

Docket: 2017-660(IT)I

BETWEEN:

ROY HARRIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 31, 2017 and July 5, 2018 at Vancouver, British
Columbia

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Shannon Fenrich Patrick Cashman

JUDGMENT AND ORDER

IN ACCORDANCE with the Reasons for Judgment and Order attached:

1. The preliminary motion of the Respondent to quash the appeals related to the 2006, 2007, 2008 and 2009 taxation years is granted on the basis that no notice of objection was filed for any of the referenced taxation years and the Court therefore lacks jurisdiction to hear the appeals pursuant to subsection 166.1 of the *Income Tax Act*, RSC 1985, c.1, as amended;
2. the appeal with respect to the 2014 taxation year is allowed solely to the extent of the entitlement to business expenses of \$7,868.69 for the 2014 taxation year;

3. on the basis of the evidence before the Court there is no outstanding appeal with respect to the 2015 taxation year which was assessed as filed and in respect of which there is no tax owing;
4. there shall be no costs;
5. these matters are returned to the Minister of National Revenue for reconsideration and reassessment.

Signed at Toronto, Ontario, this 23rd day of July 2018.

Bocock J.

Citation: 2018 TCC 148

Date: 20180723

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BETWEEN:

ROY HARRIS,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT AND ORDER

Bocock J.

[1] This appeal concerns six taxation years which are separable into two groups: the first group is comprised of the 2006, 2007, 2008, 2009 taxation years and the second of the 2014 and 2015 taxation years. The Respondent brought a preliminary motion at the outset of trial challenging the Court's jurisdiction to hear the first group (the "Preliminary Motion"). Grouping two involved disallowed business expenses. These distinct reasons concern the Court's decision with both groupings.

I. Procedural History and Background

[2] The Appellant, Mr. Harris, is a frustrated litigant. He believes he has been aggrieved by any number of people and institutions for over 30 years in relation to a longstanding alleged business disputes from the 1980's. His alleged claims against accounting firms, law firms, chartered banks, the governments of British Columbia and Canada, regulatory bodies (institutes of chartered accounts and law societies alike) and members of the judiciary have been rejected by the British Columbia Supreme Court and Federal Court alike. At the outset of his appeal it bubbled over to his tax litigation. He attempted to subpoena witnesses relevant to his alleged business dealings and his suggested entitlement to a \$100 million business loss arising from the dealings. Regrettably, Mr. Harris has never claimed such a business loss. The Minister of National Revenue (the "Minister"), quite logically, has never rejected one. Such losses are not in dispute before this Court. At a pre-hearing motion concerning the subpoenas, conducted by conference call,

this Court explained those critical facts to Mr. Harris and constrained the issues to Mr. Harris' tax assessments for the six years.

[3] During the call, the Court quashed four subpoenas and indicated it would enforce none of the others (there were in excess of 20). There were no facts, evidence or documents relevant to the dispute to be adduced by any witness under such subpoenas. The Court also advised it would entertain no mention, testimony or representation concerning the irrelevant, unclaimed and unpleaded \$100 million business loss. Such advice was repeated to Mr. Harris at the outset of the hearing and, when warranted, throughout. This was accompanied by a warning of costs under subsection 10(2) of the *Tax Court of Canada Rules (Informal Procedure)*. Mr. Harris ultimately recognized that his preoccupation with the undisputed loss was robbing his other appeals of his efforts and focus.

II Grouping One: Preliminary Motion re: 2006, 2007, 2008 and 2009 tax years

a) the nature of the motion

[4] At the hearing of the preliminary motion on the first day of hearing, the Respondent called Ms. Alice Fung to testify. Ms. Fung, a Canada Revenue Agency ("CRA") compliance officer, indicated the following dates of filing for Mr. Harris' 2006 through to and including 2009 taxation years. These returns were late filed after the Minister had assessed under subsection 152(7) of the *Income Tax Act*, RSC 1985, c.1, as amended (the "Act"). Mr. Harris filed his return on May 21, 2015 for each of the four taxation years 2006 through 2009 inclusive, and made a subsequent filing on September 11, 2015.

[5] Through affidavit evidence filed, the Minister established that a notice of reassessment for each taxation year referenced above was sent on March 26, 2016. The same affiant indicated Mr. Harris has never filed a notice of objection for any of the years 2006 through to 2009 after the March 26, 2016 reassessment.

b) Mr. Harris's submissions

[6] Mr. Harris agreed with the dates and confirmed he has not filed a notice of objection with respect to each year. However, he argues that:

- a. in other taxation years, the expenses disallowed in these four appeal years, were granted and such inconsistency is unfair;

- b. he was told by tax experts that if did not owe taxes, that he need not file returns of income; and,
- c. it is unfair to disentitle him to these losses because he incorrectly appealed before objecting.

c) The Act

[7] The taxpayer's right to object to an assessment or reassessment is provided for under subsection 165(1) of the *Act*.

