

Docket: 2012-538(IT)I

BETWEEN:

MOHAMMED RAHMAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 27, 2012 at Toronto, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Ernesto Caceres
Cameron Baradargohari (student)

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2006 and 2007 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. the income of the appellant from the taxi business for the 2006 taxation year is \$8,112;
2. in computing income from the taxi business for the 2007 taxation year: (1) the appellant's sales are \$49,779, (2) a taxi rental expense in the amount of \$12,000 has been incurred, and (3) the appellant is entitled to an additional deduction for fuel in the amount of \$2,500; and

3. gross negligence penalties should be deleted for both years.

Each party shall bear their own costs.

Signed at Ottawa, Ontario this 7th day of September 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 320

Date: 20120907

Docket: 2012-538(IT)I

BETWEEN:

MOHAMMED RAHMAN,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Mohammed Rahman, drove a taxi in Toronto during the 2006 and 2007 taxation years. His income tax returns reported business income from this activity in the amounts of \$8,112 and \$10,093, respectively.

[2] Mr. Rahman has appealed assessments under the *Income Tax Act* which increased his income from the business by approximately \$50,000 for 2006 and \$40,000 for 2007. The assessments also imposed gross negligence penalties for both years.

[3] At the commencement of the hearing, the Crown informed the Court that it would concede the following:

- the income as reported by the appellant for the 2006 taxation year,
- the revenue and taxi rental deduction as reported by the appellant for the 2007 taxation year, and
- the deletion of gross negligence penalties for both years.

[4] The relevant amounts are listed in Schedule A to the Crown's reply and will

not be reproduced here.

[5] The remaining issues involve deductions claimed for the 2007 taxation year for expenditures that were described in the income tax return as fuel, repairs and maintenance, insurance and brokerage fee.

[6] Mr. Rahman was the only witness at the hearing. He testified that he drove a taxi belonging to Amir Kahn from 2005 to 2007 and that Mr. Kahn used Blue and White Taxi as a brokerage service. Mr. Rahman stated that he took eight hour shifts as assigned by Mr. Kahn and that he normally drove one taxi but might drive another when the primary vehicle was in for repair.

[7] Mr. Rahman testified that he paid a total of \$25,150 to Mr. Kahn in 2007 as taxi rent. According to the testimony, this amount was described separately in the tax return as follows: (1) \$12,000 was paid as taxi rental, (2) \$2,350 was paid for repairs and maintenance on the vehicle, (3) \$5,400 was paid for Mr. Kahn's insurance on the vehicle, and (4) \$5,400 was paid for Mr. Kahn's brokerage fees on the vehicle. In addition, Mr. Rahman testified that he incurred fuel expense in the amount of \$13,250.

[8] The Crown is disputing most of the repair expense (\$1,975), approximately one third of the fuel (\$4,865), all of the insurance (\$5,400) and all of the brokerage fee (\$5,400).

[9] I would first comment that at the hearing counsel for the Crown refused to divulge the reason for the concessions made, despite the request of the appellant that he do so. It was suggested by Mr. Rahman that the concessions for 2006 support his position for 2007 because the aggregate amounts claimed are very similar.

[10] I am unable to agree with Mr. Rahman on this point. The concessions made by the Crown for 2006 are not relevant to the factual findings for 2007. There are many possible reasons that the Crown would make concessions that have nothing to do with the actual facts surrounding Mr. Rahman's business. The Crown has chosen not to divulge the reason for the concessions and that is their prerogative.

[11] Turning to the evidence with respect to 2007, the main problem that I have with the position of Mr. Rahman is that he has virtually no documentation to support the expenses that are in dispute. All of the disputed amounts were paid in cash except for some of the fuel, most of his suppliers insisted on cash and would not give receipts and any receipts that Mr. Rahman had have been lost. Mr. Rahman's case is

further weakened because he did not call anyone else as a witness to support his testimony.

[12] With the exception of the fuel, I do not think that Mr. Rahman has made a satisfactory *prima facie* case to rebut the assumptions made by the Minister.

[13] In order for Mr. Rahman's testimony to be believed, I would have to accept the following:

- Mr. Rahman earned very little (\$10,000) from the business in 2007 despite having worked regular shifts throughout the year,
- Mr. Rahman paid for repairs and maintenance on the taxi even though it was driven 24 hours per day and he had only an 8 hour shift, and
- all of Mr. Rahman's supporting documents had been mislaid by his former landlord.

[14] It is possible that all these statements are accurate, but it is unlikely in my view. Further, Mr. Rahman's testimony was not sufficiently detailed to satisfy a *prima facie* case.

[15] I would also mention that Mr. Rahman has a statutory obligation to keep sufficient books and records to support the income reported in the return. By dealing on a cash basis with suppliers without receipts, Mr. Rahman has put himself in a position that he is unable to comply with this obligation.

[16] In the circumstances, the assessment for 2007 should be upheld as it relates to repairs and maintenance, insurance and the brokerage fee.

[17] As for the fuel expense, the Minister assumed that the fuel expenses were at least 20 percent personal. I am prepared to accept that the allocation to personal use is too high. I propose to allow an additional deduction of \$2,500 on account of fuel.

[18] In the result, the appeal will be allowed, and the assessments will be referred back to the Minister for reassessment on the basis of the Crown's concessions and an additional \$2,500 on account of fuel expense for 2007.

[19] Each party shall bear their own costs.

Signed at Ottawa, Ontario this 7th day of September 2012.

“J. M. Woods”

Woods J.

CITATION: 2012 TCC 320

COURT FILE NO.: 2012-538(IT)I

STYLE OF CAUSE: MOHAMMED RAHMAN v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 27, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: September 7, 2012

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Ernesto Caceres
Cameron Baradargohari (student)

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Ontario