

Docket: 2021-1503(IT)I

BETWEEN:

ZDRAVKO ZUPET,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on September 12 and 13, 2022, at Kelowna,
British Columbia

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant: Robert Neilson
Michael I. Stuart (student-at-law)

Counsel for the Respondent: Randall Lau

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2014, 2016, and 2017 taxation years is allowed without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

1. the appellant operated a wholesale luxury auto business in 2016 and 2017;
2. with respect to the 2016 taxation year, the appellant is entitled to deduct business expenses in the amount of \$3,782.34;

3. with respect to the 2017 taxation year, the appellant is entitled to deduct business expenses in the amount of \$5,425.52; and
4. to the extent that the allowed expenses result in a business loss, the appellant is entitled to carry back the resulting non-capital loss to the 2014 taxation year.

Signed at Ottawa, Canada, this 1st day of August, 2023.

“Susan Wong”

Wong J.

Citation: 2023 TCC 111
Date: August 1, 2023
Docket: 2021-1503(IT)I

BETWEEN:

ZDRAVKO ZUPET,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Wong J.

I. Introduction/Overview

[1] On retiring from carpentry, the appellant looked into ways to merge his love of luxury cars into a profit-making endeavour. He had no prior experience but decided to start a wholesale luxury auto operation in which he planned to buy used luxury vehicles in Canada, sell them in the U.S., and earn a profit from the currency exchange rate.

[2] The Minister of National Revenue did not agree that the appellant had a business and therefore, disallowed his business expense deductions.

[3] The appellant represented himself during the hearing and retained counsel for the purpose of providing written submissions on the Federal Court of Appeal's decision in *Paletta*.¹

II. Issues

[4] The issues are as follows:

- a) whether the appellant carried on a business selling used luxury cars wholesale to dealerships in the 2016 and 2017 taxation years;
- b) if so, whether the appellant is entitled to deduct the claimed expenses for those years; and
- c) whether the appellant is entitled to carry back related non-capital losses (arising from the activity in question) to the 2014 taxation year.

III. Factual background

[5] The appellant attended the Marketing Administration program at NAIT (the Northern Alberta Institute of Technology) in 1974² and became a real estate salesman in about March 1975.³ He testified that in addition to real estate sales, he operated a number of different businesses including brick-laying and residential home construction. He stated that he began working as a unionized carpenter in 2002, retired effective January 1, 2016 at age 60, and began receiving his full pension.⁴

[6] He explained that at the time he retired from carpentry, his work was affecting his well-being so he and Mrs. Zupet began looking at other lines of work for him. Mrs. Zupet was a self-employed chartered accountant and retired in May 2017 at age 62.

[7] Mrs. Zupet testified that in discussing how they might continue to finance their affairs, they decided to build a global import-export business. The appellant's cousin John was in the business of buying and selling cars and after discussions with him, the appellant and Mrs. Zupet decided that their global import-export business would begin with cars, namely buying cars in Canada and selling them in the U.S. They expected the profit would come from the favorable Canada-U.S. exchange rate; put simply, a vehicle purchased in Canada could be sold for the same price in the U.S. but in U.S. dollars, resulting in a profit.

[8] The Alberta Motor Vehicle Industry Council (AMVIC) regulates the automotive industry in Alberta. The appellant and Mrs. Zupet testified that in order to buy/sell vehicles, the appellant had to successfully register with AMVIC as a licensed automotive salesperson. In order to become a registered licensed automotive salesperson, he had to complete mandatory AMVIC training and be sponsored by a licensed automotive business. Mrs. Zupet stated that they obtained a business plan package from AMVIC and proceeded to complete the checklist for

licensing the appellant's sole proprietorship (Zed Exports) as an automotive business.

