Docket: 2012-5116(IT)I

BETWEEN:

DONNA JANE ROSS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 16, 2014, at Edmonton, Alberta

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Gergely Hegedus

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the Appellant's 2003, 2004, 2005 and 2006 taxation years is dismissed.

Signed at Ottawa, Canada, this 6th day of November 2014.

"V.A. Miller"

V.A. Miller J.

Citation: 2014TCC317
Date: 20141106
Docket: 2012-5116(IT)I

BETWEEN:

DONNA JANE ROSS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] This appeal is with respect to the Appellant's 2003, 2004, 2005 and 2006 taxation years in which the Minister of National Revenue (the "Minister") disallowed certain expenses which she had claimed as employment expenses and medical expenses. The Appellant also requested that she be allowed to deduct the expenses she incurred to restore a farm building.

[2] During the relevant period, the Appellant lived in Camrose, Alberta and was employed as a distance professor by the University of Maryland University College (the "University") which is located in Adelphi, Maryland. She was both a professor and an administrator in the University's virtual Masters of Business Administration ("MBA") Program. According to the Appellant's testimony, this was the first global MBA Program and the terms of her employment required not only that she teach but also that she grow the program.

[3] In performing her duties, the Appellant used teleconferencing, the internet, and emerging technologies with her students and faculty members. She was ordinarily required to carry out her duties away from the University and in different places.

Employment Expenses

[4] The Appellant's contract of employment required that she attend conferences and that she travel to the University at least 3 times a year. She was reimbursed for her travel expenses to and from the University and for conferences.

[5] She was required to incur expenses for:

(i) Computers, printer and computer software;

(ii) Professional development courses and course related material over and above that provided by the University;

(iii) Legal and professional insurance;

(iv) Professional memberships;

(v) Automobile;

(vi) Workspace in the home;

(vii) Direct costs related to research regarding other online programs;

(viii) Shipping and postage fees;

(ix) Supplies such as paper, printer cartridges, pens, telephone, educational cable and internet access; and,

(x) Additional travel.

[6] During the relevant period, the amount of employment expenses claimed, allowed and disallowed were as follows:

	Claimed	Allowed	Disallowed
2003	$31,555.01	$16,510.54	$15,044.47
2004	39,737.72	17,009.25	22,728.47
2005	25,984.85	12,308.45	13,676.40
2006	21,277.53	13,779.95	7,497.58

[7] The details of the employment expenses which were disallowed were as follows:

	2003	2004	2005	2006
Food & Beverage	$336.58	$2,433.92	$234.28	$1,204.03
Business Taxes	-25.24	1,031.13		
Office rent	-900.00	5,916.96	629.49	4,165.36
Interest	4,306.39	4,309.15	4,784.77	
Computer CCA	849.51	1,444.16	1,010.92	
Other travel Expenses	7,755.15	5,453.60	3,454.46	-1,204.02
Advertising & promotion				-965.29
Work space in Home	2,722.08	2,139.55	3,562.48	4,297.50
Total	$15,044.47	$22,728.47	$13,676.40	$7,497.58

[8] The Appellant brought no evidence to show that she should be allowed any expenses beyond those which had already been allowed by the Minister.

[9] She stated that she was required to attend conferences as part of her duties but only a portion of the expenses she incurred were reimbursed by the University. However, the Appellant was not able to give any specifics of the conferences she attended, the expenses incurred or the amounts reimbursed for conferences. Her evidence was vague and unsupported by any documentary evidence.

[10] There was no testimony or documentary evidence presented with respect to the expenses for “Food & Beverage” or “Business Taxes”. The Respondent submitted documents to show that the Appellant had been reimbursed by the University for her travel in the amount of $8,106.36, $3,910.55, $6,192.39 and $4,084.55 in 2003, 2004, 2005 and 2006 respectively. There was no evidence whether these reimbursements pertained to travel for conferences or travel to and from the University or both.

[11] In 2003, 2004 and 2005, the Appellant's spouse lived and worked in the city of Sharjah in the United Arab Emirates. She travelled to be with her spouse and claimed these travel expenses against her employment income. All of the disallowed Other Travel Expenses were the Appellant's costs to travel to Sharjah.

[12] The Appellant stated that in order to finance her travel to Sharjah, she had to use her credit card and borrow money from the bank. The Interest amount she claimed during this period was the interest on her credit card and the bank loan. The Minister correctly disallowed both the Other Travel Expenses and Interest expenses as employment expenses. They were the Appellant's personal expenses.

