

Docket: 2018-4262(IT)I

BETWEEN:

STEVE BRAND,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal called for hearing on September 23, 2021 at Toronto, Ontario and
virtually on October 26, 2021

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant: Boris Stanislav
Leigh Somerville Taylor

Counsel for the Respondent: Gerard K. Westland
Craig Maw

AMENDED JUDGMENT

The appeal from reassessments made under the *Income Tax Act* for the Appellant's 2012 and 2013 taxation years is dismissed, without costs.

This Amended Judgment is issued in substitution for the Judgment issued August 12, 2022.

Signed at Ottawa, Canada, this 28th day of September 2022.

“Susan Wong”

Wong J.

Citation: 2022TCC92
Date: 20220928
Docket: 2018-4262(IT)I

BETWEEN:

STEVE BRAND,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

AMENDED REASONS FOR JUDGMENT

Wong J.

Introduction/Overview

[1] The issue is whether the Minister of National Revenue properly disallowed business expenses claimed by the appellant for the 2012 and 2013 taxation years.

[2] At the heart of this appeal is the importance of maintaining proper/sufficient books and records for tax purposes.

Factual background

Professional background

[3] The appellant had a lengthy military career from which he retired in 2010 after 40 years of reserve service.¹ He received a diploma in Recreational Vehicles & Marina Business Management from Sir Sandford Fleming College in Peterborough in 1977.² He worked in sales in the powersports industry (motorcycles and snowmobiles) beginning in about 1975 and became a district sales manager in 1977. In 1979, he moved to Bombardier Inc. as a district sales manager in powersports equipment/vehicles (snowmobiles, motorcycles, personal watercraft).

[4] He resigned from his salaried sales position in about 1990 and commenced work as a product development consultant, also for Bombardier Inc. He provided these consultant services as a contractor and invoiced Bombardier under the name

Riley Enterprises, which was his sole proprietorship established for this purpose.³ During his five years as a consultant for them, he was heavily involved in all aspects of snowmobile racing from testing the vehicles to race director.

[5] In about 1995, he left his consulting career with Bombardier behind to commence the business operations of 1181676 Ontario Ltd., doing business as Tekrider. Tekrider specializes in high-performance powersports apparel.⁴ The appellant and his (now ex-) wife were directors and equal shareholders until their separation in late 2012. Under their December 14, 2012 separation agreement, the appellant became sole director and 100% shareholder of the company.⁵

[6] He also works as a cottage country realtor for Re/Max Country Living Realty Inc. Brokerage.

Overview of income and expenses

[7] The appellant's 2012⁶ and 2013⁷ T1 returns show his business and professional income to consist of three sources: (a) Steve Brand real estate agent, (b) Steve Brand consultant, and (c) Riley Enterprises. In both years, the real estate operation was the only activity reporting gross income, i.e. \$105,607 in 2012⁸ and \$156,916 in 2013⁹. Business expenses were deducted under both the real estate operation and Riley Enterprises, with the latter resulting in a claimed loss of \$80,214 in 2012¹⁰ and \$56,053 in 2013¹¹. No income or expenses were reported under the consultant activity. In both years, the appellant's return stated that Riley Enterprises' main product or service was the Tekvest¹² which is a Tekrider product.¹³

[8] The Minister disallowed all of the business expenses claimed under Riley Enterprises, i.e. \$80,214 in 2012 and \$56,053 in 2013. With respect to the real estate operation, she disallowed: (a) \$12,013 of \$56,871 claimed for 2012, and (b) \$18,894 of \$67,640 claimed for 2013.¹⁴ Schedule A from the reply is attached as appendix A to these reasons; it shows the appellant's reported business income and expenses by category for his real estate operation in both years, as well as the amounts allowed by the Minister. Schedule B from the reply is attached as appendix B to these reasons; it shows the appellant's reported business expenses by category for Riley Enterprises in both years.

Flow of funds for the benefit of Tekrider

[9] The appellant explained that the expenses incurred by Riley Enterprises were an investment in Tekrider, which he hopes to grow to the point of being acquired by

a larger company. He testified that he has been a realtor for 15 years and that Riley Enterprises receives its income from his real estate operation.