[9] The AMVIC business plan package⁵ contained a fee schedule and a checklist of requirements such as a business plan, a criminal record check, a business profile showing the applicant's historical businesses, and financial institution information. The appellant and Mrs. Zupet submitted a business plan⁶ for the sole proprietorship stating, among other things, that:

- a) it was a wholesale auto business which would not be selling vehicles to the public;
- b) its owner (the appellant) did not have any experience in the motor vehicle industry but that he had purchased/leased many vehicles over the years, so was well-informed of the features of the preferred vehicles targeted for purchase and sale;
- c) its business was located in a private residential dwelling on 2.59 acres of land;
- d) its preferred type of vehicle for acquisition were popular luxury vehicles up to four years old, with no more than 40,000 km (25,000 miles) driven, and likely an Audi, BMW, Lexus, or Mercedes;
- e) vehicles would generally be purchased wholesale at live or online wholesale auctions;
- f) it had no starting inventory and planned to start with one vehicle, expecting to sell one per month;
- g) there was no advertising budget;
- h) its marketing strategy was to contact existing North American dealers/auctions before purchasing Alberta vehicles to ensure there would be a ready market;
- i) the owner (the appellant) was a luxury car enthusiast who enjoyed researching, driving, and being surrounded by luxury vehicles. Working in the automotive industry would enable him to spend more time doing something he loved;
- j) the owner (the appellant) had a few acquaintances in the automotive industry but had not yet approached anyone for guidance or assistance; and
- k) the only salesperson was the owner (the appellant).

[10] According to the AMVIC fee schedule,⁷ a wholesale auto business required a general surety bond. The appellant paid a \$500 premium and purchased an AMVIC wholesale bond for a one-year term beginning on September 14, 2016.⁸

[11] On August 23, 2016, the appellant successfully completed AMVIC's mandatory salesperson training.⁹ On September 20, 2016, AMVIC issued certificates: (a) licensing Zed Exports to operate as a wholesale sole proprietorship until September 30, 2017,¹⁰ and (b) registering the appellant as a licensed automotive salesperson for Zed Exports until September 30, 2017.¹¹ On October 21, 2016, AMVIC issued a certificate registering Mrs. Zupet as a licensed automotive salesperson for Zed Exports until October 31, 2017.¹²

[12] The appellant registered the trade name "Zed Exports" in Alberta on September 9, 2016, effective beginning September 30, 2016.¹³ On September 22, 2016, the appellant registered and requested a business number from Canada Revenue Agency for GST/HST purposes. On the request form, the appellant indicated that the business name would be "Ed Zupet operating as Zed Exports", the major business activity was "auto dealer – wholesale", and 100% of his products/services would be auto sales.¹⁴ On the same date, he also created an Import/Export account with CRA.¹⁵ Mrs. Zupet testified that they decided to register for the GST/HST because their target vehicles would cost at least \$50,000, thus exceeding CRA's \$30,000 small-supplier threshold.¹⁶

[13] The AMVIC business plan package required financial institution information by way of a completed account verification form. On September 16, 2016, the Royal Bank completed this form and verified that the sole proprietorship had opened a commercial account with a starting balance of \$5,000 USD.¹⁷ On September 30, 2016, the appellant opened a second Royal Bank commercial account with a starting balance of \$500 CAD.¹⁸ With respect to the Canadian-dollar account, he ordered business cheques with the name of the proprietorship and the Zupets' Sherwood Park address at the top.¹⁹

[14] With the AMVIC licences in place, the appellant was able to register the sole proprietorship with two online wholesale auto auction dealers.²⁰ The registration packages for the auction dealers required that the appellant authorize the release of financial credit information and provide proof of AMVIC licensing, among other things. Mrs. Zupet explained that the online auction site enabled the appellant to sell and browse vehicles for purchase in North America. She testified that a person with one of the auction dealers cautioned them as to the potential logistical problems with selling Canadian vehicles in the U.S.; for example, if a Canadian vehicle sold in the U.S. was subsequently recalled, it would be difficult transporting the vehicle back to Canada for servicing. Mrs. Zupet stated that she and the appellant decided that the logistical barriers might serve them well by removing some competition.

[15] In about October 2016, Mrs. Zupet came across an online advertisement for an Edmonton business called Auto City, which invited U.S. customers to purchase their vehicles.²¹ She stated that the advertisement caught her and the appellant's interest because Auto City appeared to be engaged in the type of business that they wished to have, i.e. selling Canadian vehicles to U.S. customers.

