

Docket: 2004-3294(IT)I

BETWEEN:

GEORGE APRILE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on February 21, 2004 at Toronto, Ontario

Before: The Honourable Justice R.D. Bell

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Kandia Aird

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JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2001 taxation year is allowed and the reassessment is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 29<sup>th</sup> day of March 2005.

"R.D. Bell"

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Bell, J.

Citation: 2005TCC216  
Date: 20050329  
Docket: 2004-3294(IT)I

BETWEEN:

GEORGE APRILE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Bell, J.**

[1] The Appellant, for his 2001 taxation year, claimed a deduction from employment expenses in the amounts of \$24,000 made up of \$10,000 with respect to wages paid to his wife, and \$7,000 in respect of each of his two sons. The Respondent allowed the \$10,000 paid to his wife but disallowed the remaining \$14,000.

[2] He testified that the sons were 11 and 13 years old respectively in the taxation year in question and that they worked photocopying, stuffing and stamping envelopes for five different mailings in that year, placing ten sheets of paper into each envelope respecting mailing to more than 2,500 partners. This totalled 500 hours for each son. The Appellant testified further that there were two other meetings in the year respecting limited partnerships and that each son worked about 50 hours for each of those two meetings. That totalled an additional 100 hours for each child. He stated further that his sons helped move files to storage about six hours per month and performed a number of other services for him. He said that the time devoted to these other services was in excess of 100 hours.

[3] He testified that he asked his employer if he could hire someone to perform these services and received a positive response. He stated further that he did not give cheques to his sons but that he bought them snowmobiles, motorcycles and

gasoline for those machines and that he gave them cash, all to a value of at least \$7,000. He said that he determined the value of this compensation at the rate of \$10 per hour for his sons' work.

[4] Respondent's counsel produced a form issued by Canada Revenue Agency ("CRA") bearing number T2200(01) entitled "DECLARATION OF CONDITIONS OF EMPLOYMENT". That contained the Appellant's name and social insurance number and was signed, apparently, by an authorized person for his employer. It furnished the following information:

1. His contract required him to pay his own expenses.
2. He was not normally required to work away from his place of business.
3. The employment period in question was the 2001 calendar year.
4. He did not receive an allowance.
5. He did not receive repayment of expenses.
6. The Appellant was required to pay other expenses for which he did not receive any allowance or repayment, namely "assistant & auto expenses".
7. He was not paid by commissions or similar amounts according to the volume of sales made or in contracts negotiated.
8. He was not required to be away for at least 12 hours from the area of the employer's business.
9. He was required to

"rent an office away from your place of business, or use a portion of his ... home"

and pay for a substitute or assistant. He was not required to pay for supplies that he used directly in his work. He was not repaid for the above expenses.

[5] The Appellant submitted simply that he was authorized by this form to do exactly what he did and that the \$10,000 paid to his wife was allowed as a

deduction but that officials of CRA stated that they did not want to hear anything from him about the nature of the compensation he paid his sons. He said that such officials wanted to see cheques and or receipts. Respondent's counsel referred to Section 8(1)(i)(ii) of the *Income Tax Act* which reads as follows:

(1) 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:

...

(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,

Respondent's counsel then advanced the simple submission that the amounts paid to his sons were not allowed as deductions because there were no "documents". By that it appears that she meant cheques or other proof of payment to the sons.

#### ANALYSIS AND CONCLUSION

[6] Respondent's counsel did not agree with the proposition that someone could be paid in kind for services resulting in the deductibility of such amounts. She submitted that the amount had to be paid in cash or by cheque with proof of payment. She did not cross examine the Appellant with respect to the services performed by his sons. She did not cross examine him on his evidence that he had provided them with the foregoing assets as consideration for the enumerated services performed by them for him.

[7] It is clear that an amount can be paid in kind as well as in money. I have no doubt about the Appellant's credibility. I accept the *unchallenged* evidence given by him as above set forth and I conclude that the amount of \$7,000 claimed by him in respect of each of his sons is made up of "amounts paid by the taxpayer in the year" 2001 as those quoted words appear in Section 8(1)(i) of the *Act*.

[8] Accordingly, the appeal is allowed.

Signed at Ottawa, Canada, this 29<sup>th</sup> day of March, 2005.

"R.D. Bell"

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Bell, J.

CITATION: 2005TCC216

COURT FILE NO.: 2004-3294(IT)I

STYLE OF CAUSE: George Aprile v. The Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 21, 2005

REASONS FOR JUDGMENT BY: The Honourable Justice R.D. Bell

DATE OF JUDGMENT: March 29, 2005

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Kandia Aird

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada