

Docket: 2012-1676(IT)I

BETWEEN:

LILY TCHENG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal *2012-3383(IT)I*
on March 21 and 22, 2013, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Agent for the appellant: Li-Han Tcheng

Counsel for the respondent: Anne Poirier
Amélia Fink

JUDGMENT

The appeal from a notice of reassessment made under the *Income Tax Act* for the 2007 taxation year is dismissed.

Signed at Montréal, Quebec, this 21st day of June 2013.

"Rommel G. Masse"

Masse D.J.

Margarita Gorbounova, Translator

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Translation certified true
on this 6th day of August 2013
Margarita Gorbounova, Translator

Citation: 2013 TCC 196

Date: 20130621

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REASONS FOR JUDGMENT

Masse D.J.

[1] In this case, there are two appeals. The first appeal is from reassessments dated May 30, 2011, and June 8, 2011, for the 2007 taxation year. The second appeal is regarding a notice of assessment dated October 31, 2011, for the 2010 taxation year. The two appeals were heard on common evidence.

Docket 2012-1676(IT)I - 2007 taxation year

[2] In filing her tax return for the 2007 taxation year, the appellant claimed net commission losses in the amount of \$17,238. On May 30, 2011, the Minister of National Revenue (the Minister) issued a reassessment disallowing, among other things, the net commission losses claimed by the appellant as well as a deduction

claimed for carrying charges in the amount of \$3,500. The Minister issued a reassessment dated June 8, 2011, which had no effect on the amounts at issue. On June 29, 2011, the appellant served on the Minister a notice of objection. At the audit stage, the appellant filed a claim for a caregiver tax credit in respect of three people, as set out in subparagraph 118(1)(c.1)(iii) of the *Income Tax Act*, RSC 1985, c. 1 (5th Supp.) (the Act). At the objection stage, the appellant filed a claim for a caregiver tax credit in respect of a fourth person for a total amount of \$16,076.

[3] On March 2, 2012, the Minister confirmed the reassessment. In addition, the Minister disallowed the caregiver tax credit as claimed; hence this appeal.

Docket 2012-3383(IT)I - 2010 taxation year

[4] In filing her income tax return for the 2010 taxation year, the appellant claimed a rental loss of \$13,172 as "other deductions" in respect of a condo located at 407-248 Corot Street, Montréal, Quebec (the condo). On October 31, 2011, the Minister issued an assessment for 2010 disallowing that amount. On or around December 13, 2011, the appellant served on the Minister a notice of objection regarding the reassessment. At the objection stage, a claim was filed in order to obtain a deduction of \$2,500 as "service fees". On August 15, 2012, the Minister confirmed the reassessment and disallowed the deduction claimed as service fees; hence this appeal.

Factual background

2007 taxation year

[5] The appellant has been retired since 2005. She holds a bachelor's degree in industrial relations from the University of Montréal. She worked as a desk officer for the City of Montréal, but today she receives a pension from the Montréal Urban Community.

[6] She operated a business selling wedding gowns between 1989 and 2001 under the name of La Noce Enrg. That business was unsuccessful. It always had low revenues and very substantial losses.

[7] Since 2001, the appellant has been selling beauty and health products. She acts as an intermediary. The products are purchased from an American company called E. Excel International Inc. and then sold to the appellant's clients. Therefore, they are

retail sales to the consumer of these products. She has few clients. All her clients are in Quebec.

[8] The appellant receives 5% commission on products sold. The appellant has no employees. Clearly, she advertises very little, and, according to her, she promotes her business through word of mouth, by posting flyers on bus shelters, and by faxing flyers. It seems that most of her clients live in Chinatown, and, given the business's sales figures, there are very few clients: friends, neighbours, family and herself. She does not go door to door and sells very little to strangers.

[9] There are no books or records for the business because the appellant does no accounting. There are no invoices or purchase orders. No invoice copies are given to clients when products are sold.

[10] The business has never generated profits and has always experienced very significant net losses. These losses are between 9 and 37 times the gross income amount. For the period from 2001 to 2007, the gross income she reported totalled only \$6,044. However, she deducted net losses of \$110,817 for that same period of time. The following table shows gross income and net losses experienced by the business from 2001 to 2007 taxation years.

| Year | <u>Gross income</u> | (Net losses) |
|-------------|---------------------|--------------|
| 2001 | \$564 | (\$20,958) |
| 2002 | \$2,089 | (\$19,450) |
| 2003 | \$1,278 | (\$13,238) |
| 2004 | \$828 | (\$20,402) |
| 2005 | \$803 | (\$20,531) |
| 2006 | \$0 | \$0 |
| 2007 | \$482 | (\$17,238) |

It is therefore clear that the business was doomed to failure right from the start.