[13] The computer equipment purchased by the Appellant was a capital expenditure and its cost is not deductible because the Appellant was an employee: *Emmons v R*, 2006 TCC 269.

Work Space in the Home

[14] The Appellant agreed that her home measured 1850 square feet in 2003 and 2540 square feet in 2004, 2005 and 2006 and that her office measured 600 square feet in 2003 and 800 square feet in 2004, 2005 and 2006. There was no dispute that the Appellant was required by her contract of employment to incur expenses for an office in her home and she was not reimbursed for these expenses. The dispute was whether the Appellant could include a portion of the cost of insurance, property taxes and mortgage interest for her home in the calculation of this expense.

[15] The relevant portions of subparagraph 8(1)(*i*)(ii) and subsection 8(2) of the *Income Tax Act* (the *"Act"*) provide:

> 8 (1) Deductions allowed -- In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:
>
> …
>
> (*i*) dues and other expenses of performing duties -- an amount paid by the taxpayer in the year, or on behalf of the taxpayer in the year if the amount paid on behalf of the taxpayer is required to be included in the taxpayer's income for the year, as

…

> (ii) office rent, or salary to an assistant or substitute, the payment of which by the officer or employee was required by the contract of employment,
>
> (2) General limitation -- Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

[16] This Court has confirmed that a deduction for office rent for an employee cannot include the cost of insurance, property taxes and mortgage interest for the employee's home. See *Horbay v R*, [2003] 2 CTC 2248 (TCC) and *Lester v R*, [2011] GSTC 153 (TCC) where the following quote was relied on to interpret subparagraph 8(1)(*i*)(ii) of the *Act*:

> The Court accepts the interpretation adopted by McNair, J. of the Federal Court in *Thompson v. Minister of National Revenue* (1989), 89 D.T.C. 5439 (Fed. T.D.) in which the appeal was on an identical basis. McNair, J. referred to the judgment of Rip, T.C.J. in *Felton v. Minister of National Revenue* (1989), 89 D.T.C. 233 (T.C.C.) and stated at pages 5443 and 5444:
>
> > The strict *ratio* of the case is contained in the following passage from the judgment of Rip T.C.J. at pp. 234-35:
> >
> > > The words "rent" and "loyer" in subparagraph 8(1)(*i*)(ii) contemplate a payment by a lessee or tenant to a lessor or landlord who owns the office property in return for the exclusive possession of the office, the property leased by the latter to the former.
> >
> > The payments by Mr. Felton to a money-lender of interest on money borrowed, to a utility supplier for the utility, to maintenance personnel for maintenance, to an insurer for insurance and to a municipality in respect of taxes are not payments of rent by a lessee to a lessor. None of these payments by Mr. Felton was for the use or occupancy or possession of property owned by another person.
> >
> > Obviously, the judges of the Tax Court in both *Philips* and *Felton* applied the plain meaning rule of statutory interpretation in determining that the home office expenses of an employee were not deductible as office rent under s. 8(1)(*i*)(ii), notwithstanding the illogical unfairness of the section in permitting the selfsame deduction in the case of business or professional persons.

This modern rule for the interpretation of taxing statutes was admirably expounded by Estey J. in *Stubart Invetments Ltd. v. The Queen,* [1984] 1 S.C.R. 536, 84 DTC 6305. The learned judge recalled the strict rule of statutory interpretation invoked for many years, whereby any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer. He pointed out that the converse was true where a taxpayer sought to rely on a specific exemption or deduction provided in the statute. In that case, the strict rule required that the taxpayer's claim fall clearly within the exempting provisions, and any doubt in that regard had to be resolved in favour of the Crown. Indeed, he perceived the introduction of exemptions and allowances as marking "the beginning of the end of the reign of the strict rule". The learned judge stated the following conclusion in the S.C.R. report of the case at p. 578 (see DTC at p. 6323):

> Professor Willis, in his article, *supra*, accurately forecast the demise of the strict interpretation rule for the construction of taxing status. Gradually, the role of the tax statute in the community changed, as we have seen, and the application of strict construction to it receded. Courts today apply to this statute the plain meaning rule, but in a substantive sense so that if a taxpayer is within the spirit of the charge, he may be held liable. See Whiteman and Wheatcroft, *supra*, at p. 37.
>
> While not directing his observations exclusively to taxing statutes, the learned author of *Construction of Statutes* (2nd ed. 1983), at p. 87, E.A. Dreidger, put the modern rule succinctly:
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

The question remains: Are the amounts claimed for home office expenses in the 1980 and 1981 taxation years deductible as "office rent" under s. 8(1)(*i*)(ii) of the *Income Tax Act*? In my view, the plain meaning of the words of the statutory provision read in context with the scheme of the Act as a whole precludes any possibility of an affirmative answer to the question. This was the approach adopted by the judges of the Tax Court of Canada in *Phillips* and *Felton*, with which I fully concur. In the result, I find that the Minister was correct in his reassessments of the

> defendant's income for the 1980 and 1981 taxation years, save only for the amounts claimed for utilities, heating and hydro in 1980.