Objections to assessment

165 (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, ...

...

(a) if the assessment is in respect of the taxpayer for a taxation year...

...

(ii) the day that is 90 days after the day of sending of the notice of assessment; ...

[8] If the taxpayer misses that date, an extension request may be made under subsection 166.1(1).

Extension of time by Minister

166.1 (1) Where no notice of objection to an assessment has been served under section 165, ... , the taxpayer may apply to the Minister to extend the time for serving the notice of objection or making the request.

[9] However there are statutory limitations on the Minister regarding concerning ability to grant an extension as described in subsection 166.1(7)(a).

When order to be made

(7) No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and ...

[10] Should the Minister refuse to allow the extension, a taxpayer may apply to this Court, and in an identical fashion this Court may not grant an order where the certain time lines have not been adhered to as specified in subsection 166.2(5) of the *Act*.

When application to be granted

(5) No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and ...

d) Analysis and Decision

[11] No objection has been filed to date with the Minister for Mr. Harris' four appeal years in question. The notices of reassessment were issued March 24, 2016. Even these reassessments were issued in respect of late filed returns. The first ninety day period under subsection 165(1)(a) expired June 22, 2016. The one year additional period for requesting an extension from the Minister to file an objection under subsection 166.1(1) or from this Court under subsection 166.2(1) expired June 22, 2017.

[12] The jurisprudence regarding missing such a timeline and the need to file an objection is unequivocal. The service of a notice of objection or an application for an extension to file one within the prescribed timelines is a precondition to an appeal: *Bormann v HMQ*, 2006 FCA 83 at paragraphs 3, 4 and 5.

[13] To each one of Mr. Harris's other arguments a case meets it head on and defeats it. The Minister is not required to assess one tax year identically to another, but rather correctly assess each tax return on its merits according to the law: *Roywood Investments Ltd. v HMQ*, 79 DTC 5451 at paragraph 5457(FC) affirmed 81 DTC 5148 (FCA).

[14] As regards the timelines for filing an objection and Mr. Harris' argument concerning the unfairness of the pre-condition of objection, the Tax Court is not a Court of equity: *Christie v HMQ*, 2006 TCC 255 at paragraph 6.

[15] On the basis of the foregoing, the Court grants the Respondent's motion. The appeals are quashed in respect of the 2006, 2007, 2008 and 2009 taxation

years. The Court does not have jurisdiction to hear the appeals where an objection to the reassessment or an extension to file one has never been filed with the Minister. The pre-condition under subsection 169(1) cannot legally be ignored.

II. Grouping Two – disallowed expenses for 2014 and 2015 taxation years

a) Further submissions required

[16] The 2014 and 2015 taxation years deal exclusively with business expenses. Both parties agreed on this and it was plain to the Court. Also obvious was that Mr. Harris' preoccupation with the unclaimed \$100 million loss had prevented him from bringing to Court on the first day of hearing any relevant vouchers, receipts and invoices he claimed were in his possession. He stated at the conclusion of that day's hearing that he could produce such documents.

[17] The Court took Mr. Harris at face value. It determined to allow him a certain period of time to serve the documents on the Respondent and file same with the Court. These were received in compliance with the applicable Order in late 2017. The Respondent requested an opportunity for counsel to cross-examine on the expense documents. The Court allowed for this and, thereafter, for limited submissions. After that limited continuation, the Court would proceed to render its decision in respect of the disallowed business expenses. The cross-examination and submissions were conducted on July 5, 2018, the second day of hearing. On that basis, the Court now renders its decision.

b) Receipt of additional information

[18] Generally the expense vouchers, invoices and receipts related to the following categories:

- home office rent and utilities;
- internet charges;
- telephone expenses;
- motor vehicle expenses;
- computer expenses;
- storage;
- health insurance premiums;
- life insurance premiums; and

legal fees.

[19] As a preliminary matter, no invoices were provided in respect of life insurance premiums. Accordingly, no additional deduction is permitted.

[20] Respondent's counsel submitted that no further tax was payable in 2015. The Minister had assessed Mr. Harris as filed. The filing provided for no tax owing and a refund. Therefore, there was no dispute between the parties or before the Court regarding an assessment for tax. The Court examined Mr. Harris' 2015 tax return and tax preparer's summary working sheets. These revealed that all claimed business expenses had been allowed. As filed, gross sales, commissions and fees were \$30,000.00, business expenses were \$7,809.24, expenses on account of business use of home were \$2,910.00 all yielding net business income of \$19,280.76. Moreover, on account of various tax credits, there was no federal income tax owing. The Minister did not reassess such amounts and, instead issued a "nil assessment". There can be no appeal from a nil assessment: *Canada v. Bruner*, 2003 FCA 54 at paragraph 3. Therefore, the Court will confine its decision to taxation year 2014.