[10] He stated that in 2012 and 2013, Riley Enterprises developed products for Tekrider, did Tekrider's business planning, and hired consultants to further Tekrider's interests. He stated that Tekrider did not have enough money to carry out the necessary research and development to design new products on its own. He explained that in other words, Riley Enterprises paid for consultant services which benefited Tekrider at no cost to the latter. Therefore, for example, \$48,517 and \$46,472 in consulting fees were deducted under Riley Enterprises for 2012 and 2013, respectively.¹⁵

[11] As another example, the appellant stated that in 2012, it was necessary to rebuild Tekrider's website. However, his soon-to-be-ex-wife would not approve any expenditures for Tekrider so he began investing heavily in the company to do what was required. Therefore, the appellant deducted \$4,704 and \$2,871 in advertising expenses under Riley Enterprises for 2012 and 2013.¹⁶

[12] Some of the supplier and consultant invoices for disallowed expenses showed Tekrider to be the customer for billing and shipping purposes.¹⁷ In cross-examination, the appellant stated that he has since learned the importance of separating expenditures and that he made these payments personally even if Tekrider was the identified customer.

[13] In cross-examination, he acknowledged that he did not invoice Tekrider as Riley Enterprises (i.e. the way he had when he provided services to Bombardier) and that in hindsight, there were things he should have done differently on the administration side. He stated that 2012 was a pivotal year on both the personal and business fronts, with his eventual hope being to benefit as Tekrider's shareholder. He testified that in the years in question, Riley Enterprises only engaged in Tekrider-related activities although five or six years later, his proprietorship did provide services under a contract with Yamaha.

Motor vehicle usage

[14] The appellant explained that as a cottage country realtor, he might travel 200 km in one day to show six properties. He estimated that he drove 50,000 to 100,000 km a year as a realtor. He stated that he typically leased three vehicles simultaneously and rotated their usage to stay under the leases' respective mileage limits of 40,000 km in 3 years. He explained that he did not keep a mileage log so

for the purposes of the Canada Revenue Agency audit, his general manager/bookkeeper assisted by compiling his property listings and used Google Maps to determine the distances.¹⁸

[15] For 2012, the appellant deducted expenses for a 2006 Jetta and a 2009 Ford F-150 pickup truck at a rate of 90% business use based on estimated total mileage (business and personal) of 10,000 km and 50,000 km, respectively.¹⁹ The Minister considered a rate of 73% business use of the F-150 only, to be reasonable and allowed \$13,501 of the claimed \$22,067 for that year.

[16] On the lease agreement for the 2006 Jetta, the box which said “Primarily for Personal, Family or Household Use” was checked.²⁰ In cross-examination, the appellant stated that he checked this box to qualify for financing and that he understood the “Business Use” box to be for situations in which the owner was a distinctly separate entity from the individual. He testified that his two sons had principal use of this vehicle for driving to and from university in Oshawa, but that their mileage would still amount to ten percent of the total mileage on that vehicle.

[17] On the retail instalment contract for the 2009 F-150, the appellant is identified as the buyer.²¹ However, monthly payments of \$1,164.28 appear on Tekrider’s general ledger as payments made.²² In cross-examination, the appellant stated that Tekrider paid for the vehicle which was used for the appellant’s real estate operations, and that maintenance/service costs were probably paid for by Riley Enterprises.

[18] For 2013, he deducted expenses for the same two vehicles plus a 2014 Ford Escape at a rate of 90% business use based on estimated total mileage (business and personal) of 8,000 km for the Jetta, 65,000 km for the F-150, and 5,000 km for the Escape.²³ The Minister considered a rate of 76% business use of the F-150 only, to be reasonable and allowed \$10,207 of the claimed \$25,756 for that year.

Business use of home

[19] The appellant stated that he maintained a home office for 30 years. He testified that as a realtor, he paid mandatory desk fees to Re/Max to maintain an onsite office but it was sometimes more convenient to work from home. In cross-examination, he stated that he did not know why there were no business-use-of-home expenses claimed under his real estate operation.²⁴

[20] Under Riley Enterprises, he deducted business-use-of-home expenses at a rate of 39% based on using about 700 square feet of his 1,800-square-foot home for business purposes.²⁵ In cross-examination, he stated that the 700 square feet consists of: (a) a home office that is about 400 square feet, (b) a mechanical shop in the basement where he does the setup of vehicles, and (c) a one-car drive-in garage where he runs motorcycles and sleds and which contains all his tools. He stated that he no longer had an office at Tekrider because he was not physically there.

