

Docket: 2018-2042(IT)I

BETWEEN:

MARJORIE WALLENS

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence on July 5, 2019 at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant: Nicholas Sider
Counsel for the Respondent: Sébastien Budd

JUDGMENT

WHEREAS THE COURT has delivered its Reasons for Judgment of even date in respect of this appeal;

NOW THEREFORE the Appeal from the reassessment made under the *Income Tax Act*, RSC 1985, c.1, as amended (the “Act”) for the taxation year 2016 is allowed, without costs, solely on the basis that the appellant incurred and is entitled to deduct from income total employment expenses of \$5,538.00, in turn, comprised of \$664 and \$4,874 on account of allowable motor vehicle expenses and work space in the home expenses, respectively.

Signed at Vancouver, British Columbia, this 17th day of September, 2019.

“R.S. Boccock”

Boccock, J.

Citation: 2019TCC193
Date: 20190917
Dockets: 2018-2042(IT)I

BETWEEN:

MARJORIE WALLENS

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bocock, J.

I. Introduction and Facts

[1] The Minister denied three categories of employment expenses claimed by the appellant, Ms. Wallens, in taxation year 2016. These three categories of claimed expenses and amounts were on account of: motor vehicle expenses in the amount of \$5,427; accounting fees of \$734; and, home office expenses \$6,207 for a total of \$12,368. Upon reassessment, the Minister disallowed \$ 9,473 and permitted \$ 2,895. A breakdown across each category was not discernible from the Minister's reassessment of September 26, 2017. After hearing evidence, Respondent's counsel conceded certain additional amounts as follows:

(i) additional motor vehicle expenses for a total allowed of \$ 664; and,

(ii) additional home office expenses for a total allowed of \$ 4,874.

yielding a total of \$ 5,538 of allowable employment expenses.

[2] Ms. Wallens no longer lives in Canada. Ms. Wallens authorized her accountant, Mr. Nicolas Sider, to appear on her behalf and provide testimony and submissions. While somewhat unorthodox, it is recognized that Mr. Sider was the

accountant who prepared the tax return and had provided Ms. Wallens with guidance regarding the deductions.

II. Facts

Ms. Wallens employment arrangement

[3] Ms. Wallens was employed by a company for which she was the sole director. Her job was to procure clients for the company's advertising business. No executed employment agreement was produced at the hearing. An executed T-2200 – Declaration of Conditions of Employment was produced. That document indicated by its terms that a motor vehicle and a home office were necessary requirements of employment.

State of expense records

[4] The sufficiency of the records pertaining to the expenses, while not perfect did include and evidence:

- a. a handwritten vehicle log;
- b. an employment expense summary;
- c. an accounting fee invoice;
- d. motor vehicle insurance invoice;
- e. credit card statements tendered as evidence of fuel, car washes, repair and maintenance, uber rides, transit fares, dental work, client promotion and property insurance;
- f. some motor vehicle repair invoices for her 2011 BMW;
- g. a landlord's annual rent statement;
- h. a home office floor plan delineating the office vs. personal use; and,
- i. Hydro-electric utility statements.

Reassessment by Minister

[5] Before any finding of this Court, the Minister, from the outset, acknowledged Ms. Wallens' right to deduct employment expenses. By implication, throughout the reassessment process and at the hearing, the T-2200 was accepted by the Minister. The Court, whatever its view, will not interfere with that conclusion. Similarly, while the credit card statements were initially challenged as a valid reflection of business expenses, the Court was prepared to accept the authenticity of the amounts, given the Minister's general acceptance of the deductibility of certain employment expenses and the veracity of the T-2200. This is distinct from the entitlement to deduct all expenses claimed. With certain exceptions, such as dental expenses and accountant fees, the percentage of expenses to be divided between personal and employment purposes and therefore the percentage deductible remained the sole issue for determination by the Court.

