Docket: 2011-144(IT)I

BETWEEN:

PINK ELEPHANT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on July 7, 2011 at Toronto, Ontario

Before: The Honourable Justice Wyman Webb

Appearances:

Counsel for the Appellant:	Timothy Fitzsimmons Adam Patchet - student
Counsel for the Respondent:	Alisa Apostle

JUDGMENT

The Appellant's appeals in relation to the reassessment of its 2006 and 2007 taxation years are allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to the deductions claimed by the Appellant for catering expenses in 2006 and 2007 as the exception in paragraph 67.1(2)(*a*) of the *Income Tax Act* is applicable to these expenses. The Appellant is therefore entitled to deduct the amount of $33,750 that was denied as a deduction in computing its income for 2006 and the amount of $41,275 that was denied as a deduction in computing its income for 2007. The Appellant is entitled to costs which are fixed in the amount of $2,500.

Signed at Halifax, Nova Scotia, this 31st day of August, 2011.

"Wyman W. Webb"

Webb, J.

Citation: 2011TCC395
Date: 20110831
Docket: 2011-144(IT)I

BETWEEN:

PINK ELEPHANT INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The issue in these appeals is whether the Appellant is entitled to deduct the full amount that it incurred for catering expenses in determining its income for 2006 and 2007 for the purposes of the *Income Tax Act* (the "*Act*") or whether such expenditures were subject to the limitation provided in subsection 67.1(1) of the *Act*. In particular the issue is whether the exception provided in paragraph 67.1(2)(*a*) of the *Act* was applicable. The amounts of catering expenses that were denied as a deduction in computing income as a result of the Respondent applying the limitation provided in subsection 67.1(1) of the *Act* were $33,750 for 2006 and $41,275 for 2007.

[2] The Appellant carries on a business of providing information technology training. The Appellant provides public educational courses in various cities to individuals. If a particular company has more than six individuals who would be taking the course, the Appellant will alternatively provide private training at the company's facilities. The public educational courses are provided at a hotel and breakfast and lunch are provided to the participants. No meals are provided if the courses are held at a client's facilities. The fee to attend a public course ranges from approximately $2,000 to approximately $10,000, depending on the course. The invoice and the receipt issued for a particular course only indicate the total cost to the participant for the course. The participants are not billed separately for the meals nor are the amounts for the meals identified separately in the invoice or the receipt for the course.

[3] The Appellant claimed a deduction for the full amount incurred as catering expenses in providing the meals to the participants in 2006 and 2007 and the Canada Revenue Agency applied the limitation provided in subsection 67.1(1) of the *Act* to a portion of the catering expenses in each of these two years. The portion to which this limitation was applied was $67,500 for 2006 and $82,550 for 2007. As a result the Canada Revenue Agency denied catering expenses in the amount of $33,750 for 2006 and $41,275 for 2007.

[4] Subsection 67.1(1) and paragraph 67.1(2)(*a*) of the *Act* provided in 2006 and 2007[1] as follows:

> 67.1 (1) For the purposes of this Act, other than sections 62, 63, 118.01 and 118.2, an amount paid or payable in respect of the human consumption of food or beverages or the enjoyment of entertainment is deemed to be 50% of the lesser of
>
> > (*a*) the amount actually paid or payable in respect thereof, and
> >
> > (*b*) an amount in respect thereof that would be reasonable in the circumstances.
>
> …
>
> 67.1 (2) Subsection (1) does not apply to an amount paid or payable by a person in respect of the consumption of food or beverages or the enjoyment of entertainment where the amount
>
> > (*a*) is paid or payable for food, beverages or entertainment provided for, or in expectation of, compensation in the ordinary course of a business carried on by that person of providing the food, beverages or entertainment for compensation;

[5] Counsel for the Appellant acknowledged that, if the exceptions contained in subsection 67.1(2) of the *Act* were not part of the *Act*, the limitation in subsection 67.1(1) of the *Act* would be applicable to the catering expenses claimed by the Appellant. The issue in this appeal is whether the exception contained in paragraph 67.1(2)(*a*) of the *Act* is applicable to the catering expenses incurred by the Appellant.

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[1] Subsection 67.1(1) of the *Act* was amended with respect to amounts that were paid or payable on or after March 19, 2007 but the amendments are not material in relation to these appeals.

[6] The Supreme Court of Canada in *The Queen* v. *Canada Trustco Mortgage Company*, 2005 SCC 54, 2005 DTC 5523 (Eng.), [2005] 5 C.T.C. 215, 340 N.R. 1, 259 D.L.R. (4th) 193, [2005] 2 S.C.R. 601, stated that:

> 10 It has been long established as a matter of statutory interpretation that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": see *65302 British Columbia Ltd. v. R.*, [1999] 3 S.C.R. 804 (S.C.C.), at para. 50. The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole. When the words of a provision are precise and unequivocal, the ordinary meaning of the words play a dominant role in the interpretive process. On the other hand, where the words can support more than one reasonable meaning, the ordinary meaning of the words plays a lesser role. The relative effects of ordinary meaning, context and purpose on the interpretive process may vary, but in all cases the court must seek to read the provisions of an Act as a harmonious whole.

