Docket: 2017-1818(IT)I

BETWEEN:

RANDALL F. BLOTT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on December 12, 2017, at Calgary, Alberta

By: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Aminollah Sabzevari

JUDGMENT

The Appeals from the reassessments made under the *Income Tax Act* with respect to the 2012 and 2013 taxation years are dismissed.

Signed at Ottawa, Canada, this 2nd day of January 2018.

"Campbell J. Miller"

C. Miller J.

Citation: 2018 TCC 1
Date: 20180102
Docket: 2017-1818(IT)I

BETWEEN:

RANDALL F. BLOTT,

Appellant,

and

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REASONS FOR JUDGMENT

Miller J.

[1] Mr. Blott appeals by way of the informal procedure reassessments by the Minister of National Revenue (the "Minister") of his 2012 and 2013 taxation years, in which the Minister denied an employment expense deduction claimed by Mr. Blott. The expense was for $12,000 which, Mr. Blott maintains, was paid each year as salary to his wife.

[2] In the years in question, Mr. Blott was a market dealer with Walton Capital Management Inc. ("WCM"), the securities arm of Walton International Corp. In an Account Manager Employment Agreement dated January 3, 2012 between Mr. Blott and WCM, his duties were described as follows:

1) Build the employee's client base and establish the employee's own deals for company products;

2) Grow the employee's own business client base both inside and outside of the company;

3) Provide support to the employee's existing client base;

4) Provide support to referring entities that are acceptable to the company, and who work with the company outside of the company's offices;

5) Provide support to other registered dealers selling company products;

6) Comply with all rules and regulations governing any *Securities Act* of registrant conduct;

7) Adhere to all operative policies and procedures in the compliance manual;

8) Attend all professional development days; and

9) Such other duties and responsibilities of an account manager that the company may advise from time to time.

[3] Mr. Blott went into considerable detail as to the level of work required to fulfill these duties. He was clearly hardworking and successful, earning $436,000 in 2012 and $526,420 in 2013. His work was throughout western Canada, though the majority of his work took place in Calgary.

[4] WCM provided support to Mr. Blott in the form of an assistant, shared with others, as well as a training department. WCM did provide Mr. Blott with a T2200 in which it answered "no" to the question of whether the contract of employment required Mr. Blott to pay for an assistant.

[5] For a few years prior to the years in issue, Mr. Blott's spouse, Suzanne Thériault, assisted him with his work. For 2011 and 2012, Mr. Blott determined it was appropriate that she be rewarded for these services. Ms. Thériault did not testify, but Mr. Blott provided a list of the duties she performed:

- Managing and auditing the receipts and expenses of the business;
- Reconciling the expenses against the business AMEX charge card;
- Paying the business AMEX charge card bill;
- Expense receipt reconciliation;
- Trailer fee auditing and reporting;
- Sorting, filing, auditing and entering business receipts;
- Income tax preparation;
- Preparing gift boxes for promotional purposes;
- Preparing and mailing celebration cards;
- Preparing gift bags for promotional purposes;
- Delivering promotional items;
- Hosting clients in our home;

- Seeking new client prospects at school
- Seeking new client prospects through our sports club and other events;
- Networking.

[6] Mr. Blott emphasized more than once that Ms. Thériault's performance of these services was essential in allowing him to devote his efforts to building a customer base and earning his commission and bonuses. He stated that he was not interested in the handling of administrative and expense related matters. He gave one example of Ms. Thériault bringing him a customer who proved to be a significant investor.

[7] Mr. Blott did not provide any documentation evidencing Ms. Thériault's auditing receipts and expenses, reconciling those expenses against the AMEX card, doing receipt reconciliations, trailer fee audits or sorting receipts. He testified that the $12,000 or $1,000 a month was arbitrary stating he felt it was more than reasonable in comparison to the level of commissions he earned and the value he placed on her contributions. He did not actually pay Ms. Thériault by cheque or any sort of transfer of funds as they had a joint account and he did not see any practical sense in doing so. He indicated that Ms. Thériault reported the $12,000 as income on her return, though he did not provide any T4.

