

Docket: 2011-3160(IT)G

BETWEEN:

DENIS GÉLINAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on June 21, 2013, at Montréal, Quebec.

Before: The Honourable Justice Gaston Jorré

Appearances:

Counsel for the appellant: Mathieu Kellner

Counsel for the respondent: Benoit Mandeville

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed and costs are awarded to the respondent in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Ontario, this 8th day of August, 2013.

"Gaston Jorré"

Jorré J.

Translation certified true
on this 11th day of February 2014.

François Brunet, Revisor

Citation: 2013 TCC 250
Date: 20130808
Docket: 2011-3160(IT)G

BETWEEN:

DENIS GÉLINAS,

Appellant,

and

HER MAJESTY THE QUEEN

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Jorré J.

[1] The Appellant is appealing from an assessment established for the 2009 taxation year.

[2] There is no disagreement as to the facts. The disagreement relates to the computation of the alternative minimum tax and, specifically, to whether, in computing the minimum tax, \$338,300 must be added to the taxable income, as this is the amount of a loss incurred in 2008.

[3] The appellant holds several rental properties and the parties agree that the table at paragraph 11 of Annex A of the reply to the Notice of Appeal reflects all the income and expenditures for these rental properties for the period of 2006 to 2008 inclusive.

[4] Six important facts should be noted:

- a) In 2008, the appellant had a rental loss of \$469,975.
- b) The other years saw a net income varying from approximately \$1,000 to \$240,000.
- c) In 2008, the appellant had an exceptional expenditure of nearly \$900,000 to keep a client.

- d) There is no dispute that there were no other expenditures comparable to the \$900,000 in the period from 2006 to 2010.
- e) There was one interest expenditure of \$1,073,792 in 2008.
- f) In the other years of the period, the interest expenditures varied from approximately \$954,000 to \$1,113,000.

[5] Yvon Renaud, an accountant, testified and explained that he prepared the appellant's income tax returns. He used very sophisticated commercial software to prepare the appellant's returns.

[6] When he computed the minimum tax, the question was raised as to whether to include an amount to line 41 of form T691, which is used to calculate the alternative minimum tax. On line 41, the relevant parts of the text are as follows:

[TRANSLATION]

If you have requested an amount on line 251 or 252 of your 2009 return for a loss incurred in another year, indicate which part of this loss can be attributed to limited partnership losses and/or the CCA or carrying charges requested for ... rental properties **(Note 6)**

[7] Note 6 is at the end of the form and the relevant parts are the following:

[TRANSLATION]

Note 6 — Compute the losses as partnership losses ... and the losses other than capital losses from other years attributable ... to carrying charges using the rules for the year. Please contact us if you require assistance.

[8] Line 252 ("losses other than capital losses from other years") from the appellant's T1 form for 2009, shows an amount of \$338,300.

[9] Mr. Renaud concluded that this loss of \$338,300, which came from the loss incurred in 2008, was not attributable to carrying charges or the interest, because, in other years from 2006 to 2010, there were no losses despite more or less comparable carrying charges. According to the appellant, the loss resulted from the exceptional expenditure of \$900,000 in 2008. Therefore, he did not add the \$338,300.

[10] The appellant claimed that this was the correct approach and, thus, that the appeal should be allowed. In the Minister's view, however, this amount should be added.

[11] Given the text at line 41 of form T691, I understand Mr. Renaud's reasoning with respect to the attribution of the loss, but I must apply the provisions of the *Income Tax Act* (ITA).

[12] The relevant provisions are section E.1 of Part I of the ITA and paragraph 20(1)(c) of the ITA.

[13] Since interest is generally a capital expenditure, it is only deductible under paragraph 20(1)(c) of the ITA.

[14] I reproduce below the applicable provisions of section E.1. For ease of reading, I have removed the parts that do not apply.