Boat

[21] The appellant testified that as a realtor, he annually shows about half a dozen cottages for which access is only by water. For cottages on small lakes without a marina, he uses his own boat to travel to those properties. He stated that the boat is 35 years old and he has owned it for 15 years. He explained that for liability reasons, the seller's boat typically cannot be used when showing such properties.

[22] If the property is on a bigger lake, he ordinarily takes a water taxi from the marina because it is less expensive and does not require him to transport his boat to the departure point. He stated that he pays a mechanic to winterize and summerize the boat, and that the disallowed deductions of \$859 for 2012 and \$394 for 2013 were annual insurance premiums.²⁶ He stated that the annual amount of fuel used for these trips was negligible (i.e. less than \$100) so he did not claim a deduction in this respect. On the other hand, the insurance premiums had been claimed at 100 percent.

[23] He testified that without looking at his real estate listings for the years in question, he would estimate personal use of the boat to be about 75%. He stated that the boat is a classic and he is the only operator.

Travel

[24] The appellant stated that the disallowed travel expenses under Riley Enterprises would have been incurred to attend trade shows for Tekrider. He stated that he would also travel to Oakville to meet with a long-time Tekrider designer who lived there.

Snow removal

[25] The appellant paid \$450 for snow removal in 2013 and this amount was claimed (and disallowed) as an advertising expense in 2013. He stated that his ex-

wife lived next door to his rental house and that her truck was getting stuck in the snow, so he paid for snow removal for both properties.

Analysis and discussion

[26] I reserved my decision in this appeal because I wished to review the appellant's documents more closely, as they were rather extensive. On reviewing the documents and hearing the testimony, I cannot see a basis to allow more than what has already been allowed by the Minister. The appellant's recordkeeping did not meet the standard required by subsection 230(1) of the *Income Tax Act*.

[27] Generally speaking, an expense is deductible from business income if it is made for the purpose of gaining or producing income from that business.²⁷ Personal or living expenses are not deductible from business income, other than travel expenses incurred in the course of carrying on the taxpayer's business.²⁸ Equally importantly, every person who carries on business must keep books and records which are sufficient to enable the Minister to determine the taxes payable.²⁹

[28] The appellant testified that in his mind, Riley Enterprises and Steve Brand are the same. It is clear from the documents and the testimony that the appellant's various activities were conflated with each other and with Tekrider in 2012 and 2013. It is also clear that the appellant underwent major changes in his personal and business life in those years and on a balance, the upheaval likely contributed to his inattentiveness to the way he kept his records.

[29] For example, the invoices from consultant Helmut Siepmann show Tekrider as the customer and were mostly claimed as deductions under Riley Enterprises.³⁰ The appellant testified that Tekrider paid for Mr. Siepmann's services until 2010 or 2011, after which Riley Enterprises or Steve Brand paid for them. However, Mr. Siepmann's April 26, 2012 invoice for services is not claimed as a deduction under Riley Enterprises and instead appears in Tekrider's general ledger as a research & development expenditure.³¹ A copy of the April 26, 2012 invoice was not entered in evidence; however, I believe that on a balance of probabilities that Mr. Siepmann was providing the same or similar services as in the other invoices. Therefore, the distinctions were murky and applied inconsistently in the books and records such that it did not enable the determination of taxes owing.

[30] The legislation requires that there be a purpose-driven correlation between an expense and the business for which it is incurred. While it is understandable why the appellant might conflate his personal enterprises with that of Tekrider, they must be

distinguished for the purposes of ascertaining deductibility as business expenses. The amounts claimed as deductions under Riley Enterprises were properly the business expenses of Tekrider because they were incurred to gain or produce income from Tekrider, and Riley Enterprises did not have a business activity of its own in 2012 and 2013.

[31] Tekrider's financial statements for the 2012, 2013, and 2014 fiscal years show shareholder loans in the amounts of \$365,971, \$325,021, and \$370,866, respectively.³² The note to the 2012 financial statement describes the shareholder loan as "amounts lent to the company by the shareholders for its operations and consist of shareholders' personal credit card[sic] balances, personal line of credit and personal loan..."³³ This description aligns with the appellant's description of the outlays claimed as business expenses under Riley Enterprises in 2012 and 2013, i.e. they are more properly an increase to shareholder loans to Tekrider than business expenses of the appellant.