[17] In accordance with *Horbay* and *Lester*, the Minister correctly allowed the Appellant to deduct a portion of the utilities expenses for her home and disallowed her deduction of insurance, property taxes and mortgage interest expenses.

Medical Expenses

[18] In 2004, 2005 and 2006, the Appellant claimed a medical expense tax credit for expenses in respect of her mother who was her dependant. Although the Minister allowed only some of the amounts claimed as medical expenses, the Appellant is no longer disputing the disallowed amounts with respect to her mother.

[19] The Appellant also claimed a medical expense tax credit in respect of herself and her spouse. The amount of medical expenses claimed were $19,871.32, $10,629.57, $9,205.87 and $11,819.84 in 2003, 2004, 2005 and 2006 respectively and the amounts of $19,355.19, $7,944.98, $7,846.37 and $11,438.52 for 2003, 2004, 2005 and 2006 were disallowed by the Minister.

[20] As stated earlier, the Appellant did not submit any documents to support her appeal. However, the Respondent tendered copies of some of the documents which the Appellant had previously given to the Minister. These documents showed that the Appellant had claimed as medical expenses the cost of a Chi Machine with accessories, a Viasonic LCD computer Monitor, an ergonometric pillow, Thermophore Heat Pack, biofeedback therapy, homeopathy remedies, supplements, Ayurveda treatments, Reiki treatments, Advil Cold & Sinus, facial, body massages, hand massages, neck massages, fitness classes and premiums paid to Alberta Health Care Insurance Plan.

[21] The Appellant stated that in 2003 she sustained a head injury on Northwest Airlines when a heavy suitcase fell on her head. The blow to her head caused her to have severe headaches, muscular pain and endocrine dysfunction. She stated that she didn't need medication; she needed alternative health care which alleviated her pain and enabled her to become well again within one and one half years. She continued to use fitness and alternative remedies to prevent disease and to promote her physical and mental health. This, she stated, was in accord with the *Canada Health Act* and the policy for Canadian health care.

[22] According to section 3 of the *Canada Health Act*, the primary objective of the Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers. However, a taxpayer can only deduct the expenses she incurred to promote and restore her physical and mental health if it is permitted by the *Act*. Unfortunately for the Appellant, the *Act* does not mirror the policy of the *Canada Health Act*.

[23] For ease of reference, I have grouped some of the claimed medical expenses. I will refer to the Chi Machine with accessories, Viasonic LCD computer Monitor, ergonometric pillow and Thermophore Heat Pack as "Devices"; the biofeedback therapy, Ayurveda treatments and Reiki treatments as "Therapies"; and, the supplements, Advil Cold & Sinus, and homeopathic remedies as "Substances". The facials, body massages, hand massages and neck massages will be referred to as "Massages". The fitness classes and premiums paid to Alberta Health Care Insurance Plan will be addressed individually.

[24] The definition of "medical expense" in subsection 118.2(2) of the *Act* lists the specific types of costs which are eligible for the medical expense tax credit. This list is exhaustive and only the cost of those items listed will qualify as a medical expense: *Roberts v The Queen*, 2012 TCC 319. This was clearly stated by the Federal Court of Appeal in *Ali v Canada*, 2008 FCA 190 at paragraph 17:

> With respect to the legislative scheme at issue in this case, the definition of "medical expense" in subsection 118.2(2) of the ITA contains an enumeration of the specific types of costs that are eligible for the METC. This indicates a legislative purpose of limiting the availability of the METC to a specific list of items.