127.51 An individual's minimum amount for a taxation year is the amount determined by the formula:

$$A(B - C) - D$$

where

- A is the appropriate percentage for the year;
- B is the individual's adjusted taxable income for the year determined under section 127.52;
- C is the individual's basic exemption for the year determined under section 127.53; and
- D is the individual's basic minimum tax credit for the year determined under section 127.531.

...

127.52(1) ..., an individual's adjusted taxable income for a taxation year is the amount that would be the individual's taxable income for the year ... if it were computed on the assumption that

(a) ...

(b) the total of all amounts each of which is an amount deductible under paragraph 20(1)(a) or any of paragraphs 20(1)(c) to 20(1)(f) in computing the individual's income for the year in respect of a rental or leasing property ... were the lesser of the total of all amounts otherwise so deductible and the amount, if any, by which the total of

(i) the total of all amounts each of which is the individual's income for the year from the renting or leasing of a rental or leasing property owned by the individual ... computed without reference to paragraphs 20(1)(a) and 20(1)(c) to 20(1)(f), and

...

exceeds the total of all amounts each of which is the individual's loss for the year from the renting or leasing of a rental or leasing property owned by the individual ... computed without reference to paragraphs 20(1)(a) and 20(1)(c) to 20(1)(f);

...

(i) in computing the individual's taxable income for the year or the individual's taxable income ... the only amounts deductible under

(i) paragraphs 111(1)(a), 111(1)(c), 111(1)(d) and 111(1)(e) were the lesser of

...

(B) the total of all amounts that would be deductible under those paragraphs for the year if ... paragraphs (b) ... of this subsection ... applied in computing the individual's non-capital loss ...

...

[15] The issue here concerns the computation of the taxable income amended within the meaning of section 127.51(B) above.

[16] The effect of paragraph 127.52(1)(b) is to limit, among other things, the amounts deducted for the amortization and for the interest paid. For the computation of the amended taxable income, the total of the deductible amounts subject to paragraph 127.52(1)(b) is limited in such a way that the total deductible for these amounts does not create a loss. For example, if there is an interest expenditure of \$100,000 and there is a further loss of \$40,000 for the purposes of the minimum tax, the deduction of interest will be limited to \$60,000 so that the income drawn from the rental property is set at \$0. The provision does not require that the amortization or the interest is the cause of the loss.

[17] Furthermore, if we review the appellant's T1 form for 2008,¹ we see that this is exactly what occurred. At line 126 of the return, we see that for all the rental properties there was one rental loss of nearly \$470,000. In form T691, at lines 5 to 7, we see that there was a deduction of interest of nearly \$1,073,000 and that for the purpose of the computation of the amended taxable income, the deduction of interest was decreased by approximately \$470,000 and income was increased by the same amount for the purposes of the alternative minimum tax.

[18] As for the year under appeal, paragraph 127.52(1)(i) applies. This paragraph means that when the losses of other years are taken into account in the computation of the amended taxable income, paragraph 127.52(1)(b) must be applied to the computation of losses in these previous years.

[19] The loss of \$338,300 at line 252 of the appellant's T1 form for 2009 was incurred in 2008. This loss would not have been incurred without the deduction of interest. Thus, \$338,300 must be added in computing the amended taxable income for 2009 for the purposes of the alternative minimum tax.

[20] For these reasons, the appeal is dismissed with costs.

[21] I note that, depending on the circumstances, the appellant may recover his minimum tax in other taxation years.

¹ Exhibit I-1.

Signed at Ottawa, Ontario, this 8th day of August, 2013.

“Gaston Jorré”

Jorré J.

Translation certified true
on this 11th day of February 2014.

François Brunet, Revisor

CITATION: 2013 TCC 250

COURT FILE NO.: 2011-4044(IT)G

STYLE OF CAUSE: DENIS GÉLINAS v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: June 21, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: August 8, 2013

APPEARANCES:

 Counsel for the appellant: Mathieu Kellner

 Counsel for the respondent: Benoit Mandeville

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