[16] They visited Auto City to see if they could find out more about the operation and while there, the manager offered Mrs. Zupet a job as accounting manager of their newly purchased Chrysler dealership in Squamish, B.C. She commenced working full-time at the Squamish dealership on November 21, 2016²² and left in about mid-February 2017.

[17] The appellant and his wife lived on an acreage in Sherwood Park, which is a hamlet in the greater Edmonton area. In 2010, the appellant moved to Kelowna to live with and take care of his elderly parents while Mrs. Zupet remained in Sherwood Park. Mrs. Zupet stated that she continued to live and base herself at the Sherwood Park acreage until the end of December 2016, when she and the appellant decided to list it for sale. They eventually sold the acreage on June 15, 2017. Mrs. Zupet testified that the acreage was the business office for the Edmonton location of Zed Exports while the appellant's parents' house in Kelowna was Zed Exports' home office.

[18] Mrs. Zupet testified that she accepted the job offer at the Squamish dealership so that she and the appellant could learn more about the auto sales business. To that end, she had the appellant come into the Squamish dealership's office to learn by helping her with paperwork or she would bring the work to her Squamish hotel room where he would do the same. She stated that during her three months at the dealership, she worked 12-hour days for seven days a week most weeks and when she did take time off, she either took the Greyhound bus or the appellant drove her to/from Squamish.

[19] She stated that the appellant purchased a new 2016 GMC Yukon Denali SUV from an Edmonton dealership on November 19, 2016, intending it to be the first vehicle sold in the U.S. by Zed Exports. The appellant purchased the vehicle for \$72,414.25 (before GST) and at the time of purchase, the odometer reading was 14 km. Mrs. Zupet stated that it was 20 percent off the manufacturer's suggested retail price so they believed the exchange rate would enable them to make a profit by selling the vehicle to a U.S. customer. On the bill of sale from the Edmonton dealership and signed by the appellant, there is a printed statement saying that the

purchaser represents he is buying the SUV for use in Canada and not for resale or primary use outside Canada.²³

[20] With respect to the funds used to purchase the SUV, Mrs. Zupet testified that their son Lance Zupet loaned the appellant \$25,000 USD²⁴ and she in turn issued a promissory note to him. She stated that Zupet family members typically loaned money to each other for use by their respective companies and that she documented the loans with promissory notes.

[21] When Mrs. Zupet accepted the job in Squamish, they decided to try to sell the SUV in B.C. for a smaller profit because it would be easier than taking it across the Canada-U.S. border. The appellant drove the SUV to various B.C. dealerships to see if anyone was interested in buying it. By March 2017, Mrs. Zupet had left the Squamish dealership and they realized they were not going to be able to sell the SUV for a profit in B.C., so they began looking into a U.S. sale again. To that end, they sought and received written confirmation from GM Canada that the SUV complied with U.S. safety standards and emission control requirements. In its April 27, 2017 letter to the appellant, GM Canada confirmed compliance and stated in its preamble that it understood the vehicle was being imported to the U.S. for personal use and not resale.²⁵

[22] They drove the SUV from Edmonton to Florida in about mid-May 2017, stopping at various Florida auto dealers to see if there was interest in buying the vehicle.²⁶ The appellant and Mrs. Zupet stated that they chose to try to sell the SUV in Florida because they spent winters in Florida from about 2007 to 2016, so they knew people there.

[23] While driving to Florida, they received an offer to purchase their Sherwood Park home with a closing date in mid-June. They sped up their drive to Florida and flew back to Alberta on about May 31st, deciding to leave the SUV in long-term airport parking. The appellant's and Mrs. Zupet's recollection differed slightly with respect to the sequence of events during this period, but they advertised the vehicle online and received an offer from a dealership in Orange County. They learned from the Orange County dealership that in order to complete the sale, the appellant had to register the vehicle in Orange County and have it certified by the U.S. Department of Transportation.

