

Docket: 2024-667(IT)I

BETWEEN:

MAHBOUBEH KHANI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on November 25, 2024, at Burlington, Ontario

Before: The Honourable Justice J. Scott Bodie

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Farina Chaudhry
 Sean Karmali

JUDGMENT

The appeal of the Appellant's entitlement to moving expenses under subsection 62(1) of the *Income Tax Act* for the 2021 taxation year is dismissed, without costs.

Signed this 14th day of February 2025.

“J. Scott Bodie”

Bodie J.

Citation: 2025 TCC 26

Date: 20250214

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MAHBOUBEH KHANI,

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REASONS FOR JUDGMENT

Bodie J.

I. Introduction

[1] In the spring of 2020, Ms. Khani, along with millions of other Canadians, found herself transitioning from a traditional office work environment to working from her home because of the COVID-19 pandemic. This transition caused a host of stresses for Ms. Khani and her family, which, according to her testimony, she in part, tried to alleviate by moving into a new home, which she believed was better suited to a home-working environment, in February 2021.

[2] In her income tax return for the 2021 taxation year, she claimed moving expenses of \$66,868. By way of Notice of Reassessment dated July 7, 2023, the Minister of National Revenue (the “Minister”) reassessed Ms. Khani for the 2021 taxation year to disallow her claim of moving expenses. Ms. Khani is appealing the Minister’s decision under the Court’s informal procedure. Accordingly, the issue in this appeal is whether Ms. Khani is entitled to claim moving expenses of \$66,868 for the 2021 taxation year.

II. Statutory Provisions

[3] Under subsection 62(1) of the *Income Tax Act* (the “Act”) there may be deducted in computing a taxpayer’s income for a taxation year, amounts paid by the taxpayer as, or on account of, moving expenses incurred in respect of an eligible

relocation, to the extent that a number of requirements are met. None of those additional requirements were at issue in this appeal. All statutory references herein are to the Act.

[4] It is the Respondent's position that the moving expenses incurred by Ms. Khani were not in respect of an eligible relocation.

[5] The term "eligible relocation" is defined in subsection 248(1). The relevant parts of the definition for purposes of this appeal are as follows:

A relocation of a taxpayer in respect of which the following apply:

a) the relocation occurs to enable the taxpayer to be employed at a location (the "new work location");

b) the taxpayer ordinarily resided before the relocation at a residence (the "old residence") and ordinarily resided after the relocation at a residence (the "new residence"); and

c) the distance between the old residence and the new work location is not less than 40 kilometers greater than the distance between the new residence and the new work location.

[6] In order for Ms. Khani's move to qualify as an eligible relocation, all three of these elements of the definition must be met. I will start by considering whether Ms. Khani's relocation occurred to enable her to be employed at the new work location.

III. Ms. Khani's Position

[7] It is Ms. Khani's position that she undertook the move to a new residence to enable her to retain, and, in fact, thrive in her employment, which she carried on from the old residence and intended to carry on from her new residence.

[8] In support of this position, she testified that she had been employed as a Territory Account Manager for SimuTech Group since 2019. In this role, she was responsible for selling both the company's software and technical services. She spent most of her time interacting in meetings with prospective and existing customers. Prior to the pandemic she worked mainly from SimuTech's offices which were located at 50 Ronson Drive in Toronto, although she often visited customers in their offices. This changed in the late winter of 2020 when SimuTech's offices were

closed because of the pandemic, and she began working from her home located in Mississauga (the “Mississauga residence”).

[9] Once she began working from the Mississauga residence, her customer meetings were generally conducted virtually. As mentioned earlier, she testified that this brought to the fore several challenges. She shared the Mississauga residence with her husband and two sons, who at the time were ages 7 and 4. They all lived on the top floor of the residence. She and her husband rented the basement to Ms. Khani’s sister and her family. She did not have a private office space in the Mississauga residence and found that she was often distracted by the rambunctious activities of her two boys, who often interrupted her customer meetings.

[10] Ms. Khani’s compensation structure with SimuTech consisted of a mixture of salary and commission, which was based on her sales. She considered her sales targets, which were set by the company each March, to be high and noted that as she met them, her targets for the following year increased. For example, her sales targets for 2020 were \$360,000 for software and \$120,000 for services. These increased to \$465,000 for software and \$165,000 for services in 2021. She worried whether she would be able to reach these new targets, especially given the challenges she experienced in working from the Mississauga residence. She testified that she believed that if she did not continue to meet or exceed these targets, she would be unable to retain her position, the income from which was relied upon for her family’s well-being.