[7] In *The Queen* v. *Stapley*, 2006 FCA 36, 2006 DTC 6075, 345 N.R. 320, [2006] 3 C.T.C. 188, Justice Sexton, writing on behalf of the Federal Court of Appeal, stated that:

> c) The Mischief Sought to be Cured by the Provision
>
> 22 Subsection 67.1(1) is a rule that applies to the calculation of income. A taxpayer must include in income, income from a business. Income from a business is defined as the profit from a business. ITA, subs. 9(1). In calculating the profit from a business, a taxpayer cannot deduct personal or living expenses. ITA, para. 18(1)(h). However, a taxpayer may deduct reasonable expenses made for the purpose of producing income from a business. ITA, para. 18(1)(a). Subsection 67.1(1) limits the quantum of paragraph 18(1)(a) deductions with respect to food, beverage and entertainment expenses.
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> 23 Logic suggests that subsection 67.1(1) fulfills the following function in the legislative scheme. To reduce the amount of tax owing, a taxpayer will seek to minimize the value of income. One way to do so involves enlarging the size of paragraph 18(1)(a) deductions. Thus, the taxpayer may blend personal and business expenses and attempt to deduct them both as business expenses under paragraph 18(1)(a). For instance, a taxpayer might characterize the cost of a dinner eaten with a client as a wholly-deductible, paragraph 18(1)(a) business expense as opposed to a non-deductible, paragraph 18(1)(h) personal one. Recognizing this, subsection 67.1(1) arbitrarily apportions this kind of "dual-purpose" expense at fifty percent between income-earning and personal expenses.

[8] It seems to me that in interpreting the exception in paragraph 67.1(2)(*a*) of the *Act*, the reason why the limitation in section 67.1 of the *Act* was added to the *Act* should be taken into account. The provision of meals by any person, as part of the ordinary course of business of that person, for compensation (whether the provision of meals is a minor part of that business or a significant part of that business) is not the mischief identified by the Federal Court of Appeal.

[9] The limitation on the amount that may be claimed as an expense for food and beverages does not apply if the food and beverages are provided for compensation (or in expectation of compensation) in the ordinary course of business of providing the food and beverages for compensation. Counsel for the Respondent acknowledged that the exception would not just apply to a person whose only business activity was providing meals for compensation. I agree with this statement. Otherwise a person who operated a hotel and a restaurant would be subject to the limitation in relation to the amounts paid for food and beverages that would be served in the restaurant. It does not seem to me that a person who operated a hotel and a restaurant would be subject to the limitation on the amount expended for food and beverages but a person who only operated a restaurant would not be subject to the limitation.

[10] The exception in paragraph 67.1(2)(*a*) of the *Act* will apply to amounts expended by a particular person on food or beverages if the person, in the ordinary course of business of providing food and beverages for compensation, provides such food and beverages for compensation (or the expectation of compensation). It seems to me that such food or beverages will be provided in the ordinary course of business of providing food and beverages whether the provision of food or beverages is a minor or a significant part of the ordinary course of business of that person. For example, as acknowledged by the Canada Revenue Agency in paragraph 5 of Interpretation Bulletin IT-518R, an airline that provides meals to its customers would not be subject to the limitation on its expenditures for food and beverages. It seems obvious that the provision of food and beverages would be a minor part of the business being carried on by an airline. Counsel for the Respondent argued that the limitation in section 67.1 of the *Act* did not apply to airlines as a result of the provisions of subsection 67.1(4) of the *Act*. This subsection provides that:

> (4) For the purposes of this section,
>
> (*a*) no amount paid or payable for travel on an airplane, train or bus shall be considered to be in respect of food, beverages or entertainment consumed or enjoyed while travelling thereon; and
>
> (*b*) “entertainment” includes amusement and recreation.

[11] The amount paid by the airline for the food and beverages it serves to its customers would not be an amount paid for travel on an airplane. Subsection 67.1(4) of the *Act* would apply to the passengers and as a result of this provision airline passengers (who are allowed deduct the cost of airfare in determining their income for the purposes of the *Act*) do not need to allocate a portion of the airfare to the food and beverages that they are served[2]. This provision does not apply to the airline itself which has incurred an amount for the food and beverages that are provided to its passengers. The exemption that the airline would need to rely upon to deduct the full amount expended for such food and beverages is the exemption in paragraph 67.1(2)(*a*) of the *Act*.

[12] The educational courses would range from two day courses to courses that would last for thirteen days. At the public educational courses (which were presented at a hotel) breakfast and lunch were provided. In the promotional materials that were prepared it was indicated that breakfast and lunch would be provided. The Appellant held approximately 35 public educational courses in 2006 and approximately 43 in 2007. In 2006 the revenue from the public education courses was approximately 30% of the total revenue of the Appellant and in 2007 it was approximately 38% of the total revenue of the Appellant. It seems clear that the ordinary course of business of the Appellant included the provision of public educational courses and that the provision of public educational courses included the provision of breakfast and lunch to the participants. Since the participants each paid from $2,000 to $10,000 to attend the public education courses, these courses were clearly provided for compensation and since the meals were part of the package, the meals were also provided for compensation.

