

Docket: 2010-2525(IT)I

BETWEEN:

GORDON G. FELSKÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on June 27, 2011, at Cranbrook, British Columbia

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:                      The Appellant himself  
Counsel for the Respondent:        Rob R.A. Whittaker

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**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeals from the reassessment by the Minister of National Revenue under the *Income Tax Act* of the Appellant's 2004 and 2005 taxation years are allowed, without costs, and the matter is referred back to the Minister for reconsideration and reassessment on the basis that:

For 2004:

1. the Appellant's gross business income was \$60,170 and his professional business income was 'nil';
2. the Appellant incurred business expenses of 30% of his gross business income; and
3. the Appellant is entitled to a capital cost allowance deduction of \$18,507.

For 2005:

1. the Appellant's gross business income was \$61,367 and his professional business income was 'nil';
2. the Appellant incurred business expenses of 30% of his gross business income; and
3. the Appellant is entitled to a capital cost allowance deduction of \$20,710.

Signed at Ottawa, Canada, this 29<sup>th</sup> day of July 2011.

“G.A. Sheridan”

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Sheridan J.

Citation: 2011TCC372  
Date: 20110829  
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BETWEEN:

GORDON G. FELSKE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Sheridan J.

[1] The Appellant, Gordon Feske, is appealing the reassessment by the Minister of National Revenue of his 2004 and 2005 taxation years. In each of those years the Appellant failed to file income tax returns and as a consequence, in September 2007 arbitrary assessments were issued under subsection 152(7) of the *Income Tax Act*. The Appellant subsequently filed returns for 2004<sup>1</sup> and 2005<sup>2</sup>. Because of the Appellant's failure to provide documentation to substantiate the claims made in his returns, the amounts originally assessed in respect of gross business and professional income, business expenses and capital cost allowance were ultimately confirmed. It is from these assessments that the Appellant appeals.

[2] In 2004 and 2005, the Appellant was a sole proprietor carrying on a general construction and snow clearing business under the name Rocky Mountain Construction. During that time, he was also the principal of several numbered companies incorporated for a variety of purposes including 581488 B.C. Ltd., a business engaged in constructing trusses. All of these enterprises seem to have operated out in the same premises.

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<sup>1</sup> Exhibit R-1, Tab 3.

<sup>2</sup> Exhibit R-1, Tab 4.

[3] The Appellant represented himself and was the only witness to testify on his behalf. As was the case at the objection stage, the great weakness of the Appellant's evidence was the lack of supporting documentation. This he blamed largely on the misconduct of the sheriff who in January 2009, conducted a seizure of assets on behalf of the Canada Revenue Agency Collections Department<sup>3</sup>. He also said he had been hampered in his dealings with the Minister's officials by the poor performance of the fiscal advisors he had retained to represent him.

[4] Keeping records is especially important when, as in the Appellant's case, a taxpayer engages in several different ventures both personally and as the directing mind of multiple corporate entities. While I accept the Appellant's testimony that some receipts and invoices may have gone astray during the seizure process, the fact remains that he did not as a rule devote much attention to records keeping; most importantly, he did not maintain any sort of journal or ledger for his business operations. However, to the extent that records did exist prior to the seizure of assets, the Appellant had no good explanation for not having provided them to the Respondent when he filed his returns or during the audit or at the objection stage.

[5] In any case, at the hearing of his appeals, the Appellant had little more than bank statements<sup>4</sup> to support his position. Without the source documents, it is difficult to verify from the statements what the amounts were for. When asked on cross-examination why he had not tried to get duplicates of invoices for expenses from local professionals and suppliers, the Appellant replied that it was too difficult to retrieve such documents after so much time had passed – illustrating perfectly why the *Act* imposes on the taxpayer the obligation to maintain such records himself.

[6] The Appellant took the same approach to reporting his income as he did to records keeping. In addition to filing his returns late and only after having been assessed under subsection 152(7), the Appellant refused to sign his returns and did not fully complete them. He struck me as an intelligent fellow and he did not pretend to be unsophisticated in fiscal matters. In all the circumstances, the Appellant's conduct gave me the impression that his failure to keep his books in order was more a deliberate strategy than mere carelessness. For his sake and that of his family, I certainly hope the Appellant will take a more sensible approach in the future.

[7] Called for the Respondent was Cindy Yip, the Appeals Officer assigned to the Appellant's objection to the 2004 and 2005 reassessments. I found Ms. Yip to be

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<sup>3</sup> Affidavit of David Boulter, Exhibit R-2.

<sup>4</sup> Exhibit R-1, Tab 8; Exhibit A-9.

clear and concise in her explanation of her analysis of the Appellant's claims on objection.