[11] Therefore, in September or October of 2020, Ms. Khani testified that she and her husband started to look for a new home. They eventually found one, which they purchased in December 2020, located in Campbellville (the “Campbellville residence”). The Campbellville residence, which the family moved into in February 2021, had a basement, which she could use as a private office, and a much larger outdoor space where her children could play and thereby occupy their time. She testified that the extra outdoor space also allowed her to hire a teacher for the children to enable them to learn more about nature and further occupy their time.

[12] Ms. Khani acknowledged that the Mississauga residence also had a basement, which she could have used as a private office. However, she said that it was occupied by her sister and her family. She testified that she relied on the monthly rent that her sister paid for the use of the space and was concerned with asking her sister and her family to move during the winter. I note, however, that she also testified that when Ms. Khani moved to the Campbellville residence in February 2021, her sister and family were able to find suitable new accommodation on their own.

[13] The evidence showed that the Mississauga residence was approximately 32 kilometers away from SimuTech's offices on Ronson Drive, while the Campbellville residence was approximately 56 kilometers away from such offices. Further, the distance between the Mississauga residence and the Campbellville residence was approximately 40 kilometers.

[14] Ms. Khani admitted on cross-examination that at no point did SimuTech express any unhappiness with her performance or suggest that it would be necessary for her to find a better work environment for her to retain her employment. She also admitted that while it was a fluid situation, SimuTech began to reopen its offices for the return of its employees on a part-time basis in either 2021 or 2022.

IV. The Law

[15] In *Bracken v. Minister of National Revenue* 84 CTC 2922 (T.C.C.), Chief Justice Christie identified four conditions that must be met for a taxpayer to qualify for a deduction in respect of moving expenses. Chief Justice Christie wrote the following at page 2929:

My reading of subsection 62(1) is that it contemplates the existence of four separate elements: old work location, new work location, old residence and new residence, and the comparison of two distances, i.e. the distance from the old residence to the new work location with the distance from the new residence to the new work location the former of which must exceed the latter by 40 or more kilometers in order for the moving expenses to be deductible.

[16] While the requirement that there be four separate elements present to qualify for moving expense deductions is consistent with the strict wording of the Act, there is nothing in the Act to preclude the work locations and the residences from being the same location, which is what Ms. Khani is effectively arguing. She argued that as a result of her being required to work from home after March 2020, her old work location is not the Ronson Drive offices of SimuTech, but rather, the Mississauga residence, which is also her old residence. Similarly, in Ms. Khani's view, the Campbellville residence is both the new work location and the new residence for purposes of the tests set out in the definition of "eligible relocation".

[17] This issue has been considered by the Courts previously. For example, in *Templeton v R* [1998] 3 CTC 207, the Federal Court considered a scenario where the taxpayer was employed as a broadcaster-commentator for a radio station. Following the expiration of his contract with the radio station, the taxpayer began to devote more of his time towards inventing games and gadgets, while also continuing his

activity as an author. During this period, his residence was in Penetanguishene. His home was his official work location for his work as an inventor and author. However, to devote more time to inventions, the taxpayer moved to Toronto, where he purchased a new home which contained a special workspace that could be dedicated to inventing. In this case, the Federal Court suggested that the four elements laid out in *Bracken* need not necessarily be considered as four separate elements. The Federal Court noted the following at paragraph 15:

It is realistic, logical and in the context with the reality of Canadian life to understand that a person's residence might very well be the same as his or her work location. To make the deduction, s. 62(1) covers a range of allowable possibilities, with the distance between a person's new residence and new work location being thousands of kilometers at one end of the range, to zero kilometers at the other. Mr. Templeton's situation of 50 feet falls nearer to the lower end of the scale.

[18] It should be noted that Mr. Templeton carried on his own business. However, in *Adamson v R* [2001] 4 CTC 2499, which was a matter conducted under the Court's informal procedure, the Court considered a situation where the taxpayer was an employee who worked out of an office at his employer's premises until he assumed a managing position and was required to start working from home. Shortly thereafter, the taxpayer moved from a small apartment in Toronto to a home in Georgetown, in large part because the home had a basement which could be used as an office.

[19] The Respondent conceded that, since the taxpayer worked from home, the new work location for purposes of subsection 62(1) was not the employer's physical premises, but rather the taxpayer's new home office. However, the Respondent argued that the moving expenses should not be allowed on the basis that the taxpayer had selected the new home and, by extension, the new work location. Therefore, it was argued, the relocation could not be said to have occurred "to enable" the taxpayer to be employed at the new work location. The Court did not share this view. The Court accepted the taxpayer's testimony that the former residence was too small to accommodate an office and his family. Accordingly, the Court found that the change in the taxpayer's employment arrangement (going from working in-office to working from home) required the taxpayer to move residences to remain employed.

