Docket: 2006-902(IT)I

BETWEEN:

TARIK ALSAADI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on March 20, 2007, at Toronto, Ontario

By: The Honourable Justice M.A. Mogan

Appearances:

Agent for the Appellant:	Costa A. Abinajem
Counsel for the Respondent:	Josh Hunter

JUDGMENT

The appeals from reassessments made under the *Income Tax Act* for the 2002 and 2003 taxation years are dismissed.

Signed at Ottawa, Canada, this 28th day of June, 2007.

"M.A. Mogan"

Mogan D.J.

Citation: 2007TCC384
Date: 20070628
Docket: 2006-902(IT)I

BETWEEN:

TARIK ALSAADI,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Mogan J.

[1] In each of the 2002 and 2003 taxation years, the Appellant was well employed in the City of Mississauga, earning salary income in excess of $60,000. In computing income for those two years, the Appellant deducted an amount which he called a loss in respect of a business which he started in 2000, and continued to operate over a six-year period until 2005. Revenue Canada reassessed the Appellant to disallow the deduction of the amounts claimed as business losses, and the Appellant has appealed to this Court from those reassessments. He has elected the informal procedure.

[2] The amounts involved are significant. In the year 2002, the Appellant had employment income in the range of $65,000 to $75,000 and he deducted a business loss of $17,083. In 2003, he again had employment income in that range, and deducted a business loss of $23,371.

[3] By way of background, the Appellant and his wife came to Canada from Syria in 1996, claiming refugee status. He spent a long time being qualified as a landed immigrant, and in that time he could not travel, but he did find useful employment soon after coming to Canada. In 2004, he was granted landed immigrant status and in 2006, he became a Canadian citizen. He made it clear how much he treasures his Canadian citizenship.

[4] In 2000, the Appellant registered the business name “TH Import/Export” as a sole proprietorship in Ontario, and was granted an Ontario business license under that name on December 15, 2000. A business name was created, but the Appellant did not incorporate. As the name implies, he wanted to get into the import/export business. He hoped he would be able to export goods to his mother country, Syria, because he knew what kind of things people in Syria might want to buy from Canada which would not be available in Syria and, *vice versa*, certain products that might be purchased at a modest price in Syria, and brought to Canada for resale.

[5] The Appellant’s inability to travel in the years 1996 to 2004 meant that he could not go back to Syria to develop a market but he had to work from Canada via email and telephone. When he became a Canadian citizen, he went to Sweden in 2006, and met with some people he knew, but that did not result in any significant sales.

[6] In the years under appeal, there were no significant sales abroad, nor was there evidence of importing anything of significance. The sales which were claimed to be effected in connection with this activity were really goods purchased in and around Mississauga, Ontario and sold either in the Appellant’s home primarily, or in activities related to the neighbourhood where he lived. What the Appellant claimed to be the thrust of his business when he started it (import/export) was not an activity that ever materialized in terms of importing goods for sale in Canada, or exporting goods for sale outside of Canada.

[7] The activity that the Appellant described was what I would call domestic sales in the home. He said that he and his wife would have what he called home parties and, in connection with those, he or his wife would buy goods at retail at stores such as Wal-Mart, which is a well known discount vendor in Canada and the US. They would go to certain stores that had special sales, particularly early Saturday mornings or late Sunday mornings, and buy goods that were on sale at bargain prices. They would then bring them to their home and invite about 20 people over for what they call a home party, and have these items for sale in their home.

[8] The Appellant’s wife also testified. She described herself as having taken an accounting course at Sheridan College, a community college in Mississauga. She said that she kept the books for this activity and in particular, at these home sales she would record the items sold and the amounts received. Every sale was in cash and she said she collected the cash and sometimes would deposit it or use a portion of it to go out and buy more goods. How she was able to keep an account of this is

puzzling because, generally speaking, a person has to be a meticulous bookkeeper to take cash in on one afternoon or evening, and then use some of it for business purchases in the next few days. She said that she noted each sale in her book, but she did not bring it to Court, nor was there any evidence of the most elementary recordkeeping in connection with this activity.