[11] In her tax returns for the 2007 taxation year (the taxation year), the appellant reported commission income of only \$482.91. However, she also reported net losses of \$17,238.35. In her Statement of Income and Expenses, she claimed the following amounts as business expenses:

Expenses for expanding sales

Vehicle:

| | |
|----------------------------|--------------------|
| Insurance | \$984.90 |
| Canadian Tire | \$906.84 |
| Toyota | \$550.65 |
| Gas | <u>\$1,300.00</u> |
| Total | \$3,742.39 |
| Shipping costs | \$901.66 |
| Travel for expanding sales | |
| Airfare | \$1,364.65 |
| Accommodations and meals | \$3,700.00 |
| Transportation | <u>\$12.56</u> |
| Total | \$5,077.21 |
| Professional services fees | <u>\$8,000.00</u> |
| Total expenses | <u>\$17,721.26</u> |

[12] The professional services fees of \$8,000 mentioned above were supposedly paid to her brother, Li-Han Tcheng, who is also her agent in this matter. She provided as supporting documentation a receipt (see Exhibit I-1, tab 9), allegedly signed by her brother, which states only the following:

**RECEIVED from LILY TCHENG the amount of \$8,000.00 for 2007
as professional services fees...**

**Han Li T.
3/12/2007**

[13] In reality, she paid nothing to her brother, but rather assumed his condo fees. She could offer only few details regarding the services that her brother had rendered to her. She said that she had not thought of obtaining invoices or other documentary evidence as supporting documentation. She was unable to tell us exactly what her brother had done to earn these fees. She told us only that her brother helps her make calculations and make deliveries. The appellant does not know what her brother does for a living; she has no knowledge of his activities. She did not seem to be aware that her brother is a social assistance recipient. According to the testimony of Yuk-Wing Chan, auditor for the Canada Revenue Agency (CRA), her brother Li-Han Tcheng did not report the \$8,000 as income in his 2007 tax return.

[14] In addition, the appellant claimed as expenses the amount of \$3,500 as carrying charges and interest, paid to Chiatsun Pan. The supporting document in support of that deduction is found in Exhibit I-1, tab 10. That document states only the following:

My name is ChiaTsun Pan, I received from Lily Tcheng for the year of 2007 the Financial and interest fees of \$ 3500.00 (three thousand and Five hundred canadian dollars Cash)

CHIATSUN PAN

This document is undated. According to Yuk-Wing Chan, Mr. Pan did not report that income in his 2007 tax return.

[15] The appellant stated that Mr. Pan was her father's friend and that he tried to find clients for her. He certainly had not succeeded given the low income that she reported. He brought her no more than two or three clients at first. She told the Court that she had also borrowed \$10,000 from Mr. Pan, but there was no written loan agreement, and she cannot prove the amount that she allegedly paid on the loan. There is no cheque or other supporting documents as all exchanges were done in cash. No reason was given for this loan.

[16] Finally, the appellant is claiming the amount of \$16,076 as a caregiver tax credit for four dependants. These people are Tsou-Kang Tcheng, the appellant's father, Wei-Ming Tcheng, the appellant's mother, Li-Chou Tcheng, the appellant's brother, and Li-Han Tcheng, the appellant's brother, who is also her agent. Based on her testimony, the appellant told us that she lived with these people during the period at issue at the Centre Yee Kang located at 1075 De Bullion Street, apartment 112, Montréal. The Centre Yee Kang is a residence for independent older adults.

2010 taxation year

[17] In this case, there is a rental losses claim in respect of a condo located at 407-248 Corot Street, Verdun. This condo has belonged to the Tcheng family for a long time.