[8] At the hearing of the appeal, after being provided with some previously undisclosed documentation, counsel for the Respondent advised the Court that the Minister conceded the capital cost allowance amounts claimed by the Appellant in his 2004 and 2005 income tax returns, \$18,507 and \$20,710 respectively. That left for the Court's determination only the quantum of the Appellant's business and professional income and his business expenses, each of which is dealt with under the headings below.

### **Business Income**

[9] In 2004, the Appellant reported business income from his sole proprietorship of \$60,170 and business expenses of \$31,625. He said that because of the Sheriff's seizure, he had no documents to show the source of his income other than the sole proprietorship's bank records for 2004<sup>5</sup>.

[10] In 2005, the Appellant reported business income of \$35,000 and claimed no business expenses. The Appellant said that the income amount was received entirely from 581488 B.C. Ltd., a company formerly owned by his father and engaged in the business of manufacturing trusses for housing construction. The Appellant received the \$35,000, not as invoiced amounts for work done for the corporation but rather, as advances to himself over the course of the year. The Appellant arrived at the \$35,000 figure by reviewing the bank statements of 581488 B.C. Ltd. for 2005<sup>6</sup> and attributing various amounts for cash withdrawals for his personal use and payments made by the company on his behalf for his personal credit card charges, gas, repairs, entertainment and so on. The Appellant could not explain why he did not have any bank statements for the sole proprietorship for 2005. He claimed no expenses when he filed his 2005 return because he felt pressured to get it done and the capital cost allowance deduction was sufficient in itself to reduce his taxable income.

[11] Notwithstanding his lack of documentation, having heard the Appellant's evidence in regard to the nature of his business, his earnings for 2003, 2004 and 2005 and the difficulties he endured during those years, I am satisfied on a balance of probabilities that his business income in 2004 and 2005 would have been in keeping with the amount reported in 2003, \$62,563. I find that his gross business income for

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<sup>5</sup> Exhibit R-1, Tab 3.

<sup>6</sup> Exhibit A-9.

2004 was \$60,170 and in 2005, \$ 61,367, the average of his 2003 and 2004 gross business income.

### **Business Expenses**

[12] Having received no receipts from the Appellant for any of the expenses claimed in his 2004 return, the Minister estimated them at 30% of the gross business income assessed in each of the taxation years. As mentioned above, at the hearing, the Appellant blamed his lack of documentation on the collection action seizure and his fiscal advisors. In the absence of any records, the Appellant argued, the Minister ought to have estimated his income for 2004 and 2005 based on standard earnings in the industry together with the amount of income accepted as reported in 2003<sup>7</sup>.

[13] The *Act* imposes a duty on taxpayers to keep adequate books and records. Having failed to do so meant the Appellant could not substantiate the specific expenditures claimed. In these circumstances, I see no reason to interfere with the Minister's approach of estimating his business expenses at 30% of his gross business income in each of the taxation years.

### **Professional Income**

[14] Ms. Yip testified that the Minister assessed professional income of \$10,000 in each of 2004 and 2005 based on the Appellant's having reported that amount in 2003. No business expenses were allowed as none had been claimed by the Appellant, consistent with his position that he had not earned any professional income in those years.

[15] I accept the Appellant's evidence that the amount claimed in 2003 was in effect a one-time "draw" from one of his corporations which, for lack of a better descriptor, he reported as "professional income". I am satisfied he did not earn any professional income in either of the taxation years under appeal.

### **Conclusion**

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<sup>7</sup> Exhibit R-1, Tab 15.

[16] The appeal is allowed and the reassessments of the 2004 and 2005 taxation years are referred back to the Minister of National Revenue for reconsideration and reassessment on the following basis:

For 2004:

1. the Appellant's gross business income was \$60,170 and his professional business income was 'nil';
2. the Appellant incurred business expenses of 30% of his gross business income; and
3. the Appellant is entitled to a capital cost allowance deduction of \$18,507.

For 2005:

1. the Appellant's gross business income was \$61,367 and his professional business income was 'nil';
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3. the Appellant is entitled to a capital cost allowance deduction of \$20,710.

Signed at Ottawa, Canada, this 29<sup>th</sup> day of July 2011.

“G.A. Sheridan”

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Sheridan J.

CITATION: 2011TCC372

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STYLE OF CAUSE: GORDON G. FELSKÉ AND  
HER MAJESTY THE QUEEN

PLACE OF HEARING: Cranbrook, British Columbia

DATE OF HEARING: June 27, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: July 29, 2011

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Rob R.A. Whittaker

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan  
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