[9] Buying at retail for resale in the home did not sound like a reasonable proposition. This is only an inference I draw based on common sense, for people to buy at retail and sell at retail in their house, when the people invited to the home could buy the same product by going to Wal-Mart, or other retail stores at a time when they were having sales. Also, there did not seem to be any distinction between buying what I would call a packaged good, like soap, cereal, cosmetics or laundry detergent, where a person can really buy it, confident in keeping the product, and buying other things like garments which might have to be adjusted or exchanged. I should think that there would be a great distinction in the retail market as to what kind of products you could safely buy for resale in the home, and what would not be a safe buy at all.

[10] There was no evidence from the Appellant and his wife, who both testified in English, although their mother tongue is not English, that they made these distinctions and were careful about doing so. The invoices presented as evidence of their business were in many respects evidence of ordinary household products that would be purchased to maintain any home. The Appellant and his wife have three sons between the ages of 14 and three; the youngest being born in 2004.

[11] I concluded from the evidence of the Appellant and his wife that the activity did not have the badges of business for a variety of reasons. One is the unlikelihood of operating a successful business by buying at retail and selling at retail in the home. Another reason is based on credibility. There were a couple of areas where I did not believe the wife. She said that early on, when she would go to Wal-Mart or any store where she bought some products for personal use, and other products on the same bill for business use, she would put the letter “P” beside personal use, and the business ones she would either circle or mark differently. In all of the documents presented to Revenue Canada, some of which were photocopied and entered as Exhibit R-7, there was no indication of that.

[12] When I put this thought to the agent who argued this appeal, he said it was because all those invoices had only business purchases on them, so they did not have to be marked with a “P”. If that is the way she did it, I would have thought that at the time the documents had been presented to Revenue Canada, they would have been

anxious to demonstrate items marked with a “P” for personal use and others marked with a circle for business use, to demonstrate how careful they were being. The fact that the Appellant produced in Court many new invoices, which had been marked “P” or circled for business purposes, is not as credible because we do not know when the “P” was put on. It could have been put on last weekend. I would have found this whole area of evidence more believable if there had been documents submitted to Revenue Canada showing that distinction being made, when so many of the invoices reviewed by Revenue Canada were items of ordinary household use.

[13] That was brought out by the auditor from Revenue Canada who also testified. He said that when he was first asked to review the returns for 2002 and 2003, he sent a letter to the Appellant on August 31, 2004 asking for invoices, the business registration certificate, banking records and for the completion of a questionnaire. There was a meeting about two months later on November 18 with the Appellant and his representative, at which these items were discussed and again, even then, in the questionnaire of 2004, many of the answers had this import/export phrase as if that were the current activity. But today, almost all of the evidence in Court related to home parties.

[14] I did not find the Appellant or his wife believable. They said they would have home parties twice a month about every two weeks. They would invite 20 people, and at least 10 would show up. Sometimes people would show up with friends. That takes a lot of organization. People who are going to have two parties a month, or at least 24 a year, I believe would have a diary or a calendar or an appointment book. They would log when these parties were held, about how many came, and if there were costs of feeding them (perhaps ordering in pizza). There was a total absence of that kind of recordkeeping. Just bland statements floating in the air that they would have these home parties and they would be selling.

[15] What really puts a cloud over the Appellant’s case is that, among the expenses claimed in the two years under appeal was a so-called administration fee paid to the Appellant’s wife ($8,100 in 2002 and $8,700 in 2003) because she worked so hard. The evidence was that she worked harder than he did, and she indicated how many hours she put in. Maybe the business was hers and not his. Maybe she ought to have been regarded as the proprietor. If one steps back and looks at the situation cynically from an income tax point of view, it does not make much sense for her to own the so-called business because she does not have any other income that I am aware of. By paying his wife $8,000 a year, and claiming a loss, the $8,000 comes off the husband’s income, which is in the generous range of $65,000 to $75,000, and it is reported by the wife. She did acknowledge that she had filed tax returns reporting

these amounts but unless she had other income, such an amount would be virtually tax-free in her hands.

[16] What really makes the compensation to the wife unreasonable is that in the year 2002 when she was paid a management fee of $8,100, the gross revenue from the so-called business was $1,429. In 2003, when she was paid a management fee of $8,700, the gross revenue of the business was $3,200. Those amounts, in a tightly knit family of husband, wife and three sons, are so very unreasonable, they do not make any sense at all in terms of trying to get a business off the ground and make it operate to earn a profit.