[13] Counsel for the Respondent argued that since the Appellant did not separately identify the amount that the participants were paying for the meals that the meals were not provided for compensation. The Appellant also did not identify the amount that the participants were paying for the exam that was given to the participant or the amount that the participants were paying for the course materials or the amount they were paying for the lectures themselves. Not identifying each item that is provided as part of a package does not mean that any particular item is not being provided for compensation. It simply means that a reasonable allocation must be made, if necessary, to determine the amount paid for any particular item that is part of the

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[2] For the individuals who took the course provided by the Appellant, the provisions of subsection 67.1(3) of the *Act* would be applicable to deem each such individual to have paid $50 per day for the food and beverages that were provided.

package. If a person acquires land and building for a single price, it does not mean that either the land or the building was acquired for no compensation.

[14] Counsel for the Respondent also argued that since some participants were registering for educational courses before a location was determined, that the meals were not provided for compensation. However, it seems to me that it was clear that meals were to be provided at the public courses, wherever these courses were to be held. Not having a location when a participant first registered for a course does not change the fact that meals were to be provided at the course (wherever it would be held). Each participant paid from $2,000 to $10,000 to attend the course, which included breakfast and lunch for each day of the course, and therefore the meals were provided for compensation.

[15] The Appellant had also raised the issue of the limitation on amounts in dispute in an appeal under the Informal Procedure. Section 2.1, subsection 18(1) and section 18.1 of the *Tax Court of Canada Act* provide as follows:

> 2.1 For the purposes of this Act, "the aggregate of all amounts" means the total of all amounts assessed or determined by the Minister of National Revenue under the *Income Tax Act*, but does not include any amount of interest or any amount of loss determined by that Minister.
>
> …
>
> 18**.** (1) The provisions of sections 18.1 to 18.28 apply in respect of appeals under the *Income Tax Act* where a taxpayer has so elected in the taxpayer's notice of appeal or at such later time as may be provided in the rules of Court, and
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> > (*a*) the aggregate of all amounts in issue is equal to or less than $12,000; or
> >
> > (*b*) the amount of the loss that is determined under subsection 152(1.1) of that Act and that is in issue is equal to or less than $24,000.
>
> …
>
> 18.1 Every judgment that allows an appeal referred to in subsection 18(1) shall be deemed to include a statement that the aggregate of all amounts in issue not be reduced by more than $12,000 or that the amount of the loss in issue not be increased by more than $24,000, as the case may be.

[16] Counsel for the Appellant stated that the amount of income tax reassessed under the *Act* for 2006 that was in issue was less than $12,000 and that the amount of income tax reassessed under the *Act* for 2007 that was in issue was less than $12,000

but the aggregate total for both years that was in issue was more than $12,000. No penalties were assessed under the *Act*.

[17] In *Maier* v. *The Queen*, [1994] T.C.J. No. 1260, Justice Garon (as he then was) held that the aggregate of all amounts in dispute means the aggregate amounts in dispute under a particular assessment (or reassessment) and not under a Notice of Appeal. When a Notice of Appeal relates to more than one assessment (or reassessment) the issue is not whether the total amounts in dispute under the Notice of Appeal exceed $12,000 but whether the total amounts in issue in relation to any particular assessment or reassessment exceeds $12,000. Therefore, the limitation of $12,000, if applicable, will apply to each assessment (or reassessment) that is the subject of the appeal. In this case, since the amount of taxes reassessed under the *Act* for each reassessment that is in issue (as there was one reassessment for 2006 and a separate reassessment for 2007) is less than $12,000, the limitation will not apply.

[18] As a result the Appellant's appeals in relation to the reassessment of its 2006 and 2007 taxation years are allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the Appellant is entitled to the deductions claimed by the Appellant for catering expenses in 2006 and 2007 as the exception in paragraph 67.1(2)(*a*) of the *Act* is applicable to these expenses. The Appellant is therefore entitled to deduct the amount of $33,750 that was denied as a deduction in computing its income for 2006 and the amount of $41,275 that was denied as a deduction in computing its income for 2007.

[19] The Appellant is entitled to costs which are fixed in the amount of $2,500.

Signed at Halifax, Nova Scotia, this 31st day of August, 2011.

"Wyman W. Webb"

Webb, J.

CITATION:	2011TCC395
COURT FILE NO.:	2011-144(IT)I
STYLE OF CAUSE:	PINK ELEPHANT INC. AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 7, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice Wyman W. Webb
DATE OF JUDGMENT:	August 31, 2011

APPEARANCES:

Counsel for the Appellant:	Timothy Fitzsimmons Adam Patchet - student
Counsel for the Respondent:	Alisa Apostle

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