[18] The expenses claimed by the appellant for the taxation year are as follows:

| | |
|------------------|------------|
| Municipal taxes | \$3,403.82 |
| School taxes | \$614.38 |
| Condominium fees | \$6,770.82 |

| | |
|--------------------------|--------------------|
| Insurance | \$348.80 |
| Maintenance and repairs | \$1,167.50 |
| Vehicle: | |
| Licence and registration | \$347.00 |
| Gas: \$10 x 52 | \$520.00 |
| | <hr/> |
| Total | <u>\$13,172.30</u> |

[19] The appellant testified that the condo was furnished, but no one has lived there since 2000. She told the Court that she keeps wedding dresses in two of the rooms. This apartment has never generated any income. The only efforts she has made to find tenants consisted in putting up flyers in bus shelters and supermarkets. She has never advertised in newspapers, and she has never hired a real estate agent as it costs too much to do so.

[20] The appellant also claimed the amount of \$2,500 as a deduction for financial services allegedly rendered by her brother, Li-Han Tcheng. The only supporting document (see Exhibit I-1, tab 19, page 23) in support of this deduction is a receipt that states the following:

Received from Lily TCHENG the amount of \$2,500 (two thousand five hundred) for 2010 for all professional services such as accounting, legal information, advice on investments, etc...

Han Li T

30 Dec. 2010

[21] There is no other supporting documentation in support of that deduction.

Statutory provisions

[22] The relevant sections of the Act read as follows:

18. (1) In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

- (a) an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

...

- (h) personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

20. (1) Notwithstanding paragraphs 18(1)(a), 18(1)(b) and 18(1)(h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts **as may reasonably be regarded as applicable thereto**

...

67. In computing income, no deduction shall be made in respect of an outlay or expense in respect of which any amount is otherwise deductible under this Act, **except to the extent that the outlay or expense was reasonable in the circumstances.**

...

118. (1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A \times B$$

where

A
is the appropriate percentage for the year, and
B
is the total of,

...

(c.1) in the case of an individual who, at any time in the year alone or jointly with one or more persons, maintains a self-contained domestic establishment which is the ordinary place of residence of the individual and of a particular person

...

- (iii) who is
 - (A) the individual's parent or grandparent and has attained the age of 65 years before that time, or
 - (B) dependent on the individual because of the particular person's mental or physical infirmity

the amount determined by the formula

$$\$18,906 + E - E.1$$

where

E

is

- (I) \$2,000 if the particular person is dependent on the individual by reason of mental or physical infirmity, and
- (II) in any other case, nil, and

E.1

is the greater of \$14,624 and the particular person's income for the year,

...

230. (1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[Emphasis added.]

Analysis

2007 taxation year

[23] In this case, did the appellant incur the expenses at issue for the purpose of earning income from a business or property?

[24] In *Stewart v. Canada*, 2002 SCC 46, [2002] 2 SCR 645, the Supreme Court of Canada dealt with the issue of when it can be said that a taxpayer has a source of income within the meaning of the Act. The Court held as follows:

[50] It is clear that in order to apply s. 9, the taxpayer must first determine whether he or she has a source of either business or property income. As has been pointed out, a commercial activity which falls short of being a business, may nevertheless be a source of property income. As well, it is clear that some taxpayer endeavours are neither businesses, nor sources of property income, but are mere personal activities. As such, the following two-stage approach with respect to the source question can be employed:

a. Is the activity of the taxpayer undertaken in pursuit of profit, or is it a personal endeavour?

b. If it is not a personal endeavour, is the source of the income a business or property?

The first stage of the test assesses the general question of whether or not a source of income exists; the second stage categorizes the source as either business or property.

...

[53] . . . Where the nature of an activity is clearly commercial, there is no need to analyze the taxpayer's business decisions. Such endeavours necessarily involve the pursuit of profit. As such, a source of income by definition exists, and there is no need to take the inquiry any further.

[54] It should also be noted that the source of income assessment is not a purely subjective inquiry. Although in order for an activity to be classified as commercial in nature, the taxpayer must have the subjective intention to profit, in addition, as stated in *Moldowan*, this determination should be made by looking at a variety of objective factors. Thus, in expanded form, the first stage of the above test can be restated as follows: "Does the taxpayer intend to carry on an activity for profit and is there evidence to support that intention?" This requires the taxpayer to establish that his or her predominant intention is to make a profit from the activity and that the activity has been carried out in accordance with objective standards of businesslike behaviour.