[24] They completed the sale of their home and then flew to Seattle to meet their Florida friends and go on an Alaskan cruise with them. After the cruise, the appellant and Mrs. Zupet flew from Anchorage back to Seattle, and from there to Florida on

about July 5th to complete the sale of the SUV. Upon obtaining the required Orange County registration and U.S. Department of Transportation certification, they sold the vehicle to the Orange County dealership on July 7, 2017 for \$52,000 USD. The dealership's delivery receipt describes the SUV as a trade-in vehicle received from the appellant with an odometer reading of 9,114 miles;²⁷ the sale proceeds were then deposited into the appellant's personal U.S. chequing account.²⁸

[25] With respect to the odometer readings of 14 km when they purchased the vehicle and 9,114 miles (i.e. 14,667 km) when they sold it, the appellant explained that a used vehicle had to have 6,000 km on it in order to be able to import it into the U.S. and that he had not expected to find such a good deal on a brand new vehicle when he purchased the SUV.

[26] Mrs. Zupet testified that they flew from Florida back to Edmonton, and then left for Slovenia on about August 15th to look into possible items to import to Canada as part of their global import-export venture. From Slovenia, they flew to Scotland at the beginning of September to look at a hotel in Scotland which their daughter and son-in-law wished for them to invest in.

[27] She stated that by the time they returned to Canada and 2018 came around, they were both experiencing health issues and the appellant's mother was diagnosed with cancer. She stated that they eventually decided not to pursue their venture anymore. In January 2019, the appellant closed the sole proprietorship's business accounts with Royal Bank and in September 2019, he cancelled its GST/HST registration.

IV. Business expenses claimed

[28] With respect to 2016, the appellant reported no gross business income and a net loss of \$22,523.83.²⁹ For 2017, he reported gross business income of \$67,080 (being \$52,000 USD multiplied by an exchange rate of 1.29) and a net loss of \$75,081.16.³⁰ He then carried back non-capital losses of \$51,256 from 2017 and applied them to his 2014 taxation year.

[29] The appellant claimed the following business expenses for 2016 and 2017³¹:

	2016	2017
Business tax, fees, licences, memberships	\$1,660.87	\$195.00
Management and administration fees	4,000.00	2,400.00
Meals and entertainment (50%)	3,035.13	5,920.51
Motor vehicle expenses	6,090.54	8,441.69
Office expenses	280.55	263.05
Travel	5,615.82	21,340.82
Telephone/Utilities	1,840.92	3,472.47
Interest		5,364.00
Maintenance and repairs		526.56
Office stationery and supplies		526.55
Professional fees		2,600.00
Capital cost allowance		11,096.26
TOTAL	\$22,523.83	\$62,146.91

(a) Motor vehicle

[30] In addition to the Yukon Denali SUV to be sold, the appellant owned a 1999 Ford Expedition SUV and a 2010 BMW X5 SUV as personal vehicles. He claimed motor vehicle expenses for: (a) the Ford Expedition based on business use of 81% in 2016 and 57% in 2017, (b) the BMW based on business use of 100% in 2016 and 74% in 2017, and (c) the Yukon Denali based on business use of 100% in both years.³²

[31] The appellant stated that he did not keep a mileage log with respect to vehicle usage; Mrs. Zupet testified that she used vehicle maintenance records and other

invoices to create logs provided to the Minister of National Revenue.³³ Based on these logs, there were many trips to Kelowna and Squamish, multiple trips to Vancouver, a trip from Squamish to Seattle, trips to Whistler, a trip to Victoria, one to Big White, one to Oliver, one to Vernon, one to Manitou, and the May 2017 trip to Florida, among others. Many of the trips are described as scouting, some are described as strategy meetings and team building, some are described as mixed, sundry, or business-related, and others have no description.

(b) Travel

[32] The appellant sought to deduct a two-day stay in April 2017 at Sparkling Hill Resort in Vernon. During the stay, the appellant and Mrs. Zupet saw a physician and one/both received chelation therapy (for heart disease), underwent allergy testing, underwent hemodynamic testing (for hypertension), and received salon treatments. He and Mrs. Zupet described the stay as a business retreat to rejuvenate themselves.

