that was in error.

Q Right, so you agree that in fact in 2007 you erroneously tried to deduct both principal and interest payments?

A I would.

(Transcript, page 75, lines 13 to 25)

[25] I have concluded that the position as adopted by the Minister in the Reassessments was correct. However, during the hearing, Counsel for the Respondent agreed to the following additional allowances. Based on the new information submitted, Counsel for the Respondent agreed that the following additional amounts should be allowed as deductions:

1. Burglar Alarm

2006	\$318.00	Allow - \$81.09
2007	\$318.00	Allow - \$81.09

(Transcript, page 216, lines 3 to 13)

2. Shaw Cable and Internet

	<u>Paid Per Year</u>	<u>Business</u>	<u>Allow</u>
2006	\$720.00	\$360.00	\$91.80
2007	\$720.00	\$360.00	\$91.80

(Transcript, page 229, lines 2 to 17)

3. Maintenance and Repairs

	<u>Paid Per Year</u>	<u>Business</u>	<u>Allow</u>
2006	\$2,856.10	\$1,428.05	\$364.15
2007	\$1,132.82	\$566.41	\$144.43

(Transcript, page 216, lines 16 to 25 and page 217, lines 1 to 16)

[26] The appeals are allowed, without costs and the Minister is to make the adjustments as outlined above.

Signed at Vancouver, British Columbia, this 6th day of May 2011.

“L.M. Little”

Little J.

CITATION: 2011 TCC 249

COURT FILE NO.: 2010-1220(IT)I

STYLE OF CAUSE: BUD SAGE AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: December 15, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: May 6, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rob R.S. Whittaker

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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