[8] In filing his tax returns for 2012 and 2013, specifically the statement of employment expenses, the $12,000 was not separately identified but was put under the heading of "office equipment".

[9] Respondent's counsel defined the issue as twofold: first, was the $12,000 expense actually incurred as salary for an assistant and, if so, does it meet the legislative requirements in section 8 of the *Income Tax Act* (the "*Act*")? There are two possible paragraphs that may be applicable: paragraphs 8(1)(*f*) and 8(1)(*i*) which read as follows:

> (f) where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and
>
> (i) under the contract of employment was required to pay the taxpayer's own expenses,
>
> (ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,

(iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and

(iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(b)(v), not included in computing the taxpayer's income,

amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph 8(1)(f)(iii) and received by the taxpayer in the year) to the extent that those amounts were not

(v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph 8(1)(j),

(vi) outlays or expenses that would, by virtue of paragraph 18(1)(l), not be deductible in computing the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

(vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(e);

…

(i) an amount paid by the taxpayer in the year, or on behalf of the taxpayer in the year if the amount paid on behalf of the taxpayer is required to be included in the taxpayer's income for the year, as

…

ii. office rent, or salary to an assistant or substitute, the payment of which by the officer or employee was required by the contract of employment,

...

to the extent that the taxpayer has not been reimbursed, and is not entitled to be reimbursed in respect thereof;

[10] It is also important to provide subsection 8(10) of the *Act*:

An amount otherwise deductible for a taxation year under paragraph (1)(c), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form, signed by the taxpayer's employer certifying that the

> conditions set out in the applicable provision were met in the year in respect of the taxpayer, is filed with the taxpayer's return of income for the year.

[11] Turning to the first issue, I note that both provisions require an amount be expended or paid, under paragraph 8(1)(*f*) of the *Act* for the purpose of earning income and under subparagraph 8(1)(*i*)(ii) of the *Act* for salary for an assistant. So, was $12,000 paid or expended by Mr. Blott? There are no cheques to Ms. Thériault. Mr. Blott's income went into the joint account and Ms. Thériault could simply access it. Is there any amount paid to Ms. Thériault in such circumstances? I conclude there is not. Granted, Ms. Thériault, as a joint holder of the account, could withdraw whatever she wanted, well in excess of $12,000 a year for that matter. Indeed, either she or Mr. Blott could withdraw everything from the account. In these circumstances, I do not see how anything has been paid or expended to Ms. Thériault. She has received nothing more than what she already had. Mr. Blott referred me to the case of *Aprile v HMTQ*[1] in which an employment expense deduction was allowed on the basis that "payment" could be made in kind (snowmobiles and motorcycles). This is not the situation before me. It was not suggested anything was paid in kind; indeed, nothing was paid at all. All that happened was that Mr. Blott, at year end, in filing his return, claimed $12,000 as a salary expense in his earning of employment income. It is not lost on me that the "payment" was buried under "office equipement" in the reporting of his income. While I do not blame Mr. Blott for that, as the return was prepared by his accountant, it raises the spectre of some concern regarding this alleged expense.

[12] In the case of *Burlando v HMTQ2*,[2] the appellant also explained he and his wife had only one account and he did not see any sense of paying his wife by cheque which he would deposit in the joint account. V. Miller J. concluded:

> 16. In conclusion, it is my view that the Appellant has not satisfied the onus on him of showing that the reassessment was incorrect. He has not shown that Bonita actually worked for him or that he paid her any wages. In a situation such as existed in this appeal, where there is an alleged working relationship between non-arm's length parties, there should have been some documentation or independent evidence to support that working relationship. …

[13] To establish a working employer/employee relationship in a non-arm's length situation, it is important that there be some evidence of a salary being paid, some evidence that the recipient of a wage has in fact received a benefit beyond

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[1]

[2] 2014 TCC 92.

what might arise in the ordinary course of a husband and wife sharing a joint account. Further, Mr. Blott provided no T4 for his wife. On balance, I conclude no salary was paid, as contemplated by the *Act*, to Ms. Thériault.