[32] As another example, the business-use-of-home expenses were claimed under Riley Enterprises, although the appellant's testimony focused on the benefit of the home office for his real estate operation. Perhaps this deduction was claimed under Riley Enterprises in part because the appellant had an office at Re/Max. His testimony suggested that the mechanical shop and garage were used for Tekrider's purposes. Again, there is a conflation of purposes and lack of precision which makes it difficult to find that the Minister's assumption has been rebutted in this regard.

[33] There was also a lack of precision in the appellant's books and records which made it difficult to determine taxes owing. For example, the appellant did not keep mileage logs for his vehicles so the only mileage information available is the table of 2012 distances created by his general manager/bookkeeper for the purposes of the audit. During his testimony, the appellant estimated that he drove both 50,000 to 75,000 km annually and 75,000 to 100,000 km annually for his real estate operation; in terms of variance, it is a wide range and makes it difficult to find that the Minister's assumption has been rebutted in this regard.

[34] There was also a conflation of purposes with respect to the 2009 F-150, for example. Tekrider made the monthly vehicle payments while the maintenance/service costs were probably paid by Riley Enterprises (based on the appellant's testimony), and the majority of motor vehicle expenses were claimed under the real estate operation. The conflation and lack of precision again makes it difficult to find that the Minister's assumption has been rebutted in this regard.

[35] Similarly with respect to the boat, the appellant testified in general terms as to how many trips he made annually to show water-access-only properties. However, no precise information was tendered with respect to actual listings and trips made in the years under appeal. This information would help determine the proportion of personal versus business use, resulting in the appropriate multiplication factor to apply to boat-related expenses. The conflation and lack of precision again makes it difficult to find that the Minister's assumption has been rebutted in this regard.

[36] While the snow removal expense in 2013 was small, it does not appear to have a business purpose based on the appellant's testimony.

Conclusion

[37] The appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 28th day of September 2022.

“Susan Wong”

Wong J.

APPENDIX A**Schedule "A"**

STATEMENT OF BUSINESS ACTIVITIES Steve Brand Real Estate Agent	2012			2013		
	Amount Submitted	Amount Allowed by Auditor	Amount Allowed by Objection	Amount Submitted	Amount Allowed by Auditor	Amount Allowed by Objection
Gross Income*	\$ 105,607	\$ 113,556	\$ 105,607	\$ 156,916	\$ 165,479	\$ 156,916
Calculation of cost of goods sold						
Cost of goods sold	-	-	-	-	-	-
Gross Profit*	105,607	113,556	105,607	156,916	165,479	156,916
Expenses*						
Advertising	3,448	-	2,748	5,496	-	5,046
Business tax, fees, licenses, dues etc.	2,225	-	2,225	1,040	-	1,040
Management and admin fees	-	-	-	5,578	-	5,578
Meals and entertainment @ 50%	438	-	438	2,009	-	2,009
Motor vehicle expenses	22,067	-	13,501	25,756	-	10,207
Office expenses	3,772	-	3,772	4,347	-	4,347
Legal, accounting & other professional	2,000	-	2,000	2,000	-	2,000
Travel	77	-	77	191	-	191
Telephone and utilities	4,463	-	4,463	2,436	-	2,436
Other expenses: Bank charges & interest	1,510	-	1,510	1,626	-	1,626
Other expenses: Broker	14,125	-	14,125	14,266	-	14,266
Other expenses: Property expenses	810	-	-	2,016	-	-
Other expenses: Boat	859	-	-	394	-	-
Other expenses:	-	-	-	-	-	-
Subtotal	55,793	-	44,858	67,155	-	48,746
Allowance of eligible capital property						
CCA	1,079	-	-	485	-	-
Total business expenses*	56,871	-	44,858	67,640	-	48,746
Net Income (loss) before adjustments*	48,736	113,556	60,749	89,276	165,479	108,170
Less business use of home expenses	-	-	-	-	-	-
Net Income (loss)*	\$ 48,736	\$ 113,556	\$ 60,749	\$ 89,276	\$ 165,479	\$ 108,170