III. Analysis of Expenses

Accounting Expenses

[6] As mentioned, one exception to the pro-ration of expenses between personal and employment is the accounting fees. This was highlighted by the Court to Mr. Sider before his submissions. Specifically, the Court highlighted paragraph 8(1)(b) of the Act which does not permit the deductibility of accounting fees as employment expenses. He insisted the Court was wrong and that it reconsider and hear his submissions. It did hear his submissions and has further considered. He remains misguided in his view. Such accounting fees, when incurred by an employee are not deductible from income unless such expenses fall within the specific category of 8(1)(b) – legal expenses of employee for a specific purpose. Beyond that, neither legal nor accounting expenses may be a condition of employment and therefore deductible expenses: *Dnebosky v. HMQ* 2019 TCC 78 at paragraph 4.

Motor Vehicle Expenses

[7] Since there was no dispute regarding the invoices produced, the question remained one of percentage. The insurance expense had been overstated by some \$450. Aside from that, logically, this took the Court to the issue of the total mileage driven during the year and the amount allocable to personal vs. employment expenses.

[8] For this information, the Court turned to the objective third party evidence: the record of the mileage of the motor vehicle when undergoing service. These

invoices consistently logged the mileage of the car. There were some 6 invoices recording various repairs and maintenance throughout the year. The records measured incrementally an increase in mileage from 64,141 km to 74,452 km. Ten thousand kilometres a year is hardly extraordinary. However, this total was neither the mileage Ms. Wallens asserted she drove the car nor what her driving log recorded she drove.

[9] Her tax returns revealed a stark contrast to the mileage logged by her garage. She claimed to have driven only 1,353 kilometres in total, 1,015 of which was recorded for employment purposes. As was also suggested by the Court to Mr. Sider before argument, the Minister's concession of 10% for employment use was very much in keeping with the assertions of Ms. Wallens total and employment mileage log and reported use in her tax return. However, Ms. Wallens claimed 90 % employment use based on her log. However, her own log disclosed only 10 % of the total mileage recorded by the third-party repair shops reflected in Ms. Wallens' own receipts. Nine-tenths of the total mileage was missing from all her calculations. Mr. Sider's explained this as an error by the garage given his experience as an accountant for other clients. The fact remains that the garage odometer readings were consistent, graduated and normalized throughout the year. It is Ms. Wallens' assertion and claim that is the outlier. The Court maintains that 10% of the actual mileage as a measure of employment expenses is reasonable based upon Ms. Wallens' own documents. As such, the Minister's ultimately allowed employment expenses for motor vehicle of \$664, itself being approximately 10% of the actual expenses, is accurate more likely accurate than any other.

Home Office Expenses

[10] Similarly, Ms. Wallens' submitted documents and arguments belie the employment percentage she claimed for home office expenses. The floor plan dimensions indicate that Ms. Wallens employment use space engaged 10% of the premises. Even then, through Mr. Sider's testimony, it was primarily the bedroom that was utilized as a home office. Since there was only one bedroom in the unit, the room was also used a goodly portion of the time for personal use. The apartment itself was 1475 square feet. The bedroom measured 140 square feet. Mr. Sider also testified he had estimated the work-space and the total area based on his usual rule of thumb. This is likely the root of the error. Ms. Wallens claimed 25% of the property expenses as work-space in the home employment expenses, or \$7,157. Ten percent would yield a deduction of \$2,863 as work-space in the home expenses. The Minister allowed \$4,875, much closer to 20%. Any percentage

beyond that is simply not supportable based upon the evidence. Ms. Wallens should consider herself fortunate.

IV. Summary and Costs

[11] Given the mixed result and the Minister's concessions at the outset, there shall be no costs in the appeal.

Signed at Vancouver, British Columbia this 17th day of September, 2019.

“R.S. Bocock”

Bocock, J.

CITATION: 2019TCC193
COURT FILE NO.: 2018-2042(IT)I
STYLE OF CAUSE: MARJORIE WALLENS AND HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: July 5, 2019
REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.
Bocock
DATE OF JUDGMENT: September 17, 2019

APPEARANCES:

Agent for the Appellant: Nicholas Sider
Counsel for the Respondent: Sébastien Budd

COUNSEL OF RECORD:

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