[33] With respect to the trip to Seattle to meet their Florida friends to embark on an Alaskan cruise together, Mrs. Zupet stated that she and the appellant hoped to persuade these friends to join them in the vehicle sales venture. She stated that while the cruise was personal, some expenses in Seattle and Anchorage were business-related because she and the appellant wanted to see how business was done in those communities.

[34] Mrs. Zupet explained that she and the appellant viewed Zed Exports as more than a used car sales operation and that it was intended to be a worldwide import-export business. For example, the hotel in Scotland would not be a good bought or sold but it would be a service provided by Zed Exports. She also stated that while in Slovenia in August 2017, she and the appellant looked into identifying goods and services to either import into Canada or export to other countries. She described most of their travel as being done in an effort to further their global import-export operation. The appellant acknowledged in cross-examination that he was born in Slovenia while Mrs. Zupet stated that while in Slovenia, they looked into the possibility of purchasing old Volkswagens to export to the appellant's Slovenian cousins to refurbish.

(c) Management and administration fees

[35] For the 2016 taxation year, the appellant deducted management and administration fees totaling \$4,000 as a business expense of the sole proprietorship. The associated invoice is dated December 31, 2016 and issued by Carolyn Peterson

to the sole proprietorship for administrative and other services, including registered office, mailbox service, telephone service, bookkeeping, and general administration.³⁴ Ms. Peterson is a bookkeeper and the appellant's sister. Mrs. Zupet testified that Ms. Peterson looked things up for them and provided miscellaneous support to them while they were travelling.

[36] Mrs. Zupet explained that the appellant's father was an experienced businessman and gave them advice. She stated that for his advice, he charged the sole proprietorship \$2,400 which they paid by paying for various repairs and maintenance to the appellant's parents' house in Kelowna. The appellant's father issued a December 31, 2017 invoice for \$2,400 for administrative and other services.³⁵

(d) Capital cost allowance

[37] With respect to 2017, the appellant deducted capital cost allowance totaling \$11,096.26 and pertaining to the BMW, the Ford Expedition, a MacBook, and a cell phone.³⁶

(e) Subcontractor amounts

[38] In the 2017 taxation year, subcontractor amounts totaling \$7,600 were included in the cost of goods sold.³⁷ These amounts consisted of:

- (a) \$6,400 paid to Cherry Lane Developments Ltd. – Cherry Lane was 100% owned by Lance Zupet. A December 31, 2017 invoice billed the sole proprietorship \$6,400 for various services rendered by him and Mrs. Zupet with respect to the wholesale auto sales venture.³⁸ In a February 11, 2021 letter to CRA Appeals at the objection stage, the appellant described the \$6,400 expenditure as an amount paid to a consultant for export-related business knowledge;³⁹ and
- (b) \$1,200 paid to Carolyn Peterson – Mrs. Zupet stated that when they sold their Sherwood Park acreage, the appellant moved his business records, filing cabinets, and office furniture to Ms. Peterson's Edmonton home. A September 30, 2017 invoice billed the sole proprietorship \$1,200 on the basis of an annual contract for administrative and other services.

(f) Amounts conceded by the Respondent

[39] During the hearing, counsel for the respondent advised that if the Court finds there was a business, then the Minister would concede the following amounts as business expenses:

	2016	2017
Business tax, fees, licences	\$1,660.87	\$195.00
Office expenses	280.55	263.05
Telephone/Utilities	1,840.92	
Office stationery and supplies		526.55
Professional fees		2,600.00
TOTAL	\$3,782.34	\$3,584.60

V. Legal framework

[40] It is well established that for the purposes of the *Income Tax Act*, there must be an income source in order for there to be income in a taxation year.⁴⁰ Where the income source is a business, then a taxpayer's income for a particular tax year is their profit from the business in that year.⁴¹ Where the allowable expenses incurred exceed the revenue earned, then the profit becomes a loss.⁴² A business loss is a non-capital loss which may be carried back 20 years (or forward three years) and deducted against income in that year.⁴³