[17] Surely, at that point in time, if they were anxious to show a profit in this business, they would consider that their efforts were what is sometimes called sweat equity, and did not require monetary compensation, either to the husband or to the wife. It was those amounts which the Appellant claims that he paid to his wife that really make this whole enterprise so unbelievably unreasonable. I do not think there was a commercial venture here at all.

[18] The Revenue Canada auditor testified that although $800 was claimed for advertising in 2002, he could find no vouchers to support it. Also, he said that there was an interest charge of $980 with vouchers, however, he could not find where the money was borrowed in connection with this business. Naturally, he disallowed the $8,100 payable to the wife. There was motor vehicle expense of $4,100 which had a voucher, but he disallowed it all because he could not find how the business would need a car driving around that much to produce $1,400 worth of revenue.

[19] And 2003 is similar. Advertising was claimed at $642, but the auditor could find no vouchers for it. Indeed, the evidence was that the Appellant had no record of who his customers were. He and his wife would phone up people but there is no customer list, no continuous solicitation record, no diarization record of who comes, who buys, who to rely on, who might come back to buy again, and who not to invite back because they never buy anything. In 2003, the interest claimed was $3,144. Again, the auditor acknowledged it had a voucher, but he did not allow any of it as an expense because he could not find how the money borrowed which caused that interest to be paid was in any way tied in with this so-called business. He naturally disallowed the management fee of $8,700 to the wife. He found that the motor vehicle expenses of $2,512 had a voucher, but he disallowed it all for the same reasons as the previous year. Why does a person need to drive around to the extent of $2,500 for a couple of parties every month?

[20] If there were in fact two parties every month, and I have grave doubts concerning the credibility of both the Appellant and his wife as to whether they had 24 parties a year, the revenue does not look like they had. But even if they did, they should have concluded long ago that those parties were not a reasonable means of generating income.

[21] The *Stuart* case, recently decided in the Supreme Court of Canada, has a bearing on this kind of activity because it states, in effect, that unless there is a hobby, a person is entitled to deduct business losses if it can be shown that the activity producing the losses was carried out in a commercial manner and had the badges of business. I do not find that level of commercial activity here; certainly not enough to justify the losses involved.

[22] The Respondent put into evidence the losses claimed by the Appellant from the so-called business in adjoining years. The amounts there are revealing:

Year	Total Revenue	Loss
2000	375	7,965
2001	Nil	14,780
2002	1,429	17,083 – under appeal
2003	3,200	23,371 – under appeal
2004	5,242	13,695
2005	6,412	16,418

With respect to the two years under appeal, I might observe that in 2003, the loss was more than seven times the revenue, and in 2002 the loss was about eleven times the revenue. Also, in 2004 the revenue was up to $5,242 and the loss claimed was $13,695. In 2005, the revenue was up to $6,412 but the loss was increased to $16,418. In the six years shown above, the total revenue was approximately $16,700, which included 2001 with no revenue at all, but the losses deducted against the Appellant's income were approximately $93,300. The aggregate losses again are more than five times the revenue generated in those years.

[23] Including the years under appeal, there was not enough commercial activity nor enough badges of business for me to find that the activity was carried on like a business. It seems to me that the object of the activity in the first four years was having a loss to deduct against what would otherwise be a generous salary in the hands of the Appellant. There was no evidence of recordkeeping, a diary, a calendar, orderly deposit slips, a separate bank account; nothing to indicate that the Appellant

and his wife were really trying to keep the accounting records for this activity separate and distinct from what I would call ordinary housekeeping.

[24] I accept without qualification the credibility of the auditor, Mr. Patel. I was satisfied that he went through this matter professionally and carefully from his description of the invoices such as Canadian Tire, Home Depot, Wal-Mart, Sears and retail stores that one visits in the normal course of operating a family household. There were no invoices to show buying wholesale or attempting to source supplies from a supplier where the price would be below retail.

[25] In my view, the whole activity lacked credibility and the badges of business. For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 28th day of June, 2007.

"M.A. Mogan"

Mogan D.J.

CITATION:	2007TCC384
COURT FILE NO.:	2006-902(IT)I
STYLE OF CAUSE:	TARIK ALSAADI AND HER MAJESTY THE QUEEN
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APPEARANCES:

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