

Docket: 2009-2420(IT)I

BETWEEN:

JASON ALLOTT,

Appellant,

and

HER MAJESTY THE QUEEN

Respondent.

Before: The Honourable Justice Steven K. D'Arcy

For the Appellant: The Appellant himself
Counsel for the Respondent: Jack Warren

**EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR JUDGMENT**

Let the attached edited transcript of the Reasons for Judgment, delivered orally from the Bench on March 11, 2010 at London, Ontario, be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity, and accuracy. I did not make any substantive changes.

Signed at Ottawa, Canada, this 3rd day of May, 2010.

"S. D'Arcy"
D'Arcy J.

Citation: 2010 TCC 232
Date: 20100318
Docket: 2009-2420(IT)I

BETWEEN:

JASON ALLOTT,

Appellant,

and

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Respondent.

**EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR JUDGMENT**

**(Delivered orally from the Bench
on March 11, 2010 at London, Ontario)**

D'Arcy J.

[1] This appeal concerns the deductibility of child care expenses pursuant to subsection 63(1) of the *Income Tax Act*.

[2] When filing his return for the 2007 taxation year, the Appellant claimed a deduction of \$4,221 for amounts he asserted were paid to two teenagers who babysat his children. The Appellant provided the Court with a detailed statement evidencing the weekly payments made to the two teenagers.

[3] In addition, the Appellant provided the Court with an acknowledgement letter issued by one of the teenagers confirming that she had received the amount noted in the statement. A separate letter containing the teenager's Social Insurance Number was also provided.

[4] The spouse of the Appellant, Ms Allott, testified for the Appellant. She noted that numerous attempts have been made to obtain a receipt from the second teenager. However, the teenager's parents have refused to provide the information or to provide contact information for the teenager.

[5] Ms Allott testified that the amounts in question were paid to the teenagers.

[6] Counsel for the Respondent has accepted that the Appellant is entitled to deduct the \$1,800 paid to the teenager who provided the acknowledgement letter. However, he noted that it is the Respondent's position that the Appellant is not entitled to deduct the amounts paid to the second teenager since the Appellant has not provided a receipt issued by the teenager.

[7] The relevant words of subsection 63(1) are as follows:

...where a prescribed form containing prescribed information is filed with a taxpayer's return of income...under this Part for a taxation year, there may be deducted in computing the taxpayer's income for the year such amount as the taxpayer claims not exceeding the total of all amounts each of which is an amount paid, as or on account of child care expenses incurred for services rendered in the year in respect of an eligible child of the taxpayer,

...

and the payment of which is proven by filing with the Minister one or more receipts each of which was issued by the payee and contains, where the payee is an individual, that individual's Social Insurance Number...

[8] This Court has ruled on numerous occasions that the words requiring the filing of receipts are "directory" rather than mandatory. Bowman J. (as he then was) noted in *Senger-Hammond v. The Queen*, [1997] 1 CTC 2728 at paragraph 26:

The essence of section 63 is the deduction of child care expenses, not the collection of tax from babysitters. The language of the provision does not support the view that the filing of receipts is mandatory. For one thing, the word 'shall' is not used. Rather it describes a method of proof, which is clearly formal, evidentiary and procedural.

[9] The law was summarized by Morgan J. in *Dominguez v. The Queen*, [1998] 4 CTC 2222 at paragraph 10:

If the inquiry is blatantly result-oriented (I am pleased to follow those refreshingly candid words), then I will adopt the label which permits a court to determine as a matter of evidence whether a particular taxpayer has incurred specific expenses on account of child care. In my opinion, the requirement in subsection 63(1) that the Appellant file receipts containing the S.I.N. of the payee is only directory. It is not imperative.

[10] I accept the evidence of Ms Allott that the expenses were incurred as detailed in the statement provided to the Court.

[11] For these reasons, the appeal is allowed with costs of \$250, and the matter is referred back to the Minister for reconsideration and reassessment on the basis that the Appellant was entitled to deduct under section 63, in computing his taxable income for the 2007 taxation year, an amount for child care expenses of \$4,221.

D'Arcy J.

CITATION: 2010 TCC 232

COURT FILE NO.: 2009-2420(IT)I

STYLE OF CAUSE: JASON ALLOTT AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: LONDON, ONTARIO

DATE OF HEARING: MARCH 11, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice
Steven K. D'Arcy

DATE OF JUDGMENT: MARCH 18, 2010

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Jack Warren

COUNSEL OF RECORD:

For the Appellant: N/A

For the Respondent: Myles J. Kirvan
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