Devices and Fitness Classes

[25] The cost of a device or equipment used by a patient is a medical expense if the device meets the conditions in paragraph 118.2(2)(*m*) of the *Act*. It reads:

> (2) Medical expenses -- For the purposes of subsection (1), a medical expense of an individual is an amount paid
>
> (*m*) [prescribed in regulations] -- for any device or equipment for use by the patient that
>
> (i) is of a prescribed kind,

> (ii) is prescribed by a medical practitioner,
>
> (iii) is not described in any other paragraph of this subsection, and
>
> (iv) meets such conditions as may be prescribed as to its use or the reason for its acquisition,
>
> to the extent that the amount so paid does not exceed the amount, if any, prescribed in respect of the device or equipment;

[26] Section 5700 of the *Income Tax Regulations (Regulations)* provides that for the purposes of paragraph 118.2(2)(*m*) of the *Act*, a device or equipment is prescribed if it is described within one of the numerous paragraphs of that section. None of the Devices purchased by the Appellant are listed in section 5700.

[27] Likewise, fitness classes are not listed in subsection 118.2(2). It is my view that this means that the cost of the Devices and the cost of the fitness classes are not considered to be medical expenses for the purposes of the *Act*.

Therapies

[28] According to paragraph 118.2(2)(*l.9*), the cost of therapy can be a medical expense. That paragraph provides, in part:

> (2) Medical expenses -- For the purposes of subsection (1), a medical expense of an individual is an amount paid
>
> (*l.9*) [therapy] -- as remuneration for therapy provided to the patient because of the patient's severe and prolonged impairment, if
>
> (i) because of the patient's impairment, an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the remuneration is paid,
>
> (ii) the therapy is prescribed by, and administered under the general supervision of,
>
> (A) a medical doctor or a psychologist, in the case of mental impairment, and
>
> (B) a medical doctor or an occupational therapist, in the case of a physical impairment,

[29] According to the facts presented in this appeal, the Appellant did not have a severe and prolonged impairment in accordance with section 118.3 of the *Act* and the Therapies were not administered under the general supervision of a medical doctor or an occupational therapist. Clearly, the cost of the Therapies provided to the Appellant does not qualify as a medical expense.

Substances

[30] A medical expense for substances is allowed in paragraph 118.2(2)(*n*) which reads:

> (2) Medical expenses -- For the purposes of subsection (1), a medical expense of an individual is an amount paid
>
> (*n*) [drugs] -- for
>
> (i) drugs, medicaments or other preparations or substances (other than those described in paragraph (k))
>
> (A) that are manufactured, sold or represented for use in the diagnosis, treatment or prevention of a disease, disorder or abnormal physical state, or its symptoms, or in restoring, correcting or modifying an organic function,
>
> (B) that can lawfully be acquired for use by the patient only if prescribed by a medical practitioner or dentist, and
>
> (C) the purchase of which is recorded by a pharmacist, or
>
> (ii) drugs, medicaments or other preparations or substances that are prescribed by regulation;

[31] It is clear from the Federal Court of Appeal decisions in *Ali v R*, 2008 FCA 190, *Tall v R*, 2009 FCA 342 and *Ray v R*, 2010 FCA 17 that for the purposes of subparagraph 118.2(2)(*n*)(i), the cost of substances is a medical expense only if the purchase is "recorded by a pharmacist". None of the Substances in question meet that requirement.

[32] Subparagraph 118.2(2)(*n*)(ii) of the Act does not apply to this appeal. It is only effective for expenses incurred after February 26, 2008.

Massages

[33] The cost of the Massages is a medical expense only if the massage therapists were medical practitioners as required by paragraph 118.2(2)(*a*) of the *Act*. It provides:

> (2) Medical expenses -- For the purposes of subsection (1), a medical expense of an individual is an amount paid
>
> > (*a*) [medical and dental services] -- to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person (in this subsection referred to as the "patient") who is the individual, the individual's spouse or common-law partner or a dependant of the individual (within the meaning assigned by subsection 118(6) in the taxation year in which the expense was incurred;

[34] For the purposes of paragraph 118.2(2)(*a*), a massage therapist is a medical practitioner only if she/he is authorized to practise as such according to the laws of the jurisdiction where the services were rendered. See subsection 118.4(2) of the *Act*.

[35] Some of the receipts for massages did not contain an address. According to those which did, the Appellant received massages in Dubai, Sharjah and Alberta. There was no evidence that a massage therapist in Dubai and Sharjah is a medical practitioner.

