

TAX COURT OF CANADA

IN RE: THE INCOME TAX ACT

2004-452(IT)I

BETWEEN:

BRYAN E. SMITH,

Appellant;

- and -

HER MAJESTY THE QUEEN,

Respondent.

Held before Mr. Justice Little at 455 Columbia Street, Room
223, Kamloops, B.C., on Wednesday, April 19, 2006.

APPEARANCES:

Mr. E. Smith,

For the Appellant;

MS. S. Fairbridge,

For the Respondent.

THE REGISTRAR: A. Skuce

Allwest Reporting Ltd.
#302-814 Richards Street
Vancouver, B.C.
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Per: S. Leeburn

REASONS FOR JUDGMENT

(Delivered Orally in Kamloops, B.C. on April 19, 2006)

JUSTICE: I'm going to give the decision on the appeal filed by Bryan E Smith. The facts are in the 1999 taxation year the appellant was a long haul truck driver. In 1999 the appellant worked for the following companies: January 1 to February 22, 1999, Beaver Trucking Service Ltd in Kamloops; from February 25, 1999 to December 31, 1999 Cascade Carriers Ltd in Calgary. The appellant worked as a truck driver on the road for 161 days in 1999.

In 1999 the appellant and his wife, Heather Smith, also operated a music business know as North 40 Music Studios ("North 40"). North 40 was established in 1996 to supply DJ services, the rental of PA equipment and mobile recording services for bands and solo artists in the Kamloops area. When the appellant filed his 1999 income tax return, he claimed a business loss in the amount of \$19,522.68 in respect of North 40. The financial position of North 40 may be summarized as follows: Gross business income reported, \$2,500; current expenses, \$6,595.08; capital cost allowance claimed, \$13,493.60; business use of home, \$1,933.

The Minister of National Revenue (The Minister) reassessed the appellant on the following basis:

1 The appellant was allowed a business loss of \$1,429.10 in
2 respect of North 40, which was determined on the following
3 basis:

4 (a) business income of \$2,500 was accepted;
5 (b) current expenses \$3,243.10 and CCA of
6 \$683 was allowed.

7 The tax issues are:

8 (a) whether expenses in excess of the
9 amount allowed by the Minister were incurred by the
10 appellant for the purpose of gaining or producing income
11 from a business;

12 (b) whether the amount of \$12,807.60 for
13 CCA was properly disallowed by the Minister; and

14 (c) whether the appellant is entitled to
15 claim a work space in the home.

16 I will now give my analysis and decision.

17 The appellant was unable to be present for
18 the hearing because of a work commitment, and his father,
19 Mr. Ed Smith, acted as the appellant's agent. Mr. Ed Smith
20 also provided evidence with respect to the appellant's
21 business activities.

22 At the commencement of the hearing Mr. Ed
23 Smith filed an affidavit signed by the appellant. Counsel
24 for the Crown, Sara Fairbridge, objected to evidence being
25 produced by affidavit, and I agree with Ms. Fairbridge's

1 comments. However, in an attempt to resolve the issue
2 without any further delay (there have been two
3 adjournments of the appeal already) I agreed to proceed
4 with the appeal, but I told Mr. Ed Smith that he may have
5 difficulty establishing his son's case since the evidence
6 produce by Ed Smith will be hearsay, will be second-hand
7 evidence, and sometimes of little or no value.

8 I will now deal with the individual items
9 in dispute and I will use the appellant's affidavit as a
10 guide.

11 (1) Capital Cost Allowance. The amount
12 claimed was \$13,493; the amount allowed by the Minister
13 was \$686. During the hearing the agent introduced Exhibit
14 A-4, which contained further information re new purchases
15 of equipment in the amount of \$11,261. This equipment was
16 purchased in 1999. If we apply the 50 percent rule to
17 this new equipment, the correct figure for additions to
18 the class is \$5,630. During the hearing the agent agreed
19 that a Mercedes automobile, costing in excess of \$32,000,
20 was a luxury vehicle and he dropped the claim for capital
21 cost allowance with respect to the Mercedes.

