

Docket: 2011-2622(IT)I

BETWEEN:

ENZO BALDASSARRA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 11, 2012 at Toronto, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

Agent for the Appellant: Domenic Serra

Counsel for the Respondent: Rita Araujo

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2005 and 2006 taxation years is dismissed.

Signed at Toronto, Ontario this 18th day of May 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 175
Date: 20120518
Docket: 2011-2622(IT)I

BETWEEN:

ENZO BALDASSARRA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Enzo Baldassarra, appeals assessments made under the *Income Tax Act* for the 2005 and 2006 taxation years. The question is whether payments received by the appellant from Aro Excavating Ltd. (“Aro”) totaling \$15,000 each year should be added to the appellant’s income as income from employment.

[2] The appellant testified on his own behalf. A former owner of Aro, Cesare Aromatario, was subpoenaed to testify on behalf of the respondent.

[3] The appellant was a foreman and heavy equipment operator for Aro, which has since gone out of business. He belonged to a union and was paid on an hourly basis, except for the amounts in dispute.

[4] There are two types of payments at issue, monthly payments of \$1,000 and Christmas bonuses in the amount of \$5,000. The monthly payments were made every month except for July and August during the relevant period, so that the total amount paid was \$15,000 each year.

[5] I will first consider the \$1,000 monthly payments.

[6] The appellant testified that these payments were a reimbursement of expenses incurred in the course of employment. The expenses included tools, gas, and entertainment expenses consisting of meals and sporting events. The appellant testified that he provided receipts to Aro and that Aro rounded the amounts to \$1,000 per month which was approximately what he spent.

[7] This testimony was contradicted by Mr. Aromatario. He testified that the monthly payments had been negotiated as additional remuneration, to be paid above the regular hourly wage. He testified that any expenses would be reimbursed separately and that the appellant was not required to do any entertaining in the course of his work.

[8] The respondent entered into evidence the accounting records reflecting these payments. They were posted to an account called "Sub-Contracting" which clearly is incorrect. Mr. Aromatario was unclear but thought that the amounts were not included on the T4s.

[9] The preponderance of the evidence suggests that the monthly payments were as Mr. Aromatario testified, namely, further remuneration rather than as a reimbursement of expenses. Aro should have included them in T4s, but it appears that Aro hid the payments in a subcontracting account.

[10] The appellant's testimony that he incurred expenses in the range of \$800 or \$1,100 per month seems unlikely. Why would Aro not simply reimburse expenses if receipts had been provided, as the appellant suggested? Why would Aro put the amounts in a sub-contracting account if they were a reimbursement of expenses?

[11] The appellant's testimony was self-serving and no supporting evidence was provided. I would conclude that the monthly payments should be added to the appellant's income.

[12] As for the Christmas bonuses in the amount of \$5,000, it was suggested by the representative of the appellant that this amount might have been included on the T4s. This is certainly possible, but it is not likely in my view. First, the appellant did not provide any reconciliation of the T4s to show that the bonuses were included. Second, the fact that Aro misclassified the payments in a subcontracting account suggests that they were not being reported as employment income.

[13] I would conclude that the Christmas bonuses should also be added to the appellant's income.

[14] The appeal will be dismissed.

Signed at Toronto, Ontario this 18th day of May 2012.

“J. M. Woods”

Woods J.

CITATION: 2012 TCC 175

COURT FILE NO.: 2011-2622(IT)I

STYLE OF CAUSE: ENZO BALDASSARRA v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 11, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: May 18, 2012

APPEARANCES:

Agent for the Appellant: Domenic Serra

Counsel for the Respondent: Rita Araujo

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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