[55] The objective factors listed by Dickson J. in *Moldowan*, at p. 486, were: (1) the profit and loss experience in past years; (2) the taxpayer's training; (3) the taxpayer's intended course of action; and (4) the capability of the venture to show a profit. As we conclude below, it is not necessary for the purposes of this appeal to expand on this list of factors. As such, we decline to do so; however, we would reiterate Dickson J.'s caution that this list is not intended to be exhaustive, and that the factors will differ with the nature and extent of the undertaking. We would also emphasize that although the reasonable expectation of profit is a factor to be considered at this stage, it is not the only factor, nor is it conclusive. The overall assessment to be made is whether or not the taxpayer is carrying on the activity in a commercial manner. However, this assessment should not be used to second-guess the business judgment of the taxpayer. It is the commercial nature of the taxpayer's activity which must be evaluated, not his or her business acumen.

...

[60] In summary, the issue of whether or not a taxpayer has a source of income is to be determined by looking at the commerciality of the activity in question. Where

the activity contains no personal element and is clearly commercial, no further inquiry is necessary. Where the activity could be classified as a personal pursuit, then it must be determined whether or not the activity is being carried on in a sufficiently commercial manner to constitute a source of income. . . .

[25] It must therefore be determined whether the appellant really intended to carry on an activity for profit and whether there is evidence to support that intention. This requires the taxpayer to establish that her predominant intention was to make a profit from the activity and that the activity has been carried on in accordance with objective standards of businesslike behaviour.

[26] The Court must consider the following factors:

Profits and losses in past years

[27] The analysis of past commission income shows that, from 1989 to 2007, the appellant experienced significant net losses. To start, it was the La Noce Enrg. business, which never made a profit. Starting in 2000, it was the sale of health and beauty products. Neither the wedding gown sale business nor the health and beauty products sale business ever made profits. The net losses were up to 37 times higher than the gross income. These net losses are not tenable. The appellant has never operated a profitable business, and the businesses that she has operated have been operated at a loss every year for a long time. The small amount of gross income she earns and her history of net losses, which greatly exceed her gross income, clearly show that she has never intended to carry on a commercial activity. For her, it is only a pastime, not an activity carried on in pursuit of profit.

The course of action

[28] The appellant has no action plan or business plan. Her business is advertised through word of mouth or through flyers in bus shelters and supermarkets. She sells her products to family members, friends and herself. According to her, she does not go door to door and only rarely sells to strangers. How could she grow her business if she does not sell to strangers?

[29] She has never put accounting procedures into practice, and, in fact, she does no accounting at all. She does not keep sale invoices or purchase orders. She stated that she had never thought of keeping invoices, purchase orders or other business documents. The appellant keeps no books or accounting records as required by

subsection 230(1) of the Act. She keeps no annual inventory register, and she has no list of clients.

[30] While the appellant is an intelligent and well-educated woman and has a bachelor's degree, she shows almost a complete lack of insight, diligence, knowledge and planning regarding the management of her business. This shows that she has no subjective intention to carry on a commercial activity.

The nature of the product and of the target market

[31] The appellant sells beauty and health products, but she could not give any precise details about these products. She could not give us a list, an inventory or catalogue of the various products that she sold. These products are not sold in a store; instead, they are sold from home. The appellant sells the products to only a few clients. Therefore, the target market is very limited and the target customers are not numerous.

[32] I am of the view that these factors, namely, the nature of the products, the way in which they are marketed, the target market and target customers seem to contradict the fact that the appellant carried on a commercial activity.

Type of expenses

Motor vehicle expenses

[33] The appellant is claiming an expense of \$3,742 as a motor vehicle expense. She is claiming that her personal vehicle is used 100% for the delivery of merchandise to clients. The appellant explained that there is no mileage log because the car is used 100% for business. She told the Court that her personal travel is in Chinatown; therefore, a car is not necessary. She uses public transit if she needs to go outside Chinatown.

[34] I do not believe the appellant. It is absolutely implausible that a personal vehicle would be used 100% for the purpose of earning a gross income of \$482, and that, when one needs to travel for personal reasons, said vehicle remains parked in the garage or on the street. This claim is not at all credible.

[35] In addition, I am of the view that the amount claimed as vehicle expenses is completely unreasonable and contrary to the scheme of section 67 of the Act, which sets out that "*no deduction shall be made in respect of an outlay or expense in*

respect of which any amount is otherwise deductible under this Act, except to the extent that the outlay or expense was reasonable in the circumstances". [Emphasis added.]

