Docket: 2013-1695(IT)I

BETWEEN:

ROBERTA M. ROGERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on January 23, 2014, at Saskatoon, Saskatchewan.
Before: The Honourable Justice K. Lyons

Appearances:

Agent for the Appellant:	Ronald W. Rogers
Counsel for the Respondent:	Bryn Frape

JUDGMENT

The appeals are allowed on the bases that the amount of $3,206 in 2008 is a business expense, and that the amount of $3,200 in 2009 is not unreported income and is to be deleted from the appellant's taxable income. The reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on those bases. In all other respects, the appeals with respect to the 2008 and 2009 taxation years are dismissed.

Signed at Toronto, Ontario, Canada, this 28th day of March 2014.

"K. Lyons"

Lyons J.

Citation: 2014 TCC 101
Date: 20140328
Docket: 2013-1695(IT)I

BETWEEN:

ROBERTA M. ROGERS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lyons J.

[1] These are appeals from reassessments made by the Minister of National Revenue (the "Minister") for the 2008 and 2009 taxation years. In those years, Roberta Rogers, the appellant, carried on a business of mostly buying, repairing and selling motor vehicles.

[2] In reassessing the appellant, the Minister included unreported business income in the amount of $3,200 in 2009, and disallowed amounts claimed by the appellant as business expenses for salaries and meals for her two sons as follows:

	2008	**2009**
Salary (vehicles)	$4,300	$5,232
"Disallowed meals expenses"	$1,218	$1,240
Meals (50%)		$292

*References to cents have been removed from the above amounts.

FACTS

[3] Ronald Rogers is the spouse of the appellant and stated that he is the most knowledgeable about the appellant's proprietorship business (the "business"). He testified on behalf of the appellant and with her concurrence. He said that he was the only person that maintained the books and records of the business, and did so to the best of his ability to be compliant, but underscored that he is not a professional bookkeeper. At the end of the year, the books and records were taken to an accountant who prepared the tax returns.

[4] He explained that the business was multifaceted but in 2008 and 2009 the business activities involved mostly buying, repairing and selling cars. Previously it had bought and sold boats, skidoos, collectibles, musical instruments and wooden consuls for cars.

[5] The appellant had claimed salary expenses for her two sons in the amounts of $5,500 in 2008 and $5,232 in 2009. The Minister allowed the amount of $1,200 as an expense in 2008, and disallowed the remaining amounts.

[6] The salary and disallowed meals expenses were disallowed on the basis they were not made for the purpose of gaining or producing income from a business under paragraph 18(1)(*a*), and were personal or living expenses of the appellant pursuant to paragraph 18(1)(*h*) of the *Income Tax Act* (the "*Act*"). The Meals expense of $292 was disallowed under section 67.1 of the *Act*.

LEGISLATION

[7] Paragraphs 18(1)(*a*) and 18(1)(*h*), and subsection 67.1(1) of the *Act* read as follows:

> 18.(1) General limitations. 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; …
>
> 67.1(1) Subject to subsection (1.1), for the purposes of this Act, other than sections 62, 63, 118.01 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50 per cent of the lesser of
>
> (*a*) the amount actually paid or payable in respect thereof, and
>
> (*b*) an amount in respect thereof that would be reasonable in the circumstances.

ANALYSIS

[8] The onus is on the appellant to prove the Minister's reassessments are incorrect. Based on the evidence presented, I must determine on the balance of probabilities if the evidence presented by the appellant suffices to demolish any or all of the Minister's assumptions. The appellant can accomplish this where the appellant makes out a prima facie case unless that is subsequently rebutted or the contrary is proved.

[9] Paragraph 18(1)(*a*) prohibits a deduction for an expense unless it was made or incurred by a person for the purpose of gaining or producing income from the business.[1]

[10] I find that some but not all of the amounts claimed by the appellant were expenses incurred for business purposes.