[36] In *Pagnotta v The Queen*, [2001] 4 CTC 2613 (TCC), Campbell Miller, J, found that a massage therapist in Alberta did not qualify as a medical practitioner for the purposes of paragraph 118.2(2)(*a*) of the *Act*. In his analysis he referred to both the *Medical Professions Act* and the *Health Disciplines Act* of Alberta. I note that the *Medical Professions Act* was repealed and replaced by the *Health Professions Act*, RSA 2000, c H-7, but that did not occur until December 15, 2009. All of the *Health Disciplines Act*, except the Schedule, was also replaced by the *Health Professions Act* and that occurred on December 31, 2001.

[37] According to the *Medical Professions Act*, a medical practitioner is a person registered in the Alberta Medical Register. Section 21 of that statute provides that only persons who hold a certificate of registration from the Medical Council of Canada and has met the education and training requirements set out in the by-laws qualify to be registered in the Alberta Medical Register.

[38] There was no evidence concerning any of the individual massage therapists or whether they were registered or qualified to be registered in the Alberta Medical

Register. I have concluded that they were not registered and that they did not qualify to be registered in the Alberta Medical Registry.

[39] Counsel for the Respondent referred to the *Health Professions Act*. However, that statute does not use the term "medical practitioner". It refers to "professional service", "regulated member" and "regulated profession". Those terms are defined in section 1(1) as follows:

> (ff) "professional service" means a service that comes within the practice of a regulated profession;
>
> (ll) "regulated member" means a person who is registered as a member under section 33(1)(a);
>
> (mm) "regulated profession" means a profession that is regulated by this Act;

[40] Paragraph 33(1)(*a*) of the *Health Professions Act* reads:

> 33(1) A council
>
> > (*a*) must establish, in accordance with the regulations, a regulated members register for one or more categories of members who provide professional services of the regulated profession, and …

[41] In Alberta there are 30 different health professions that are regulated by 28 colleges in accordance with the *Health Professions Act*. Massage therapy is not a profession regulated by the *Health Professions Act*. Nor is massage therapy designated as a health discipline under the Schedule which remains in force with respect to the former *Health Disciplines Act*.

[42] I have concluded that the massage therapists were not medical practitioners in accordance with paragraph 118.2(2)(*a*) and the cost of massages was not a medical expense.

Premiums for Health Insurance

[43] The cost of health plan premiums is a medical expense if the premiums are paid for a private health services plan. Paragraph 118.2(2)(*q*) provides:

> For the purposes of subsection (1), a medical expense of an individual is an amount paid

> (*q*) [health plan premiums] -- as a premium, contribution or other consideration under a private health services plan in respect of one or more of the individual, the individual's spouse or …

[44] In this appeal, the premiums are not medical expenses as they were paid in respect of the Alberta Health Care Insurance Plan which is a public health insurance plan.

Restoration of Farm Building

[45] Counsel for the Respondent stated that the Appellant did not claim an expense in her tax returns for the restoration of a farm building. The Appellant says that she did. The Notice of Appeal does not mention the restoration but the Reply to Notice of Appeal does. However, it does not give a cost for the restoration. The assumptions in the Reply are:

> 10(w) The Appellant did not operate a farming business during the 2003, 2004, 2005 and 2006 taxation years; and
>
> 10(x) Amounts incurred by the Appellant for restoring farm buildings were not incurred to earn income from business or property.

[46] The Appellant agreed that she did not operate a farming business in any of the relevant years.

[47] It was her evidence that there was a farm building which her parents had built many years ago. The building was on the verge of falling down and she was able to get permission to move it. She paid to have it attached to her home and to have it restored. Her spouse used the first floor of the barn for his office and the upstairs part of the barn became part of the Appellant's office.

[48] The Appellant was not able to tell me how much the restoration cost except that it was "$3,000 a month for x number of months to the main labourer" .

[49] Regardless of the cost, the amount spent to restore the farm building is a personal expense and it is not deductible.

Late Filing Penalty

[50] The Appellant stated that she hired DiGirolamo & Company Tax Lawyers to prepare her income tax returns. She gave them all the necessary documentation so

that her 2006 return could be filed on time. However, her 2006 return was filed late.

[51] It is my view that this is an issue between the Appellant and her tax preparers and not one that I can resolve.

[52] For all of the reasons stated above, the appeal is dismissed.

Signed at Ottawa, Canada, this 6th day of November 2014.

"V.A. Miller"

V.A. Miller J.

CITATION:	2014TCC317
COURT FILE NO.:	2012-5116(IT)I
STYLE OF CAUSE:	DONNA JANE ROSS AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Edmonton, Alberta
DATE OF HEARING:	April 16, 2014
REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
DATE OF JUDGMENT:	November 6, 2014

APPEARANCES:

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