* Amounts have been rounded up

APPENDIX B**Schedule "B"**

STATEMENT OF BUSINESS ACTIVITIES Riley Enterprises	2012			2013		
	Amount Submitted	Amount Allowed by Auditor	Amount Allowed by Objection	Amount Submitted	Amount Allowed by Auditor	Amount Allowed by Objection
Gross Income*	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Calculation of cost of goods sold						
Cost of goods sold	-	-	-	-	-	-
Gross Profit*	-	-	-	-	-	-
Expenses*						
Advertising	4,704	-	-	2,871	-	-
Meals and entertainment @ 50%	74	-	-	-	-	-
Motor vehicle expenses	2,049	-	-	845	-	-
Office expenses	4,338	-	-	-	-	-
Travel	2,810	-	-	1,128	-	-
Telephone and utilities	-	-	-	-	-	-
Other expenses: Bank charge & interest	1,510	-	-	1,626	-	-
Other expenses: R&D expenses	7,895	-	-	949	-	-
Other expenses: R&D consulting fees	48,517	-	-	46,472	-	-
Other expenses:	-	-	-	-	-	-
Subtotal	71,896	-	-	53,891	-	-
Allowance of eligible capital property						
CCA	8,318	-	-	2,162	-	-
Total business expenses*	80,214	-	-	56,053	-	-
Net Income (loss) before adjustments*	(80,214)	-	-	(56,053)	-	-
Less business use of home expenses**	11,678	-	-	8,853	-	-
Net Income (loss)*	\$ (80,214)	\$ -	\$ -	\$ (56,053)	\$ -	\$ -

* Amounts have been rounded up

** not used. Carry forward amounts

CITATION: 2022 TCC 92
COURT FILE NO.: 2018-4262(IT)I
STYLE OF CAUSE: Steve Brand v. His Majesty The King
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: September 23, 2021 and October 26, 2021
REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong
DATE OF JUDGMENT: September 28, 2022

APPEARANCES:

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¹ Exhibit A-1, Tab 1

² Exhibit A-1, Tab 1

³ Exhibit A-1, Tabs 4, 5, and 6

⁴ Exhibit A-1, Tab 1

⁵ Exhibit A-1, Tab 36

⁶ Exhibit A-1, Tab 24 at page 171

⁷ Exhibit A-1, Tab 25 at page 383

⁸ Exhibit A-1, Tab 24 at page 172

⁹ Exhibit A-1, Tab 25 at page 385

¹⁰ Exhibit A-1, Tab 24 at page 307

¹¹ Exhibit A-1, Tab 25 at page 494

¹² Exhibit A-1, Tab 24 at page 305; Tab 25 at page 492

¹³ Exhibit A-1, Tab 8

¹⁴ Reply to the notice of appeal, Schedules A and B

¹⁵ Reply to the notice of appeal, Schedule B

¹⁶ Reply to the notice of appeal, Schedule B

¹⁷ Exhibit A-1, Tab 24 at pages 184, 185, 345, 347, 356 to 364; Tab 25 at page 506

¹⁸ Exhibit A-1, Tab 28

¹⁹ Reply to the notice of appeal at paragraph 17(h)(viii); Exhibit A-1, Tab 24 at page 167

²⁰ Exhibit A-1, Tab 24 at page 263

²¹ Exhibit A-1, Tab 25 at page 467

²² Exhibit A-2, Tab 40 at page 613

²³ Reply to the notice of appeal at paragraph 17(i)(ix); Exhibit A-1, Tab 25 at page 380

²⁴ Exhibit A-1, Tab 24 at page 175; Tab 25 at page 387

²⁵ Notice of appeal, paragraph 27; Exhibit A-1, Tab 24 at page 308; Exhibit A-1, Tab 25 at page 495

²⁶ Exhibit A-1, Tab 24 at pages 302 and 303

²⁷ *Income Tax Act*, paragraph 18(1)(a)

²⁸ *Income Tax Act*, paragraph 18(1)(h)

²⁹ *Income Tax Act*, subsection 230(1)

³⁰ Exhibit A-1, Tab 24 at pages 356 to 363

³¹ Exhibit A-2, Tab 40 at page 675; Tab 41 at page 952

³² Exhibit A-1, Tabs 13, 14, and 15

³³ Exhibit A-1, Tab 13 at page 52