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Date: 20080205
Dockets: 2007-3312(IT)I
2007-3313(IT)I

BETWEEN:

RICHARD MOODY,
DIRECT MUSIC MEDIA INC.,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

**(Delivered orally from the Bench at
Vancouver, British Columbia on January 18, 2008)**

Beaubier, D.J.

[1] By consent of the parties, these appeals were heard together on common evidence at Vancouver, British Columbia on January 16, 2008. Mr. Moody is the sole shareholder of Direct Music Media Inc. (“DMM”) which is assessed for 2004 respecting an amount of non-capital losses of \$84,656 which will vary depending on any amount by which Mr. Moody is successful in his personal appeal. As a result, the detail of this Judgment will be devoted to Mr. Moody’s appeal.

[2] Paragraphs 4 – 11 of the Reply to Mr. Moody’s Notice of Appeal set out the matters in dispute. They read:

4. By Notices dated March 16, 2006, the Minister reassessed the Appellant’s 2000, 2001 and 2002 taxation years to:
 - a) delete declared other employment income in the amounts of \$30,593, \$28,001 and \$26,866, respectively;

- b) include net business income in the amounts of \$93,585, \$58,521 and \$32,781, respectively (the "Fees"); and
 - c) include other income in the amounts of \$5,176, \$14,442 and \$52,991, respectively (the "Benefits").
5. The Appellant objected to the reassessments by serving on the Minister a Notice of Objection dated June 12, 2006.
6. By Notification of Confirmation dated April 19, 2007, the Minister confirmed the reassessments.
7. In reassessing the Appellant's 2000, 2001 and 2002 taxation years and in confirming the reassessments, the Minister relied on the following same assumptions of facts:
- a) The Appellant is the sole shareholder and director of Direct Music Media Inc. (the "Company");

Fees

- b) The Appellant provided management services to the Company (the "Business");
- c) The Fees were with respect to management fees the Appellant received from the Company for the Business;
- d) The Company claimed the Fees as expenses incurred to earn its income;
- e) The Appellant declared management fees received from the Company as other employment income in his 2000, 2001 and 2002 taxation years in the amounts of \$30,593, \$28,001 and \$26,866, respectively;
- f) By declaring management fees received from the Company as income from employment, the Appellant did not make Canada Pension Plan contributions;
- g) The Fees were not income from employment;
- h) The Fees were income from the Business;

Benefits

- i) The Company paid personal expenses of the Appellant;
- j) The Benefits are with respect to expenses incurred by the Appellant and/or for the Appellant;
- k) The Benefits were not expenses of the Company;
- l) The Benefits were not incurred by the Company for the purpose of earning income of the Company;
- m) The Company claimed the Benefits as advertising, promotion and travel expenses; and
- n) The Benefits included amounts charged to the Appellant's CIBC VISA credit card.

B. ISSUES TO BE DECIDED

- 8. The issues are whether the Minister properly included in the Appellant's income:
 - a) the Fees; and
 - b) the Benefits.

C. STATUTORY PROVISIONS RELIED ON

- 9. He relies on sections 3, 5, 9, 67 and 67.1, subsections 15(1), 230(1) and 248(1) and paragraphs 18(1)(a) and 18(1)(h) of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), as amended (the "Act").

D. GROUNDS RELIED ON AND RELIEF SOUGHT

- 10. He respectfully submits that the Appellant understated his revenue from the Business. The Fees were properly included in the Appellant's income for his 2000, 2001 and 2002 taxation years pursuant to subsection 9(1) and paragraph 3(a) of the *Act*.
- 11. He further submits that the Benefits, which were conferred on the Appellant by the Company, were properly included

in computing the Appellant's income for his 2000, 2001 and 2002 taxation years under subsection 15(1) of the *Act*.

[3] Respecting item 4(b) of the Reply, Mr. Moody specifically disputed two categories of the increase to his income – his claims for travel and auto expenses and his claims for advertising and promotion expenses.

[4] DMM started operating in 2000 and had a contract to supply London Drugs with DVDs in Saskatchewan, Alberta and British Columbia. It had no cash or credit and relied on Mr. Moody's credit card for financing. In about 2003, because of the strain on DMM, London Drugs agreed to own the inventory and to pay DMM a service fee for weekly restocking and supplying the DVDs. The result is that Mr. Moody's personal credit card was a common source of cash and DMM's operations were on a cash basis during the years of Mr. Moody's appeal.

[5] For the year 2000, Mr. Moody dealt specifically with the following items:

Travel and Auto

1.	January 20:	LTA Holidays Canada	\$ 1,142.50
	January 14:	Cash Withdrawal	<u>\$ 2,000.00</u>
			\$ 3,142.50

Mr. Moody testified that this money was used to enable him to travel to Singapore and Thailand where DMM got contracts to supply DVDs to retailers there. That business lasted until non-copy right copies flooded the market, particularly in Thailand. He is believed and this claim is allowed.

