

Docket: 2018-3616(IT)I

BETWEEN:

MAURICIO GALVIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 9, 2019, at Calgary, Alberta

Before: The Honourable Justice B. Russell

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: **Andrew Lawrence**

FURTHER AMENDED JUDGMENT

The appeal of the two reassessments each raised September 25, 2017 pursuant to the federal *Income Tax Act* pertaining respectively to the Appellant's 2014 and 2015 taxation years, is dismissed, without costs.

This Further Amended Judgment is issued in substitution for the Amended Judgment dated February 14, 2020.

Signed at Ottawa, Canada, this 19th day of **February** 2020.

“B.Russell”

Russell J.

Citation: 2020TCC20
Date: 20201402
Docket: 2018-3616(IT)I

BETWEEN:

MAURICIO GALVIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Russell J.

[1] The Appellant, Mauricio Galvis (MG), appeals two reassessments raised September 25, 2017 by the Minister of National Revenue (Minister) under the federal *Income Tax Act* (ITA) regarding MG's income tax liabilities for his 2014 and 2015 taxation years. Both reassessments disallowed employment expenses claimed in relation to usage of a 2011 Mercedes Benz automobile and as well disallowed employment expenses claimed in relation to remuneration MG said he paid to telemarketers he had hired.

[2] The evidence of MG, who was the sole witness testifying at the hearing, was that throughout the two taxation years in issue his employer was First Data Canada Ltd. (First Data), which was in the business of selling point of sale business devices, such as credit card readers. MG's employment responsibility was to market First Data business devices within the region of southern Alberta.

[3] When he travelled for this work it was by automobile. He and his spouse owned three vehicles - a 2001 Toyota, a 2001 Nissan and a 2011 Mercedes Benz acquired in June 2014. His spouse was employed as a nurse who worked shifts at a hospital. She would drive one or other of their vehicles from home to the hospital and back, each trip being a 30 to 40 minute drive. He testified he would primarily drive the Toyota, until their mid-2014 acquisition of the Benz, which MG said was primarily for his use, to look prosperous when making business visits, although his spouse would sometimes drive it. MG asserts that the appealed reassessments are wrong in denying deduction for expenses in respect of the 2011 Benz.

[4] He stated that his spouse primarily drove the Nissan. MG and his spouse co-owned these three vehicles. The Minister previously had allowed expenses of \$6,262 and \$4,466 for operation of the Nissan for the two taxation years respectively. MG said he had no particular awareness of that. In response to a question from the bench he said that his spouse did not primarily drive the 2011 Benz in travelling back and forth for her hospital work, even on winter nights, as opposed to driving the ten year older Nissan. He said that this was because of concern the Benz would get dinged in the hospital parking lot.

[5] Vehicle insurance documentation filed as exhibits showed his spouse as the principal driver of the Benz and he the principal driver of the Nissan. MG said this was mistaken, and that he was the principal driver of the Benz and his spouse the principal driver of the Nissan. The supposedly wrong statements as to principal drivers were shown on two different insurance documents dated June 30, 2014 and August 25, 2014 respectively, without any amendment having been made or sought by MG during the taxation years in issue to correct this supposed error. MG testified that he had not noticed these statements on the insurance documents until well after the fact.

[6] In cross-examination MG described his typical work day as beginning with a 30 - 45 minute conference call with his Winnipeg-based supervisor and other executives across the country as for business prospects, and then briefly sitting down at his house with “telemarketers” (as discussed below) making telephone calls for him and doing any calls they might wish him to do, and then returning some calls and sending some emails himself. Then he, “...would likely, for example [on] any given day, may have [a] meeting with a referral partner or - - training in a financial institution that’s a referral partner of ours. So [a] combination of working from home, sending emails, and then occasionally, obviously, seeing - - going out to see actual merchants and partners of ours.” [Transcript, pp. 72-73]. I observe from this that vehicular travel for MG in the course of his employment work did not appear to be extensive.

[7] MG did not present any mileage log in support of his motor vehicle expense claim. He said he had maintained one but on a monthly basis had electronically submitted it to his employer for work purposes, apparently had not kept a copy, and subsequently could not obtain the mileage log back from First Data. The log would have shown monthly mileage although would not have been specific as to which of the couple’s autos had been used for any of his trips. No corroborating documentation such as copies of correspondence with First Data seeking a copy of his mileage log was submitted. Likewise, no documentation supporting MG’s

assertion that after the years in issue he had tried to get the insurance company to change its record of who were principal drivers of the Nissan and Benz was submitted. Nor was MG's spouse or an insurance company agent called to testify.