[36] Very little merchandise is sold and delivered to only a few clients. The motor vehicle expenses (\$3,742) are more than seven times the amount of gross income (\$482). The fact that the appellant claimed expenses of over \$3,700 as motor vehicle expenses only to deliver so few products to only a few clients clearly shows that she had no objective intention or reasonable expectation to carry on an activity for profit. A serious business person would never have incurred such expenses.

[37] In this case, I am satisfied that the vehicle expenses are only personal expenses.

Expenses for shipping costs

[38] The shipping costs of \$900 are almost twice as high as the gross business income. The appellant cannot tell us why she incurred these costs except to say that it was to send flyers or to deliver products. A serious business person would never have spent such an amount of money in order to earn only \$482 in income. The shipping costs claimed are completely unreasonable. The appellant has not demonstrated that the expense was made in order to earn income.

Trip to China

[39] The appellant spent \$5,000 on a 20-day trip to China, according to her, in order to boost sales. She has made a business trip to China each year since 2000, except in 2006. None of these business trips brought her a single client or a single product sale. Therefore, it is clear that the appellant had no hope that the trip to China in 2007 could generate additional income.

[40] The appellant's situation is similar to that of the taxpayer in *Henrie v. The Queen*, 2009 TCC 356 (CanLII). Justice Favreau stated at paragraph 9:

[9] The travel expenses in this case are not expenses incurred to produce income from a business or property, but rather personal or living expenses. The appellant did not show a direct link between the expense incurred and the activity of earning an income. It is in fact impossible to calculate how much each dollar of the travel expenses in a given taxation year generates in terms of additional income for the appellant's business in the year in question or in future years. In this case, there is no cause and effect between the expense and the income.

[41] In this case, the appellant did not show any link between the expense incurred and the activity of earning an income. She did not provide a list of potential clients or businesses that she had visited with the purpose of growing her business. Her clientele in Quebec was not numerous, and the appellant did not explain to us why it was necessary to go to China to find new clients when she put very little effort into finding clients closer to home.

[42] The trip was to her country of origin for twenty days at the end of the year during the Holidays. The trip cost over \$5,000, 10 times more than the gross business income. I cannot believe that a serious business person would have incurred such expenses to earn such a small gross income. Given that the appellant had made several business trips to China in the past, always during the Holidays, I conclude that the expenses for that trip were of a personal, not commercial nature.

[43] In addition, I find that these travel expenses are completely unreasonable.

Professional services fees

[44] The alleged professional services were supposedly provided by Li-Han Tcheng, the appellant's brother. However, he never received the \$8,000 that the appellant has claimed; she told us that she had paid condo fees and property tax for him in exchange for his professional services. According to Yuk-Wing Chan, the CRA auditor, Li-Han Tcheng never reported that amount as income in his tax return for 2007. The receipt that was provided as supporting documentation consists of one page, which reads as follows: [TRANSLATION] "Received from Lily Tcheng the amount of \$8,000 for 2007 as professional services fees" (see Exhibit I-1, tab 10). The appellant cannot give the Court any details on the nature, the quantity or the frequency of the professional services that were rendered to her by her brother. There are no details of professional services on the receipt, and no other supporting documents were provided in support of this expense. The appellant cannot explain to the Court what her brother has done to earn those very generous fees, except to say that he had made calculations and sometimes delivered products.

[45] It is difficult to see why a health and beauty products retailer would need such expensive professional services. There is nothing in all of the evidence that explains the need for such an expense. A serious business person would never have incurred such an expense without a good reason, and the appellant did not give the Court a good reason for the expense. I am of the view that the fees claimed are completely unreasonable.

Carrying charges and interest

[46] The appellant told us that she had paid Chiatsun Pan the amount of \$3,500 as carrying charges and interest. She told us that Mr. Pan was her father's friend, and that she paid him that amount so that he would introduce her to potential clients. According to the appellant, Mr. Pan introduced her to only two or three clients. Mr. Pan also loaned her some money. The interest on that loan is included in the total of \$3,500. The appellant provided a supporting document (see Exhibit I-1, tab 11), which states only that Mr. Pan had received from the appellant the amount of \$3,500 as carrying charges and interest for 2007. The Court has no way of determining which portion of that amount is attributable to carrying charges and which is attributable to interest. However, there are no details of the professional services provided on the receipt obtained from Mr. Pan. There is no written loan contract, and the appellant cannot show the amount that she had paid on the loan. There is no cheque or other supporting document as all of the transactions were made in cash.