2.	February–November:	Paid Shannon Moody	\$ 1,975.00
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This is not accepted. Shannon is Mr. Moody's daughter and she was paid these sums as a form of mileage allowance on the basis that she was a salesperson. But she did not have to file itemized claims with DMM as other salesmen did. Without a log and other substantiation this claim respecting a relative is denied.

3.	August 25:	Silkway Travel	\$ 1,676.00
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This was a second sales trip to Singapore and Bangkok and is allowed for the reasons given in [5]1 above.

Total allowed \$ 4,818.50

Advertising and Promotion

1. October 26: Richard Moody
reimbursed for samples \$ 1,500.00

Mr. Moody testified this was “likely” cash used to obtain goods from Costco when suppliers cut off DMM. Such testimony is not acceptable and this is denied.

2. December 21: Shirley Larson \$ 1,099.53

This was a reimbursement for tickets to an Elton John concert which Mr. Moody believed were used for unnamed London Drug employees. This is insufficient evidence. At least the names and titles of all the alleged London Drug employees should have been supplied.

3. December 21: Shirley Larson \$ 1,207.72

Mr. Moody testified that this was to reimburse Shirley for her credit card charge for DMM’s staff Christmas party. In view of the date and the restaurant stub, this is believed and allowed.

Total allowed \$ 1,207.72

[6] For the year 2001 Mr. Moody dealt specifically with the following items:

Travel and Auto

1. January 22: Shannon Moody car
allowance \$ 400.00

For the reasons described in [5]2 Travel and Auto this is not accepted.

2. March – July: CIBC Visa charge \$13,650.75

Mr. Moody alleged that this included personal expenses and business charges for gas, ferry travel to Vancouver Island, lunch, entertainment and attendances on London Drug staff. But there are no receipts, no names, no other documents and while some may be for business capital items and some may be for business, it may all be personal. Without substantiation this is not allowed.

Total allowed Nil

Advertising and Promotion

1. October 15: Shirley Larson \$ 1,167.15

This was allegedly another reimbursement for Shirley paying for a staff dinner with her credit card. However, there is no receipt attached and no reason given for a dinner at or around this date. This is denied.

Total allowed Nil

[7] For the year 2002 Mr. Moody dealt specifically with the following items:

Travel and Auto

1. March 29: R. Holmberg \$ 150.81
January 31: K. Meyer \$ 1,246.68

These were payments to DMM salesmen. They are allowed.

Total allowed \$ 1,397.49

Advertising and Promotion

The auditor only sampled expenses claimed above \$3,000. Those below \$3,000 were allowed.

1. May - December: Visa \$35,157.01

This is not allowed for the reasons set out in [5]2 Advertising and Promotion.

2. June 24: Lululemon \$ 1,790.00

This is claimed as a purchase of DVDs related to yoga so that DMM could copy this for sales purposes. Mr. Moody was “pretty sure” that at least \$255.34 of the total was for this. Without the receipts and further substantiation, a claim of this size for such a retail outlet is not acceptable.

3. December 13: Costco \$ 1,790.58

DMM could not afford bonuses so these were Christmas gifts “raffled off” to employees at the annual Christmas party. The receipt and explanation are accepted.

Total allowed \$ 1,790.58

[8] Thus, based on the foregoing and before dealing with the benefit question, the following additional expense claims are allowed to Richard Moody:

1. For 2000	\$ 4,818.00
	+ <u>\$ 1,207.72</u>
Total	\$ 6,025.72

2. For 2001 Nil

3. For 2002	\$ 1,397.49
	+ <u>\$ 1,790.58</u>
Total	\$ 3,188.07

[9] The amounts assessed as “shareholder benefits” were recorded in DMM’s ledger as management salaries. Mr. Moody was the manager and the sole shareholder and he did not report the amounts assessed as employment income. Both Appellants must live with the corporate records made at the times in question and upon which they relied at those times.

[10] For these reasons, this portion of the appeal is dismissed.

[11] DMM’s appeal is allowed to adjust the assessment appealed by the total of the sums and the years described in paragraph [8] hereof namely, the sum of \$9,213.79.

Signed at Saskatoon, Saskatchewan this 5th day of February, 2008.

“D.W. Beaubier”

Beaubier, D.J.

CITATION: 2008TCC74

COURT FILE NOs: 2007-3312(IT)I and 2007-3313(IT)I

STYLE OF CAUSE: Richard Moody and Direct Music Media Inc.
v. The Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 18, 2008

REASONS FOR JUDGEMENT BY: The Honourable D.W. Beaubier,
Deputy Judge

DATE OF JUDGMENT: February 5, 2008

APPEARANCES:

For the Appellants: Richard Moody for himself and as
Agent for Direct Music Media Inc.

Counsel for the Respondent: Christa Akey

COUNSEL OF RECORD:

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Name:

Firm:

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