

TAX COURT

IN RE: THE INCOME TAX ACT

2004-4802(IT)I

BETWEEN:

FRANCIS C.Y. CHEN

Appellant

- and -

HER MAJESTY THE QUEEN,

Respondent

Held before Mr. Justice Hershfield, in Courtroom 603, 6th
Floor, 701 West Georgia Street, Vancouver, B.C., on Monday,
December 12, 2005.

APPEARANCES:

Mr. Francis Chen,

On His Own Behalf;

Mr. Kevin McGillivray

For the Respondent.

THE REGISTRAR: C. DeSantos

Allwest Reporting Ltd.
855 Homer Street
Vancouver, B.C.
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Per: S. Leeburn

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REASONS FOR JUDGMENT

(Delivered Orally in Vancouver)

JUSTICE: First of all, you've said many many times here today, including in your opening remarks that nobody responded to you from the Department, and that maybe you could have provided them with this evidence or other evidence. And I told you repeatedly that the Department's failure to respond to you the way in which you hoped that they would respond, the way in which anybody might hope to respond, does not prevent them from putting the burden of proof on you here today.

And that burden of proof, you failed to meet it. And the reason that you failed to meet it is not because nobody responded to you, you failed because you didn't keep ledgers. You're an accountant. You should tell all of your clients to keep their ledgers of their expenses and you have the names of where everything goes, keep a ledger of -- that's what you didn't provide them. You didn't provide them because you didn't have ledgers.

You give receipts. Those receipts aren't for expenditures that were incurred directly by you. You've got receipts that were paid by other people, your business partner, your business partner who can't use those expenses. Now, I know you say that's somebody's

1 assumption, but we've got nobody here to tell us
2 otherwise. You haven't established your burden of proof
3 that in fact you incurred these expenses for the purposes
4 of gaining or producing income. You have to have those
5 records. You have to have those ledgers. If you don't
6 have them, and you provide receipts by other people, all
7 you do is draw a curtain of suspicion around your entire
8 case. These are all cash transactions. Nobody can follow
9 them.

10 And I understand your credit card has been
11 suspended. That's your evidence. I can even accept that,
12 but I still have other evidence that you could have
13 brought to me. And you're an accountant. You have to
14 come and represent people. You have to understand you
15 just can't come and say, "Oh, a couple of thousand dollars
16 of promotion expenses should be accepted just because I
17 say so. And I won't say who the gifts are for." Or,
18 "Maybe I could have told you who the gifts were for if you
19 had asked me before." You can't depend on being asked.
20 This is a self-assessing system. You must keep those
21 records. So whether you are asked by the auditor or asked
22 by me, you must show me your ledgers that you kept in that
23 year and name the clients that you gave the gifts to.

24 And I don't accept that you put on your
25 forms four names that are really two people. This is your

1 other partner. She's right on these forms in respect of a
2 travel business. You say these are all your expenses and
3 your gifts. I think it looks suspicious.

4 Your partner is not here to say she didn't
5 give any of these gifts, these coins were never there for
6 any of the travel business customers. I think it's
7 suspicious. And whether or not I'm wrong in my suspicions
8 is irrelevant, Mr. Chen. What's relevant is, this is a
9 self-assessing system, you must keep your records, and you
10 must lay everything out in your ledgers on a day-to-day
11 basis that describe exactly what these expenses are. And
12 you haven't done that.

13 In relation to your rent, which is the
14 major part of this, I accept the lease is in your name. I
15 accept that you paid it out of your own bank account. And
16 even if I accept that you were never reimbursed, which
17 again in the circumstances of this -- there's some
18 bartering, arbitrage aspect of this. You are too close to
19 this fifty percent partner for me to trust actually that
20 there was no other way in which you could have been
21 subsidized by your partner. But even if I accept there
22 was absolutely no subsidy from your partner, that has
23 nothing to do with the legal requirements for you to only
24 deduct the portion of your space that is reasonably
25 attributable to the business that you are allocating it

1 there's been no allocation. No allocation because rent
2 not paid; that's not relevant. No allocation because
3 lease not on your name; not relevant. No allocation
4 because they didn't sign a sublease; that's not relevant.
5 The only issue is what space is attributable to your
6 business, and I'm not satisfied that its 95 percent, and
7 I'm therefore going to go along with the assumption by the
8 respondent that it's 50 percent.

9 And if you are faced with this sort of an
10 appeal again, or faced with clients, you'd better bring
11 corroboration. Bring to the Department floor plans,
12 pictures, corroborating testimony, if that what it takes
13 so that you become bolstered with more credibility so that
14 on, even a test of probability, your credibility is
15 buoyed. And I'm just not satisfied, on the evidence that
16 you presented, that even on a balance of probability that
17 it's 95 percent in relation to the accounting business.
18 There's a substantial travel business going on here
19 according to the evidence.

20 So the appeals are dismissed for those
21 reasons. Thank you.

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