[47] I am of the view that the carrying charges and interest are completely unreasonable in the circumstances. I cannot believe that a serious business person would have incurred such expenses.

[48] The appellant's situation is not very different from that of the taxpayer in *John R. Coome v. The Queen*, 2007 TCC 493, [2008] 1 C.T.C. 2544, where Justice Morgan observed the following:

[17] The Appellant did not advertise in 2001 and 2002. He did not keep a log to record the business use or personal use of his automobile. He did not maintain a diary to record the appointments, meetings, open houses or other events connected with his efforts as a real estate agent. He worked only as a subagent to a highly successful agent (Ariette Kendall) receiving such contacts as she would pass down to him, but he was required to share his commissions 50-50 with her. And lastly, in 2001, he earned no commissions at all but recorded expenses of \$16,566. In 2002, he earned only one commission of \$329.94 on the purchase of a home for himself and his wife. In summary, he had no clients in 2001 and 2002 after holding his real estate agent's licence for more than 10 years.

[18] . . . On the profit and loss experience of past years, Schedule "A" to these reasons shows that in each year from 1989 to 2002, the Appellant's real estate expenses exceeded his real estate revenue. Even in his two best years, . . .

[19] There is no evidence that the Appellant's efforts as a real estate agent have the capability to show a profit. . . .

[20] Although the Appellant's activity as a licensed real estate agent is not a hobby or a personal endeavour, I find that he did not carry on that activity in a commercial manner or with businesslike behaviour. . . .

[49] I reached the same conclusion regarding the appellant. She did not exercise her activities in a commercial manner or with businesslike behaviour. In addition, the expenses she claimed are completely unreasonable in the circumstances.

Caregiver credits

[50] The appellant claimed the amount of \$16,076 in caregiver credits under paragraph 118(1)(c.1) of the Act. I accept that, during the 2007 taxation year, the appellant's parents lived at the Centre Yee Kang, located at 212-1075 De Bullion Street in Montréal. The Centre Yee Kang is a centre for independent older adults. The Centre offers services to tenants such as a meal service. Based on the testimony of Christine Tu, manager of the Centre Yee Kang, only tenants stated on the lease have the right to live at the Centre. In accordance with the Centre's rules, tenants' children are not permitted to live on site. However, children have the right to visit the tenants, and they have the right to stay there, but for no longer than one week. According to Ms. Tu, although the appellant visited her parents in 2007 and although she stayed the night fairly often, the appellant did not reside there. Only the people stated on the lease as tenants have the right to reside there.

[51] The appellant stated that her usual place of residence was 212-1075 De Bullion Street in 2007, where she lived with her parents and her brother Li-Chou Tchong as dependants. It is clear that she cannot claim any credits for her brother Li-Han Tchong because he was not 65 years old and had no mental or physical infirmity. The issue to be decided is where the appellant's usual place of residence was since, to be entitled to the caregiver tax credit, both the appellant and her dependants must have the same place of residence, namely, 212-1075 De Bullion Street, Montréal.

[52] I am not persuaded that the appellant resided at 212-1075, De Bullion Street during the taxation year at issue. The address 407-248 Corot Street, Verdun, is found on all the appellant's tax returns until 2007 as her home address. Starting in 2008, the appellant's address is indicated as 1075 De Bullion Street on her tax returns. Although the address on her tax returns is De Bullion Street, almost all of the information slips sent to the appellant have a different address than 1075 De Bullion Street. For example:

- a. T1 General 2007 - 407-248 Corot (Exhibit I-1, tab 1)
- b. T4A 2007 - pension benefit from the City of Montréal addressed to 407-248 Corot Street (Exhibit I-1, tab 1)
- c. T4RIF 2007 - income from a registered fund sent to 248 Corot Street (Exhibit I-1, tab 1)
- d. T5 2007 - investment income sent by Desjardins Securities to 248 Corot Street (Exhibit I-1, tab 1)
- e. T5 2007 - investment income sent by CIBC to 248 Corot Street (Exhibit I-1, tab 1)
- f. Letter dated March 25, 2008, from the Capitale Assurances générales addressed to 248 Corot Street (Exhibit I-1, tab 1)
- g. T4A (P) 2010 – Quebec Pension Plan benefits - address obscured (Exhibit I-1, tab 19)
- h. T4RIF 2010 – Desjardins Trust – Corot Street (Exhibit I-1, tab 19)
- i. T4A 2010 - City of Montréal - Corot Street (Exhibit I-1, tab 19)
- j. T5 2010 – CIBC – Corot Street (Exhibit I-1, tab 19)
- k. T5 2010 – Caisse Desjardins – address obscured (Exhibit I-1, tab 19)
- l. La Capitale - insurance premium for 2010 - Corot Street (Exhibit I-1, tab 19)