Vehicles expense

[11] The amount totaling $3,206 is a deductible business expense in 2008 because the payments, allocable to the value of vehicles given to their sons in 2008, were for the tasks performed by their sons.[2]

[12] Numerous times throughout his testimony, Mr. Rogers stated that his sons were not paid salaries in 2008 and 2009. He said that he erred in entering those amounts into the books as salaries. His sons had been hired by the business and they were paid up to 2007. After that, they found part-time work at Dairy Queen,

near their parents' home, and were not hired by the business on a scheduled basis. They showed up if and when they had the time to help with the business.

[13] Mr. Rogers stated that to show her gratitude, the appellant gifted a vehicle from the business to each son. However, he also described these as payments in depreciable items that were in need of repair for which the appellant now seeks to deduct as business expenses.

[14] In 2008, Devan received a 1987 Chevrolet Blazer ("Blazer"), and Kurtis received a 1996 Taurus ("Taurus" and collectively "the vehicles"). In his testimony, Mr. Rogers said that the vehicles were given to their sons with the intent of incurring income for the appellant's business in both years. The vehicles were used to go from their homes to the Dairy Queen and then to their parents' home to help their mother in the business whenever they were able, but the sons never received any money in 2008 and 2009 from the business.

[15] The respondent argues that since the vehicles were gifts for work given as a goodwill gesture to family, these are non-deductible personal expenses as contemplated by paragraph 18(1)(*h*) of the *Act*.[3] The respondent's position is premised on Mr. Rogers having indicated that gifts were given in exchange for work. However, it is apparent from the evidence, oral and documentary, and the position advanced by the appellant that the appellant considered the vehicles as payments, in depreciable items, to her sons for tasks performed thus enabling the business to earn income by controlling costs.[4]

[16] Another concern with the respondent's position is that it fails to factor in the detailed explanation of the tasks that the appellant's sons performed. Mr. Rogers testified that they fixed and restored vehicles, sandblasted frames and parts, did metal work and fabrication, welded, replaced ball joints, repaired brakes, changed tires, fixed transmissions, removed and reinstalled engines, dismantled a Chevy half ton, cut out rust, worked on rocker panels and custom made pieces for the floor of the Chevy.

[17] In support, he produced a Task performance chart for each of 2008 and 2009 confirming the tasks performed by his sons.[5] While he candidly acknowledged that the charts were prepared sometime after the fact, he said that the information in the charts is taken from the general ledger which recorded the actual work done by both sons.

[18] The chart for 2008 shows the total amount of $650 as allocable to the Taurus and describes it as the actual cost to the business. In cross-examination, he was unequivocal in admitting that the Taurus was valued at $650 and not $3,000 as recorded on exhibit A5 which he said was an error.

[19] On the same chart, the total amount of $2,556, allocable to the Blazer, was calculated on the same basis as the Taurus. Consistent with that chart, exhibit A5 shows the amount of the Blazer as $2,500. Given that, I infer the value of the Blazer is $2,556 in 2008. I find that the provision of the vehicles as payments, totaling $3,206 in 2008, were for the tasks performed by their sons, and were incurred for the purpose of earning income and deductible as business expenses.[6] Mr. Rogers was forthright in his testimony and was a credible witness.

[20] For the reasons that follow, I find that the total amount of $5,232 is not a deductible business expense in 2009.

[21] The appellant has failed to discharge her onus in failing to provide detailed information and document her affairs in a reasonable manner with respect to 2009. Assertions without proof are not sufficient to support claims.[7]

[22] According to the 2009 chart, the actual cost to the business is shown as $5,232 and described as "gift – business cost." However, other than that assertion and unlike the explanations and documentation provided with respect to the Taurus and Blazer for 2008, no evidence – oral or documentary - was provided with respect to the $5,232 in 2009."

[23] Of some import, during cross-examination Mr. Rogers admitted that other than the Taurus and the Blazer given to theirs sons in 2008, their sons were not given any other vehicles or items for their help nor were they paid money.

[24] I find and conclude that the total amount claimed of $5,232 in 2009 was not substantiated and did not establish any business purpose and is prohibited by paragraph 18(1)(*a*) of the *Act* as a deductible business expense.