[41] The litmus test for whether there is an income source continues to be the two-step approach set out by the Supreme Court of Canada in *Stewart*⁴⁴, i.e.:

- i. Is the activity in question undertaken in pursuit of profit, or is it a personal endeavour?⁴⁵

In other words, does the taxpayer intend to carry on the activity for profit and is there objective evidence to support that subjective intention?⁴⁶ The taxpayer must show that their predominant intention is to make a profit from the activity and that the activity has been conducted so as to be consistent with objective standards of business-like behaviour.⁴⁷

- ii. If it is not a personal endeavour, is the source of the income a business or property?⁴⁸

In this appeal, the parties agree that if there is an income source, it is a business (not property).

[42] Where the activity: (a) appears to be clearly commercial, (b) contains no personal or hobby element, and (c) the evidence is consistent with the view that the activity is conducted for profit, then a source of income exists for the purposes of the Act.⁴⁹ However, where the activity could be considered a personal pursuit, then one must ask if the activity is being carried on in a sufficiently commercial manner so as to be a source of income.⁵⁰

[43] When determining whether a taxpayer is carrying on the activity in a sufficiently commercial manner, the non-exhaustive list of objective factors include: (1) 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 activity to show a profit.⁵¹ The factors will vary depending on the nature and extent of the activity.⁵² This determination is not an evaluation of the taxpayer's business acumen but, rather, the commercial nature of the activity in question.⁵³

[44] The question of whether a business exists is separate from the deductibility of expenses.⁵⁴ In order to be deductible against business income, the expense must be incurred for the purpose of gaining or producing income from the business.⁵⁵ It will not be deductible against business income if it is a personal or living expense⁵⁶ or if it is unreasonable in the circumstances.⁵⁷

VI. Discussion and analysis

(a) Was the activity in question undertaken in pursuit of profit, or was it a personal endeavour?

[45] Although the appellant and Mrs. Zupet asserted that the activity was or would become a global import-export business, the evidence shows that it was the wholesale sale of used luxury automobiles during the years in question. For example, the sole proprietorship's activity was described as "used motor vehicles" in the appellant's T2125 statements of business or professional activities filed as part of his 2016 and 2017 returns.⁵⁸ In addition, the business plan submitted to AMVIC

described it as a “wholesale auto business”⁵⁹ and all the arm’s-length professional entities they dealt with were in the automotive industry.

[46] I have set out the relevant factual timeline in detail to illustrate the somewhat convoluted chaos of events during the years under appeal. Activities which might be considered personal versus business-related overlapped regularly. For example, the appellant enjoyed driving luxury cars on a personal level and the activity involved the sale of luxury vehicles. The appellant’s stated plan involved the purchase and sale of used luxury vehicles, but he purchased a new luxury SUV and put over 14,000 km on it driving it mostly around B.C. (where he lived) and eventually to Florida. He sold the SUV in Florida, where he and Mrs. Zupet spent winters (on a personal level) rather than numerous other U.S. states which were geographically much closer to Kelowna and Edmonton.

[47] Given the amount of overlap, I am of the view that the activity had a personal element so it was not clearly commercial. Therefore, the question is whether the activity was carried out in a sufficiently commercial manner so as to be a source of income.

[48] The appellant and Mrs. Zupet took a significant number of steps toward setting the activity up as a business in 2016, namely:

- a) they both completed the necessary AMVIC training and became licensed automotive salespeople;
- b) they completed an extensive list of AMVIC requirements (including purchasing insurance) and successfully licensed his proprietorship for wholesale auto sales;
- c) he used his AMVIC licences to in turn register his proprietorship with online wholesale auto auction dealers that dealt in the purchase and sale of vehicles across North America;
- d) he registered the proprietorship’s trade name in Alberta;
- e) he obtained a business number from CRA for GST/HST purposes, plus opened GST/HST and Import/Export accounts with CRA;
- f) he opened two commercial bank accounts, one in U.S. dollars and one in Canadian dollars; and
- g) he ordered business cheques for the Canadian-dollar commercial account, using the name of the proprietorship.