[14] Further, even if I found an amount was paid, it must have been paid for salary or for the purpose of producing income. The former requires a finding of an employer/employee relationship. Again, Mr. Blott has not satisfied me on this score. Ms. Thériault did not testify to elaborate on any of the duties Mr. Blott described. There were no set hours, but she worked, according to Mr. Blott, on an as needed basis. He could provide no evidence of her efforts other than the general observation he would not have earned so much without her help. This is simply too vague to support a working employment relationship. No, I conclude no amount was paid as salary for an assistant.

[15] Have the further requirements of paragraph 8(1)(*f*), subparagraph 8(1)(*i*)(ii) and subsection 8(10) of the *Act* been met? The key requirement is Mr. Blott must show he was required by contract of employment to pay these expenses. As pointed out in the case of *Tulman v HMTQ*:[3]

> 29. There is a distinction in being permitted to do something and being required to do something as noted by Bowie J. in Morgan v Canada, 2007 TCC 475, …
>
> 30. Absent an express requirement in a written contract, if it is tacitly understood by the employer and employee that such payment was to be made and necessary to fulfill the duties, that would suffice.

[16] This view is confirmed in *Massicolli v HMTQ*:[4]

> 66. The case law stands for the proposition that the requirement to hire and pay the salary of an assistant within the meaning of subparagraph 8(1)(i)(ii) of the ITA can be implicit, and the essentiality of the expense is sufficient to conclude that there is an implicit requirement to hire and remunerate an assistant.
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> 67. In Schnurr, cited by counsel for the appellant, this Court established that it is not necessary for the obligation to hire an assistant and pay his or her salary to be explicit. The obligation can be implied from the employer-employee relationship.

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[3] 2014 TCC 140.

[4] 2012 TCC 344.

> 68. This "implicit requirement" principle was followed in Sauvé v. The Queen, Vickers v. The Queen and Morgan v. The Queen.
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> 69. However, it is important to note that it is not sufficient that the employment contract authorizes the taxpayer to hire an assistant and pay his or her salary. The contract must require it. In Morgan, supra, Justice Bowie stressed the meaning of the term "required" in subparagraph 8(1)i)(ii):
>
> > Both the English verb "to require" and the verb "obliger" that appears in the French version of the Act are necessarily imperative.
>
> 70. In Morgan, Justice Bowie was unable to find that there was an implicit obligation, since the appellant testified that his employment contract allowed but did not require him to hire and pay an assistant.
>
> 71. In the instant case, the appellant expressly testified that NBF did not require him to hire and pay an assistant; this choice was left to his discretion. The decision in Morgan is clear in this regard: the verb "require" within the meaning of subparagraph 8(1)(i)(ii) is imperative.

[17] Was it implicit in Mr. Blott's employment agreement with WMC that he was "required" to incur the expenditures of a salaried assistant? I find nothing in Mr. Blott's testimony that supports any such implicit requirement. Yes, he worked extremely hard, putting in long hours and he reaped the benefits of that. He was provided with some support from the employer. He no longer works with WMC and nobody testified from his former employer. His course of action to have his wife assist was entirely self-driven, and not as a result of any implicit requirement in his agreement with WMC.

[18] I combine this view with the fact that the T2200 was checked in the negative regarding the requirement to hire an assistant and find the requirement of section 8(10) of the *Act* has simply not been met.

[19] Mr. Blott was a straightforward witness. He has paid significant amounts in taxes to the government. The amount he sought to deduct was minimal in comparison to his earnings. It is not difficult to appreciate his concern with the government's denial and now my dismissal of his Appeals. He did not act unreasonably, but he just did not provide sufficient evidence either of an implicit or explicit employment requirement to hire an assistant, of a positively completed T2200, of a real payment of salary or of evidence of work done for that salary. Failing all that, I must dismiss his Appeals.

Signed at Ottawa, Canada, this 2nd day of January 2018.

"Campbell J. Miller"

C. Miller J.

CITATION:	2018 TCC 1
COURT FILE NO.:	2017-1818(IT)I
STYLE OF CAUSE:	RANDALL F. BLOTT AND HER MAJESTY THE QUEEN
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APPEARANCES:

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