Disallowed meals expenses

[25] I find that the disallowed meals expenses, $1,218 in 2008 and $1,240 in 2009, were personal expenses as their sons need for food existed apart from - and were not intrinsic to - the business.[8]

[26] Mr. Rogers testified that the disallowed meal expenses were for fast food lunches, twice weekly, for their sons. He said that these were claimed in monthly batches and entered in the general ledger as $100 each month. The burgers and fries were consumed in the garage by his sons while working on cars or if the appellant needed help.

[27] The appellant again argues that the disallowed meals expenses enabled the business to earn income, therefore the $100 per month for meals for two children should be allowed as business expenses in 2008 and 2009, and the amount is extremely reasonable.

[28] The respondent argues that the disallowed meals expenses for the appellant's sons' lunches were separate from - and does not constitute a need that is intrinsic to - the business, thus were personal expenses prohibited by paragraph 18(1)(*h*). As well, the amounts were unsubstantiated thus prohibited by paragraph 18(1)(*a*) of the *Act*.

[29] Counsel for the respondent relied on the decision of *Scott v Canada*, 98 DTC 6530 (FCA), in which the Federal Court of Appeal recognized that the human need for food exists independent from, and not intrinsic to, the business. At paragraph 6, the Court states:

> … It is not a need that is intrinsic to the business. While appropriate meals may make one available for business or better able to perform at one's business, the need to satisfy thirst and hunger exists independently from the business. …

[30] Since the disallowed meals expenses were to satisfy their sons need to consume food that existed independently of the business and was not intrinsic to any business need or purpose, I find that the disallowed meals expenses are personal expenses that are prohibited by paragraph 18(1)(*h*) of the *Act*, and, in any event, since no receipts or other documentation were available relating to the disallowed meals expenses, the appellant did not meet the onus of establishing that she is entitled to deduct the disallowed meals expenses, thus are prohibited by paragraph 18(1)(*a*) of the *Act*.

Meals

[31] I find that the amount that the appellant may claim in 2009 for meals is limited to the $292, 50% of $584, in 2009.

[32] Mr. Rogers testified that arrangements were made to stay at a private residence for no cost on this trip. He also said that they had obtained car parts in exchange for the price of a meal.

[33] The appellant disputes the reduction by 50% of the amount of $584 incurred and claimed for meals in 2009. She asserts that because she was very careful about other expenses on that business trip the $584 should be allowed as these are very reasonable expenses in 2009.[9]

[34] The difficulty with the appellant's argument is that subsection 67.1(1) of the *Act* allows business persons to deduct only up to 50% of their food and beverage expenses for meals of a business a nature.

[35] Section 67.1 was added to the *Act* in 1988. Prior to the addition of this section, the entire amount of reasonable meal expenses incurred for the purpose of earning income from a business would have been deductible in computing income from that business. However, after February 21, 1994, the limitation was changed to 50% for expenses incurred. Thus that provision restricts claims for meals by 50% of the reasonable amount ($584) that was incurred.

[36] I find that only $292, 50% of the $584, is deductible for meals for the business trip in accordance with section 67.1 of the *Act*. I conclude that the Minister correctly allowed the amount of $292 in 2009.

Unreported Income

[37] I accept that the payment of $3,200 in 2009 belonged to Mr. Rogers, not the appellant.[10]

[38] He testified that in July 2006 he had finished physiotherapy for an injury to his shoulder. He had purchased a 1978 Chevy truck (the "truck") which cost him $3,700 including repairs. He was hired as courier but could not use the truck because the Workers Compensation Board would not allow him to do so.

In 2006, he transferred the truck and a 1991 Thunderbird (the "Thunderbird") to the business and was given a promissory note by the business because it had no money. At some point those vehicles were transferred back to Mr. Rogers. This was corroborated by documentation, including a bill of sale and promissory note, tendered in evidence. In 2008 and 2009 he owned and operated both vehicles. He stated that the payment of $3,200 in 2009, relating to those vehicles, belonged to him, not the business. I find that the source of the $3,200 was with respect to the sale of the truck and the Thunderbird. I conclude that this was not unreported income of the appellant in 2009.