[49] I believe that the appellant and Mrs. Zupet visited Auto City in October 2016 because Auto City seemed to be in the business of selling Canadian vehicles to U.S.

customers, and that is what they wished to do. I also accept that Mrs. Zupet believed that by taking the account manager job at Auto City's new Squamish dealership, she would learn more about the automotive industry (as neither the appellant nor she had any prior experience). The screen print from the Auto City website is dated October 31, 2016 so it is contemporaneous with their stated timeline of events.⁶⁰

[50] From November 2016 onward, the choices made by the appellant in running his new business were either not principally geared toward making a profit or maximizing it. Rather than acquiring a used vehicle by wholesale auction (as stated in the business plan), the appellant bought the Yukon Denali SUV brand new for \$72,414.25 CAD. At the time of purchase, he represented to the dealership that he was not buying the SUV for resale. When subsequently seeking confirmation from GM Canada that the SUV met U.S. safety and emission control requirements, he represented that the SUV was being imported to the U.S. for personal use and not resale. After putting over 14,000 km on it, he then sold the used SUV for the equivalent of \$67,080 CAD by driving the vehicle to Florida, where he and Mrs. Zupet had friends and spent winters.

[51] A business model which includes acquiring inventory by misrepresenting the terms of acquisition and import seems increasingly unsustainable over time, with a growing risk of failure as the appellant's practices become known in his industry. The appellant may have purchased the new SUV at an unexpectedly low price, but his practice of driving it to various dealerships to canvass interest actively depreciated his only inventory, thus reducing his chance of recovering the original purchase price or making a profit.

[52] It is not this Court's place to evaluate the appellant's business acumen but, rather, the commercial nature of the activity. The numerous steps taken by the appellant and Mrs. Zupet during the relatively condensed period from about August to September 2016 were start-up in nature and contained no discernible personal element. Therefore, I am of the view that the appellant intended for the activity to be a business. On a balance, I accept the appellant's contention that the purchase of the new SUV was a singular deviation from the business plan to deal in used vehicles. Therefore, the commercial nature of the activity remains intact and there was a business source of income in 2016 and 2017.

(b) Which of the claimed expenses are deductible?

[53] While I have found that there was a business source of income in the form of wholesale luxury auto sales, it was also a source without much business conducted during the years in question.

[54] As discussed above, activities which might be considered personal versus business-related overlapped regularly. The appellant and Mrs. Zupet travelled between Edmonton/Sherwood Park, Kelowna, and Squamish regularly as a pattern of commuting between the places they lived and worked. However, they characterized this travel as business-related because the appellant drove the SUV to B.C. dealerships looking for interested purchasers. They travelled to destinations including Seattle, Alaska, Whistler, Slovenia, Croatia, Scotland, and Florida during 2016 and 2017. Each destination seemed to include a vacation component and/or had a strong personal connection such that the business purpose offered to the Court was sometimes strained to the point of not being credible.

[55] With respect to the motor vehicle usage, no contemporaneous logs were kept. However, even if they were, the business purpose would remain questionable. There is no doubt that there was a great deal happening in the appellant's and Mrs. Zupet's lives during 2016 and 2017. They were trying to plan for their retirement years while balancing responsibilities for elderly parents and taking care of their own health, all while living in different provinces. Even if amounts spent were not business in nature, I appreciate that they were not necessarily incurred for enjoyment either.

[56] The amounts invoiced by family members for services were only documented with a year-end invoice and in these circumstances -- with the significant amount of overlap between personal and business elements -- it is not sufficient evidence to establish that these expenses were incurred or that they were incurred for a business purpose.

[57] I am of the view that the amounts conditionally conceded by the respondent are appropriate. In addition, I would allow \$1,840.92 for telephone/utilities expenses in 2017. The respondent's concessions do not propose that an amount be allowed under this category for 2017. However, the SUV was sold in 2017 so I would expect that the appellant required the use of his telephone and utilities to facilitate the eventual sale. In the absence of better evidence and on a principled basis, the \$1,840.92 I am proposing is identical to that being allowed for 2016.

