

TAX COURT OF CANADA

IN RE: the Income Tax Act

BETWEEN:

BALESH W. KONDA

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

*** * * * ***

**ORAL REASONS FOR JUDGMENT BY
THE HONOURABLE JUSTICE PARIS**
in the Courts Administration Service, Courtroom,
200 Kent Street, Ottawa, Ontario
on Tuesday, September 18, 2007 at 2:00 p.m.

*** * * * ***

APPEARANCES:

Mr. Balesh W. Konda

for himself

Ms. Marie-Andrée Legault
Mr. Simon Petit

for the Respondent

Also present:

Ms. Line Lanthier

Court Registrar

A.S.A.P. Reporting Services Inc. 8 2007

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--- Upon commencing on Tuesday, September 18, 2007,
at 2:00 p.m.

REASONS FOR JUDGEMENT BY MR. JUSTICE PARIS, ORALLY:

This is an appeal from a
reassessment of the Appellant's 1988 taxation year,
by which the Minister of National Revenue
disallowed the Appellant's claim for investment tax
credit with respect to his investment in A.L.H.
Systems.

A.L.H. is a partnership which
undertook to do scientific research and
experimental development.

The Minister refused the
investment tax credit on the basis that A.L.H. had
not done any scientific research and experimental
development within the meaning of paragraph
37(1)(a) of the *Income Tax Act* and Regulation 2900
of the *Income Tax Regulations* in the 1988 year.

Therefore, the Appellant as
partner of A.L.H. was found to not have had any
"qualifying expenditures" as defined in subsection
127(9) of the *Act*, and no investment tax credit
could be claimed.

There are a number of issues set
out in the Reply to the Notice of Appeal, but at

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1 the outset of this hearing for the sake of
2 expedience, I directed the parties to present
3 evidence and argument on two of the issues, and to
4 postpone presenting evidence and argument on the
5 remaining issues until the first two issues had
6 been decided, if it were still necessary to do so.

7 Therefore, the two issues to be
8 decided at this point are, firstly, whether the
9 Appellant has shown that A.L.H. did in fact carry
10 out any scientific research and experimental
11 development in 1988, and secondly, whether the
12 Appellant was a specified member of A.L.H. as that
13 term is defined in subsection 248(1) of the *Act*.

14 The Appellant conceded in argument
15 that he was a specified member of A.L.H., because
16 he did not participate actively in the operations
17 of the partnership on a regular, continuous and
18 substantial basis.

19 I, too, am satisfied that the
20 evidence shows that the Appellant was a specified
21 member of A.L.H.

22 The Appellant became a partner in
23 A.L.H. in the Fall of 1988, after attending a
24 presentation in Ottawa.

25 He understood that the partnership
26 would carry out research and development leading to

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1 the development of software for use in the
2 financial industry, and with applications in other
3 fields as well. The project was referred to as
4 "INCOM".

5 The partnership activities were to
6 be carried out in Montreal, but the Appellant said
7 he did not go to Montreal.

8 He received and read some progress
9 reports on the research activities, and attended
10 three or four meetings in Ottawa to discuss the
11 program and to give his opinion on whether the
12 research work was going in the right direction. He
13 also received some diskettes containing basic
14 computer exercises to be done by each investor in
15 the partnership, but says that he himself did not
16 do the exercises.

17 After a meeting in early 1989, the
18 Appellant said the project appeared to run into
19 difficulties, and his attempts to get further
20 information from A.L.H. were unsuccessful.

21 The activities carried out by the
22 Appellant cannot be considered to have been
23 continuous, regular or substantial in relation to
24 the activities of A.L.H. The Appellant was a
25 passive investor, and relied on others to carry out
26 all of the partnership operations. His input into

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1 the project was limited to his attendance at a few
2 meetings to review the progress of the
3 partnership's research work, and to offering his
4 opinion at these meetings regarding the progress of
5 the research.

6 As a specified member of A.L.H.,
7 the Appellant is not permitted any investment tax
8 credit as set out in subsection 127(8) of the Act.

9 This conclusion alone is sufficient to dispose of
10 the appeal, but I will also deal with the question
11 of whether the Appellant has shown that A.L.H.
12 carried out scientific research and experimental
13 development in 1988.

14 Section 2900, sub (1) of the
15 Regulations sets out the meaning of "scientific
16 research and experimental development" . It reads
17 in part as follows:

18 For the purposes of this part, paragraphs
19 37(7)(b) and 37.1(5)(e) of the Act,
20 "scientific research and experimental
21 development is a systematic investigation
22 or search carried out in the field of
23 science and technology by means of
24 experiment or analysis, that is to say,
25 basic research namely, work undertaken
26 for the advancement of scientific
27 knowledge with a specific practical
28 application in view or development,
29 namely, use of the results of basic or
30 applied research for the purpose of
31 creating new, or improving existing,
32 materials, devices, products or
33 processes.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Shorthand and transcribed therefrom, the
foregoing proceeding.

Sue Rochon