22 After carefully considering the evidence of
23 the agent I have concluded that the capital cost allowance
24 claimed for 1999 should be as follows:

25 The original amount of the claim is

1 \$31,171. This is the original amount of the capital cost
2 available. We should add to that figure the amount of
3 \$5,630, being one half of the additions for 1999, which
4 give the total of the capital cost allowance schedule of
5 \$36,701. The original claim for 1999 was \$2,748.50. I am
6 going to add a further figure of \$7,240 to make it a total
7 CCA available for the year 1999 of \$10,008.

8 (2) Re: Travel. Paragraph 20 of the
9 affidavit, the appellant's agent said that he made an
10 error when he prepared the tax return re travel when he
11 claimed only \$113.85. The appellant's agent now claims it
12 should have been \$860.41 and he filed Exhibit A-9 to prove
13 this point. In making his calculations on A-9, the
14 appellant's agent used a rate of 45.5 cents per kilometre.
15 This is the 2006 rate, which he obtained from the Canada
16 Revenue Agency. I believe it should be reduced to 35
17 cents per kilometre. As a result of using 35 cents per
18 kilometre, using the numbers contained in the exhibit
19 provided by the appellant's agent, I have concluded that
20 the travel amount that should be allowed is \$661 instead
21 of \$860.41. So the new amount is \$661 re travel.

22 Next category, Meals and Entertainment Re
23 the Shows put on by North 40. The appellant claimed \$350
24 when he filed his 1999 tax return. The Minister allowed
25 zero. The appellant's agent claimed that this amount

1 should be \$12,015 and he filed Exhibit A-10 to establish
2 his point. However, the appellant's claim was based upon
3 \$45 per day for meal allowances, which were the 2006
4 rates. In the 1999 return, and in evidence from the
5 appellant's agent, the appellant admits that the claim for
6 1999 should be \$33 per day for meal allowance not \$45. If
7 we use the appellant's figures of 18 days times 33 we get
8 a figure of \$594. We must then deduct 50 percent as the
9 *Act* requires to give a figure of \$297. There were three
10 shows, we multiply the 297 by 3, which gives us a figure
11 of \$891 instead of the amount shown on exhibit A-10 of
12 \$12,015. So the new amount re meals and entertainment is
13 \$891 at the rate of \$33 per day.

14 Next item, Re: Meals as a Trucker. Exhibit
15 R-1, the appellant's tax return shows that he appellant
16 claimed \$5,213 for meals. I am not convinced on the
17 evidence that any further amount should be allowed in this
18 category.

19 Next item, Re: Office in the Home. The
20 appellant claimed that \$1,933 as the expense he thought he
21 should deduct for 1999. Section 18(12) of the *Income Tax*
22 *Act* prohibits a deduction of expenses re office in a home
23 in a situation such as this where there is a loss created.
24 I, therefore, have decided that no amount should be
25 allowed in this category.

1 Next item, Re: Interest. Paragraph 25, of
2 the affidavit indicates that the appellant claimed \$1,547
3 when he filed his tax return. The Minister allowed
4 \$1,006.37. This claim was with respect to the interest
5 paid by the appellant on a loan of \$21,000 obtained from
6 the Community Futures Development Corporation. The agent
7 for the appellant attached forms from Community Futures
8 Development Corporation re interest shown on the
9 affidavit. I have calculated the interest as charged to
10 the appellant by Community Futures and I have concluded
11 that the Minister was correct and the agent was incorrect
12 in his calculations. The correct figure was \$1,006.37 for
13 1999 and no adjustment should be made to this figure.

14 The agent for the appellant also argued
15 that there should be additional interest re the amounts
16 that the appellant failed to claim for 1996, 1997 and 1998
17 (Refer to paragraph 27 of the affidavit). Those years are
18 statute barred and the appellant cannot go back ten years
19 to claim interest on a loan that was outstanding ten years
20 ago. The Minister cannot be faulted for the errors and
21 mistakes made by the appellant and his agent re unclaimed
22 interest.