[58] With respect to the remaining disallowed amounts, it is difficult to discern whether they were personal and/or unreasonable in the circumstances. In any event,

the Minister's assumptions have not been rebutted in this regard and these amounts were not incurred for the purpose of gaining or producing income from a business.

VII. Conclusion

[59] The appeal is allowed without costs, on the following basis:

- a) the appellant operated a wholesale luxury auto business in 2016 and 2017;
- b) with respect to the 2016 taxation year, the appellant is entitled to deduct business expenses in the amount of \$3,782.34;
- c) with respect to the 2017 taxation year, the appellant is entitled to deduct business expenses in the amount of \$5,425.52; and

- d) to the extent that the allowed expenses result in a business loss, the appellant is entitled to carry back the resulting non-capital loss to the 2014 taxation year.

Signed at Ottawa, Canada, this 1st day of August 2023.

“Susan Wong”

Wong J.

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COURT FILE NO.: 2021-1503(IT)I
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DATE OF HEARING: September 12 and 13, 2022
REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong
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APPEARANCES:

Counsel for the Appellant: Robert Neilson
Michael I. Stuart (student-at-law)
Counsel for the Respondent: Randall Lau

COUNSEL OF RECORD:

For the Appellant:

Names: Robert Neilson
Michael I. Stuart (student-at-law)

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For the Respondent:

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- ¹ *Canada v. Paletta*, 2022 FCA 86
 - ² Exhibit A-1, page 1
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 - ⁵ Exhibit A-1, page 9
 - ⁶ Exhibit A-1, pages 13 to 13e
 - ⁷ Exhibit A-1, page 9b
 - ⁸ Exhibit A-1, pages 11 and 12
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 - ¹⁵ Exhibit A-2, page 26
 - ¹⁶ *Excise Tax Act*, subsection 148(1)
 - ¹⁷ Exhibit A-1, pages 17 and 18
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 - ²¹ Exhibit A-1, page 32
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 - ²⁴ Exhibit A-2, page 2
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 - ²⁹ Exhibit R-1, Tab 2; Reply to notice of appeal (Schedule A)
 - ³⁰ Exhibit R-1, Tab 3; Reply to notice of appeal (Schedule B)
 - ³¹ Exhibit R-1, Tabs 2 and 3; Reply to notice of appeal (Schedules A and B)
 - ³² Exhibit R-1, Tab 6, pages 427 and 502
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 - ³⁴ Exhibit R-1, Tab 6, page 78
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 - ³⁶ Exhibit R-1, Tab 3, pages 38 and 40; Reply to notice of appeal at paragraph 10(cc)
 - ³⁷ Exhibit R-1, Tab 3, page 37
 - ³⁸ Exhibit R-1, Tab 6, pages 62 and 63
 - ³⁹ Exhibit R-1, Tab 5, page 48
 - ⁴⁰ *Income Tax Act*, section 3; *Canada v. Paletta*, 2022 FCA 86 at paragraph 30
 - ⁴¹ *Income Tax Act*, subsection 9(1); *Canada v. Paletta*, 2022 FCA 86 at paragraph 31
 - ⁴² *Income Tax Act*, subsection 9(2); *Canada v. Paletta*, 2022 FCA 86 at paragraph 31
 - ⁴³ *Income Tax Act*, paragraph 111(1)(a)
 - ⁴⁴ *Stewart v. Canada*, 2002 SCC 46 (CanLII)
 - ⁴⁵ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 50
 - ⁴⁶ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 54
 - ⁴⁷ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 54
 - ⁴⁸ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 50
 - ⁴⁹ *Canada v. Paletta*, 2022 FCA 86 at paragraph 36; *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 60
 - ⁵⁰ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 60
 - ⁵¹ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 55
 - ⁵² *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 55
 - ⁵³ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 55
 - ⁵⁴ *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraphs 58 and 60

⁵⁵ *Income Tax Act*, paragraph 18(1)(a)

⁵⁶ *Income Tax Act*, paragraph 18(1)(h)

⁵⁷ *Income Tax Act*, section 67

⁵⁸ Exhibit R-1, Tabs 2 and 3

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