[53] It is the same for the information slips and other documents for the 2008 and 2009 taxation years. Sometimes, the appellant uses the address 3-1010 De L'Hôtel de Ville Avenue, Montréal, as her address (see Exhibit I-1, tab 26, page 7, T4A P for 2009).

[54] I agree with Ms. Poirier when she says that the appellant's true address is a bit of a mystery. The appellant told us that she lives at 212-1075 De Bullion Street, but she has no right to live there: it is a centre for older adults and she is not the tenant. Ms. Tu, the manager of the Centre, told us that, although the appellant is very often

on the premises, she does not live at 1075 De Bullion Street. The appellant receives correspondence and information slips at a different address than De Bullion Street.

[55] The appellant's testimony was not credible. The appellant had to satisfy me on the balance of probabilities that she lived at 1075 De Bullion Street during the taxation year at issue. She did not satisfy me of this fact.

2010 taxation year

Rental losses

[56] With regard to the condo located at 407-248 Corot Street, it is clear that the appellant has taken no steps since 2000 to rent out the condo, except for flyers posted in bus shelters and supermarkets. She put no ads in newspapers and hired no real estate agent to find tenants because a real estate agent's fees were too expensive. She did nothing to make the apartment more attractive to tenants. She must demonstrate that she attempted to rent out the condo for profit in order to be able to claim a rental loss. The condo was supposedly vacant since 2000, even though it was furnished and a person could live there.

[57] The appellant made no effort to rent out the condo and was content to claim the expenses she incurred as rental losses in order to reduce her taxes. Evidently, she never intended to make a profit from this property. A serious business person would have at least hired a real estate agent to find a tenant. The fact that the appellant refused to hire a real estate agent and that she was content to keep the condo vacant in order to claim expenses as rental losses clearly shows that she had no intention of making a profit from it.

[58] With regard to the expense of \$2,500 as professional services rendered to the appellant by her brother Li-Han Tcheng, suffice it to say that I do not accept that these services were rendered or that the appellant paid for them. A serious business person would have hired real professionals, not somebody who is unemployed. In addition, if this expense was actually paid, it is completely unreasonable in the circumstances.

Conclusion

[59] I am satisfied that the appellant's claim for a caregiver tax credit is unfounded. Shared residence is an essential condition for being entitled to the caregiver credit. The appellant did not persuade me that her usual place of residence was 212-1075

De Bullion Street with the persons who were supposedly her dependants during the taxation year at issue.

[60] I am satisfied that all the expenses claimed as net commission losses and rental losses regarding the condo are absolutely and completely unreasonable. The appellant's activities were not carried on in accordance with objective standards of businesslike behaviour. These activities are certainly not commercial in nature. The appellant was unable to show on the balance of probabilities that her predominant intention was to make a profit from a business or property. The expenses were incurred almost entirely for personal purposes. In addition, I find that these expenses were claimed solely for the purpose of reducing the appellant's taxes to zero and that they were not incurred with a view to make a profit from a business or property.

[61] For these reasons, the appellant's two appeals from notices of assessment for the 2007 and 2010 taxation years are dismissed.

Signed at Montréal, Quebec, this 21st day of June 2013.

"Rommel G. Masse"

Masse D.J.

Translation certified true
on this 6th day of August 2013
Margarita Gorbounova, Translator

CITATION: 2013 TCC 196

COURT FILE NO.: 2012-1676(IT)I

STYLE OF CAUSE: LILY TCHENG
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 21, 2013

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse, Deputy
Judge

DATE OF JUDGMENT: June 21, 2013

APPEARANCES:

Agent for the appellant: Li-Han Tcheng

Counsel for the respondent: Anne Poirier
Amélia Fink

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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