

Docket: 2009-67(IT)G

BETWEEN:

HAROLD SHAPIRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on December 14, 2010, at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Diana Aird

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**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the 2005 year is dismissed in accordance with the attached Reasons for Judgment.

Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 8<sup>th</sup> day of February 2011.

“V.A. Miller”

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V.A. Miller J.

Citation: 2011TCC79  
Date: 20110208  
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HAROLD SHAPIRO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

V.A. Miller J.

[1] The issue in this appeal is whether, for the 2005 taxation year, the Appellant was entitled to deduct \$57,201.85 which he paid as director's liability under the *Excise Tax Act (ETA)* and \$3,195.85 which he paid for legal expenses.

[2] The Appellant was a director of Concept Imports International Inc. (Concept). It was the Appellant's evidence that he became director of Concept to establish a business and to earn income for his family. Concept failed to remit Goods and Services Tax (GST) to the Receiver General of Canada (the Receiver) for the period July 1 to September 30, 1996 and by March 1997, Concept ceased to carry on business.

[3] By notice dated April 8, 2002, the Appellant was assessed \$100,306.64 pursuant to subsection 323(1) of the *ETA* for Concept's failure to remit GST (director's liability). The Appellant appealed the assessment and the parties consented to Judgment (the Consent). A Judgment of this Court, dated June 1, 2005, was issued in accordance with the Consent wherein the Appellant was held liable to pay the amount of \$57,201.85.

[4] The Appellant incurred legal expenses of \$3,195.85 with respect to the objection and appeal of the assessment under the *ETA*.

[5] The Appellant paid the amounts of \$57,201.85 and \$3,195.85 in 2005 and claimed them as an expense made in earning income on his 2005 income tax return.

[6] It was the Appellant's position that his obligation to pay Concept's debt arose in October 1996 when Concept failed to remit GST to the Receiver. At this time, Concept was still in business. The amount of GST and legal fees were paid to gain or produce income.

[7] The Appellant's payment of his director's liability to the Receiver was not made to gain or produce income. It stems from GST which was paid to Concept by its customers as a tax levy. The amount of \$57,201.85 was collected by Concept who was deemed to hold that amount in trust for Her Majesty in right of Canada<sup>1</sup>. In Concept's hands, the GST was not income, nor was it part of Concept's income earning process<sup>2</sup>. Upon Concept's failure to remit, that liability was imposed on the Appellant, and the payment is similarly not deductible.

[8] The legal fees paid by the Appellant to institute and prosecute his objection and appeal under the *ETA* are also not deductible. Except where there is a specific provision in the *Income Tax Act* (the *Act*), legal fees are deductible only to the extent that they are incurred for the purpose of gaining or producing income from a business or property and they are not made on account of capital<sup>3</sup>. In 2005, the Appellant reported employment income, pension income and dividend income but no self-employment income.

[9] The specific provisions of the *Act* are paragraphs 60(o) and 8(1)(b). They read:

**60. Other deductions** -- There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:

(o) **legal [or other] expenses [of objection or appeal]** -- amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to,

(i) an assessment of tax, interest or penalties under this Act or an Act of a province that imposes a tax similar to the tax imposed under this Act,

(ii) a decision of the Canada Employment and Immigration Commission, the Canada Employment and Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act* or the *Employment Insurance Act*,

(iii) an assessment of any income tax deductible by the taxpayer under section 126 or any interest or penalty with respect thereto, or

(iv) an assessment or a decision made under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

**8. (1) Deductions allowed** -- In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto:

...

(b) **legal expenses of employee** -- amounts paid by the taxpayer in the year as or on account of legal expenses incurred by the taxpayer to collect or establish a right to salary or wages owed to the taxpayer by the employer or former employer of the taxpayer;

[10] Legal fees incurred in preparing, instituting or prosecuting an objection or an appeal with respect to the *Income Tax Act*, the *Employment Insurance Act* and the *Canada Pension Plan* are deductible pursuant to paragraph 60(o) of the *Act*. Legal expenses of an employee are deductible if those expenses were incurred to collect or establish a right to salary or wages<sup>4</sup>. Neither provision is applicable to the facts of this appeal.

[11] For all of these reasons, the appeal is dismissed with costs to the Respondent.

Signed at Ottawa, Canada, this 8<sup>th</sup> day of February 2011.

“V.A. Miller”

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V.A. Miller J.

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<sup>1</sup> Section 222 of the *ETA*

<sup>2</sup> *Bender v. R.*, [2002] 4 C.T.C. 2523 at paragraph 6

<sup>3</sup> *Penner v. The Queen*, [2002] T.C.J. No. 558 at paragraph 14

<sup>4</sup> *Cimolai v. The Queen*, 2005 TCC 767

CITATION: 2011TCC79

COURT FILE NO.: 2009-67(IT)G

STYLE OF CAUSE: HAROLD SHAPIRO AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 14, 2010

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: February 8, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Diana Aird

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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