CONCLUSION

[39] The appeals are allowed on the bases that the amount of $3,206 in 2008 is a business expense, and that the amount of $3,200 in 2009 is not unreported income and is to be deleted from the appellant's taxable income. The reassessments are referred back to the Minister for reconsideration and reassessment on those bases. In all other respects, the appeals with respect to the 2008 and 2009 taxation years are dismissed.

Signed at Toronto, Ontario, this 28th day of March 2014.

"K. Lyons"

Lyons J.

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[1] Pursuant to subsection 9(1) of the *Act*, a taxpayer is required to declare as income profit from a business. In calculating profit, the *Act* allows for certain business deductions. Other deductions, are specifically prohibited under paragraphs 18(1)(*a*) and (*h*) of the *Act*.

[2] This amount is comprised of the Taurus valued at $650 and the Blazer which I infer is valued at $2,556. See Exhibits A-3 and A-5. Exhibits A-5 and A-6 show that the Taurus was purchased in 2008 for $1,500 plus parts totaling $350. Exhibit A-3 shows $1,500 plus $350 for Parts minus $1,200 = $650. The amounts for actual cost to the business for the vehicles is identified by Mr. Rogers as $3,206 on the chart for 2008. He also refers to the cost charged noted by the Canada Revenue Agency (the "CRA") in the amount of $4,300 as not a true price and merely a general value. However, the CRA arrived at that based on information provided by the appellant showing a value of $5,500 for both vehicles. See Exhibit A-5, page 3. Mr. Rogers said that someone at the CRA forgot what he showed them. According to the Reply, this amount was arrived at by utilizing the

$5,500 which was subsequently reduced by the $1,200 as noted on Schedule A and subparagraphs 22 (e) to (g) of the Reply.

3 The thrust of the appellant's argument is that while no salary and no money were paid, the vehicles were gifted, to her sons for the tasks performed by them, thereby enabling the business to earn income by keeping costs down and therefore the payments are deductible business expenses in 2008 and 2009. The respondent argues, in the alternative, that if the Court finds that these are business expenses, the amount should be limited to the amount of $650 in 2008 for the value of the Taurus.

4 Concerns were expressed by Mr. Rogers during his testimony that if there are meanings ascribed to words that he might not fully appreciate, he asks that it not undermine his position. Clearly, the appellant's use and understanding of the word gift, is one example and it is not the same as the respondent's use and understanding of the word gift.

5 Exhibits A-3 and A-4.

6 The charts produced by Mr. Rogers showing what he describes as the actual cost to the business, compared to amounts Mr. Rogers estimated, based on rates in the automobile industry, would be the cost or value had the appellant contracted the work to others to perform the same tasks are irrelevant to establishing a claim for business expenses. The charts show $3,206 as the actual cost and $20,400 as the estimated cost in 2008, and $5,232 as the actual cost and $25,350 as the estimated cost in 2009, exclusive of meals.

7 *Njenga v Canada*, 96 DTC 6593 (FCA).

8 The disallowed meals expenses, in the amounts of $1,218 for 2008 and $1,531.96 for 2009, are also identified on the charts, Exhibits A-3 and A-4, as part of the actual cost to the business. It is noted that the amount for 2009 differs from the $1,240 in issue and disallowed by the Minister.

9 The Respondent asserts that only 50% of the $584 is deductible in accordance with section 67.1 of the *Act*.

10 Counsel for the respondent took no position with respect to the $3,200 in 2009 in light of the evidence that Mr. Rogers was the owner of the truck and Thunderbird which was not presented to the CRA.

CITATION:	2014 TCC 101
COURT FILE NO.:	2013-1695(IT)I
STYLE OF CAUSE:	ROBERTA M. ROGERS and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Saskatoon, Saskatchewan
DATE OF HEARING:	January 23, 2014
REASONS FOR JUDGMENT BY:	The Honourable Justice K. Lyons
DATE OF JUDGMENT:	March 28, 2014

APPEARANCES:

Agent for the Appellant:	Ronald W. Rogers
Counsel for the Respondent:	Bryn Frape

COUNSEL OF RECORD:

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