23 Next item, Legal Fees. When he filed his
24 tax return the appellant claimed legal fees of \$275. The
25 Minister allowed zero. The agent for the appellant

1 indicated that the appellant paid legal fees or
2 administrative fees equal to one percent of the loan.
3 According to Exhibit 5 of the affidavit of the appellant,
4 the loan balance in 1999 was at the beginning of 1999
5 \$11,231.13. I will allow 1 percent of \$11,231 or \$112.

6 Next item is insurance. The appellant
7 claimed \$436.89 which is 40 percent of \$1,092.22. The
8 Minister allowed 10 percent of this amount or 109.25. I
9 will allow \$436. That is the original amount that was
10 claimed by the appellant.

11 The appellant also claimed the expenses re
12 a telephone. He claimed \$907.74, which is 60 percent for
13 business. The Minister allowed zero. I will allow 50
14 percent of \$907.74 or \$453.87.

15 The agent for the appellant also referred
16 to child tax credits and child tax benefits, which he says
17 were delayed because of the appeal that was filed. The
18 agent or the appellant should check with Canada Revenue
19 Agency officials re these issues.

20 Finally I wish to say that the appellant is
21 fortunate that the Minister recognized that the appellant
22 was carrying on the business in 1999. I say this for the
23 following reasons:

24 (1) the income received from North 40 was
25 minimal, that is only \$2,500 in the year, compared to

1 expenses and equipment and automobiles approaching
2 \$200,000, and also compared to projected income for the
3 business of \$185,500 which was shown on Exhibit A-1, the
4 document submitted to Community Futures. The projection
5 there, as I say, was \$185,500 for 1999 and the actual
6 amount was apparently only \$2,500.

7 (2) I also note that the records were very
8 poorly prepared; they were less than adequate. They were
9 just a series of receipts with no explanation. For
10 example reference was made to a CB radio. Exhibit 3
11 indicates that a CB radio was sold to Cascade Carriers,
12 not the appellant, in July 30, 1999.

13 Reference was also made to the appellant's
14 wife, Heather, being a partner in North 40. However, all
15 of the loss of North 40 was applied to the appellant and
16 no portion of the loss was applied to Heather. To know
17 the full answer, we should have seen Heather's tax return
18 or heard from Heather. I also wish to note that Exhibit
19 A-5 refers to the fact that Heather apparently had a
20 capital cost allowance claim of \$23,651.80 but there was
21 no reference to which year this related to.

22 Exhibit R-3 refers to the courier business
23 apparently operated by Heather in Canmore from October to
24 December 1999, but there was no reference to any income
25 received or capital cost allowance allowed. This type of

1 evidence raises questions: What was going on? Was any
2 income reported? Were expenses okay? Evidence of this
3 nature raises questions and creates problems but provides
4 no answers. I again note that Brian and Heather were
5 partners in North 40. The court should have information
6 about the partnership. Without that information there are
7 unanswered questions and points of concern.

8 Finally if the appellant thinks he is
9 entitled to additional losses he or his wife should have
10 been in Court yesterday, and they should have maintained
11 proper books and records. By not keeping proper records,
12 they are the cause of their own problems. Mr. Ed Smith
13 did the best he could under the circumstances but his
14 hands were tied because of the poor and totally inadequate
15 records and the absence of the appellant or his business
16 partner, Heather Smith.

17 The appeal will be allowed without costs
18 and the Minster will make the adjustments I have referred
19 to above. Thank you appeal allowed without costs.

20 (PROCEEDINGS CONCLUDED)

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I HEREBY CERTIFY THAT THE FOREGOING
is a true and accurate transcript
of the proceedings herein to the
best of my skill and ability.

S. Leeburn, COURT REPORTER

CITATION: 2006TCC516

COURT FILE NO.: 2004-452(IT)I,

STYLE OF CAUSE: Bryan E. Smith and
Her Majesty the Queen

PLACE OF HEARING: Kamloops, B.C.

DATE OF HEARING: April 19, 2006

REASONS FOR JUDGMENT BY: The Honourable Justice
L.M. Little

DATE OF JUDGMENT: April 19, 2006

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Sara Fairbridge

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COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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

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