[21] As to 2014, the Minister does not challenge that Mr. Harris operated a business known as Electronic Express. In carrying out such business, Mr. Harris provided his clients with analytical data tracking consumption habits of various groups of consumers. He filed on the basis of net business income of \$17,436.23 in 2014, later reduced through a T1 adjustment request to \$8,739. The Minister contends the net business income is \$25,639.00 for 2014. The Minister denied most of the expenses claimed. Since it was unclear which expenses were allowed previously by the Minister, the Court will simply decide overall to which business expenses Mr. Harris should be entitled a deduction based upon his receipts. On the basis of that evidence before it, the Court conducted the following item by item review.

c) Expense Analysis by Category

Home Office Rent and Utilities

[22] Mr. Harris produced a landlord's certificate as to his aggregate rent paid. He also produced a British Columbia Hydro invoice history. His personal residence was 700 square feet of which approximately 150 square feet was used for primarily business purposes. Presumably, from time to time these premises were used for

personal purposes and the primarily personal premises were used for business purposes. Reasonably, 22% would be a balanced allocation for business purposes.

[23] As such, Mr. Harris is entitled to business expenses on account of rent of \$3,069.00 and utilities of \$49.90 for 2014.

Internet and Phone Charges

[24] Mr. Harris’s business clearly relied on these services to a great extent. Most present businesses survive on such services. When businesses are run from personal residences, the delineation of personal versus business use is next to impossible. It is clear that Mr. Harris uses his smart phone and tablet for personal communications and blogs. It is also likely his uses these devices for business purposes. Similarly, it is naïve to believe his desk top computer is not occasionally used for personal use. On this basis, and given the technologically intense nature of both Mr. Harris’ business and personal life, an 80% business, 20% personal split between all internet and phone charges submitted would be reasonable. This would exclude the separate “1-800” line which logically is exclusively used for incoming business calls. On that basis Mr. Harris’ internet and phone charges for business purposes and therefore his business expenses are as follows:

	2014 Totals	Business Portion
Rogers Phone	\$158.82	\$127.06
1-800 Charges	\$171.69	\$171.69
Primus	\$875.76	\$700.60
Internet (Shaw)	\$1,478.70	\$1,182.96
Total Internet and Phone Business Expenses	\$2,684.97	\$2,182.31

Storage Fees

[25] Mr. Harris paid considerable amounts for the storage of obsolete and retired computers, business records, data storage devices and files. While not a particularly efficient method of storage, the CRA and this Court cannot judge these business practices. Mr. Harris admitted many of the records relate to lawsuits unrelated to his present business and to outdated storage devices and disks with which he is reluctant to part. Logically, a 50:50 division between business and personal is reasonable. This results in business expenses on account of storage of \$686.70 for 2014.

Motor Vehicle Expenses

[26] Mr. Harris admitted the sole business use for his otherwise personal use vehicle was to visit his U.S. legal adviser (also his cousin) usually not more than 14 times a year in Bellingham, Washington. The round trip was estimated at 150 kilometers. There was no log or calendar to support the trips. This 2000 km per annum seems comparatively small to the personal use miles. Mr. Harris's other business activities may be conducted remotely. Even these alleged business trips have a personal component and no invoices for legal services from his U.S. legal counsel were offered. On balance, there is insufficient evidence to show the expenses were incurred for a business purpose and not simply a personal expenditure. No deduction for motor vehicle expenses is allowed.

Computer Expenses

[27] As with the telephone and internet charges above and consistent with the disallowances of motor vehicle expenses, computers and electronic devices are critical tools of the trade for Mr. Harris. His total expense reflected in an invoice was \$1,839.97 USD or \$2,350.97. On that basis, 80% will be permitted as business expenses. On that basis, his computer expenses shall be \$1,880.78 for 2014.

Insurance Premiums

[28] Insurance premium expenses for Mr. Harris were for himself and not for any employees. They are a personal expense and not deductible as a business expense.

Legal Fees

[29] Mr. Harris paid a law firm, whose practice is restricted to tax, legal fees totalling \$819.00 in 2015 as evidenced by invoice. Since this invoice relates to the 2015 taxation year and was allowed, the Court will omit consideration of it.

III. Conclusion and Costs

[30] On the basis of the foregoing, Mr. Harris is entitled to the following business expenses in taxation year 2014:

Expense Item	Business Expense 2014 Taxation Year
Home Office and Utilities	\$3,118.90
Internet Phone	\$2,182.31
Storage	\$686.70
Computer Expenses	\$1,880.78
Total Business Expenses	\$7,868.69

[31] Given the state of Mr. Harris business records and his failure to bring any expense receipts to the first day of hearing, there shall be no costs.

Signed at Toronto, Ontario, this 23rd day of July 2018.

Bocock J.

CITATION: 2018 TCC 148
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STYLE OF CAUSE: ROY HARRIS and HER MAJESTY THE QUEEN
PLACE OF HEARING: Vancouver, British Columbia
DATE OF HEARING: October 31, 2017
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APPEARANCES:

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COUNSEL OF RECORD:

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