[8] MG did present as evidence, certain fuelling receipts for the Benz, some illegible, those legible showing fuel having been paid by his credit card. Also some repair documentation for the Benz was filed, showing MG's name as the customer as opposed to his spouse. These relatively non-comprehensive items do not have strong probative value. Per schedule "A" of the Reply, claims for Benz expenses for the 2014 and 2015 taxation years were approximately \$11,000 and \$10,000 respectively, and that is in addition to the aforementioned deductions of \$6,262 and \$4,466 respectively for the two years that already had been permitted, for operational expenses of the Nissan.

[9] Nor did MG, in the absence of an actual mileage log for the Benz, provide any listing of clients or referral partners and their location that he would have the Court accept that he had visited in the course of carrying out his employment duties, and establishing which automobile (the Nissan, for which deductions for operating expenses already had been allowed, and/or the Benz) he would have been driving for such trips.

[10] MG submitted in evidence two T2200 forms per subsection 8(10) of the ITA, completed by his employer for the subject two taxation years. They stated that MG would receive from his employer a mileage allowance. There was no specific evidence as to frequency or duration of any of his employment-related trips and in which vehicles. As noted, the Minister had already allowed deductions for each of the two years for operation of the Nissan.

[11] I find that MG's evidence was insufficiently detailed and was non-comprehensive, including particularly as to documentation, to allow his claim for deduction of employment - related motor vehicle expenses pertaining to use of the 2011 Benz. He seemed to place reliance on the fact that he was an owner of that vehicle, so as to establish him as its primary user, notwithstanding that that vehicle's purchase documentation showed that he and his spouse were co-owners of that vehicle. It may have been that he did substantially or primarily drive it but there remains an unfortunate dearth of contemporaneous records evidencing distances and destinations of employment-related driving as opposed to other driving. The maintenance documentation showing his name as customer does not establish more than the fact that he rather than his spouse tended to take that car in for servicing. The insurance documentation shows, for each of the two years in

issue, his spouse as being the primary driver. In short, MG has not provided an adequate evidentiary basis to support a determination as to any particular amount of expenses that could be allowed in respect of operation of the 2011 Benz in conjunction with his employment work.

[12] I turn now to the other issue, being denial of any deduction for amounts paid to persons MG called “telemarketers”, that he said he had hired to assist him in contacting by telephone potential clients and referral entities. MG testified that from time to time throughout a year he would hire a few such persons (referencing in particular his 17 year old baby-sitter), to come to his house each day and make a series of calls as one aspect of his overall sales efforts. Further, MG tended to pay them mostly with Walmart \$100 gift coupons - as he opined that these young persons would or might tend to wastefully spend actual currency paid to them.

[13] Once again there was a serious lack of probative evidence as to how much they were paid, who was paid, and when. No receipts or invoices were submitted in evidence. No payroll documentation was put in evidence. No one else including any of these purportedly hired persons was called to testify regarding this.

[14] In short, proof of actual payment of the claimed amounts in this regard was not sufficiently if at all established, through contemporaneous documentation or otherwise. Furthermore, the two subsection aforementioned Form T2200s each stipulated that MG’s contract of employment, “did not require him or her to...employ a substitute or assistant”.

[15] Accordingly I also am unable to find in favour of MG for claimed expenses for telemarketers.

[16] In conclusion this informal appeal will be dismissed, albeit without costs.

This Amended Reasons for Judgment is issued in substitution of the Reasons for Judgment dated January 31st, 2020 to amend above-noted appearances of counsel.

Signed at Ottawa, Canada, this **14th** day of **February** 2020.

“B.Russell”

Russell J.

CITATION: 2020 TCC 20

COURT FILE NO.: 2018-3616(IT)I

STYLE OF CAUSE: MAURICIO GALVIS AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: October 9, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell

DATE OF JUDGMENT: January 31, 2020

**DATE OF AMENDED
JUDGMENT: February 14, 2020**

**DATE OF AMENDED
REASONS FOR JUDGMENT: February 14, 2020**

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: **Andrew Lawrence**

COUNSEL OF RECORD:

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Name:

Firm:

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