[20] I agree with Ms. Khani's position and with the decisions of this Court reviewed above, that subsection 62(1) and the definition of "eligible relocation" must be interpreted in a manner that recognizes the reality that, particularly in the post pandemic work environment, many Canadians work from home and, just like Canadians who work in a more traditional setting, should be able to access the

benefit of the deduction available under those provisions where circumstances warrant.

[21] However, it must also be recognized that Parliament did not intend for the deduction to be available where a person relocates primarily for personal reasons. As now Chief Justice St-Hilaire wrote in considering the tests set out in the definition of “eligible relocation”, in her decision in *Del Vecchio v His Majesty the King* 2023 TCC 46 at paragraph 29, “I also find that the expression must be interpreted with some degree of flexibility, but not in a way that renders it meaningless.”

[22] In order that the tests not be rendered meaningless where a person with a home office moves to a new home with a new home office, it is important that the taxpayer clearly be able to demonstrate that the relocation primarily occurred to enable the taxpayer to be employed at the new location and not for personal reasons. There is an inherent difficulty in attempting to ascertain a person’s intention behind any action. In doing so, it is important to consider a person’s statements. However, personal statements cannot be determinative. As Justice Iacobucci wrote in *Symes v The Queen* [1993] 4 SCR 695 at page 736:

As in other areas of law where purpose or intention behind actions is to be ascertained, it must not be supposed that in responding to this question, courts will be guided only by a taxpayer’s statements, *ex post facto*, or otherwise, as to the subjective purpose of a particular expenditure. Courts will instead, look for objective manifestations of purpose, and purpose is ultimately a question of fact to be decided with due regard for all of the circumstances.

V. Conclusions

[23] In this case, Ms. Khani stated that the move to the Campbellville residence was motivated by her wanting to retain her employment and to improve her position with her employer. She said that the lack of a dedicated office in the Mississauga residence meant that she was often distracted by the activities of her boys, making her concerned that she would be unable to meet her targets and potentially lose her job. She said that these concerns were alleviated by the basement office she had in the Campbellville residence and the more outdoor space surrounding that residence for her sons to play outside. I accept Ms. Khani’s sincerity in making these statements and have no doubt that the Campbellville residence provided her with a better work environment than she had previously.

[24] However, in looking at all the surrounding circumstances, I cannot accept that the primary motivation behind the relocation was to enable to her retain her

employment. First, she admitted in cross-examination that at no time did her employer express any dissatisfaction with the work she was doing while working out of the Mississauga residence or suggest that a move might be necessary for her to retain her employment. She met her targets and was paid the full commissions for which she was eligible in the year in which she and her husband purchased the Campbellville residence, 2020.

[25] Secondly, Ms. Campbell was vague in her testimony as to whether her work from home status would be temporary. In the one letter from her employer which was entered into evidence, and which was drafted after Ms. Khani's relocation, her employer described the closure of SimuTech's offices as "temporary". Further Ms. Khani admitted on cross-examination that at some point SimuTech began the process of bringing its staff back to the office. It is much less likely that the relocation of a person's home office could be primarily motivated by employment concerns, where such person is working from home on a temporary basis, or in a situation that is likely to be temporary. This is one distinguishing feature from the *Adamson* case reviewed above, where it was clear that both the taxpayer and his employer intended that he would be working from home on a permanent basis.

[26] Thirdly, while I understand that the Campbellville residence had a basement where Ms. Khani could set up her office, so did the Mississauga residence. The fact that her sister was living in the basement in the Mississauga residence, paying rent, did not appear to be an impediment to Ms. Khani moving to the Campbellville residence in February 2021.

[27] Because of these surrounding circumstances I cannot find that Ms. Khani's relocation occurred to enable her to be employed at the Campbellville residence for purposes of the definition of "eligible relocation" in subsection 248(1). As this is a requirement which must be met for a relocation to qualify as an "eligible relocation", Ms. Khani's move cannot so qualify. Under subsection 62(1) moving expenses can only be deducted if they are incurred in respect of an eligible relocation.

[28] Accordingly, the appeal is dismissed, without costs.

Signed this 14th day of February 2025.

"J. Scott Bodie"

Bodie J.

CITATION: 2025 TCC 26

COURT FILE NO.: 2024-667(IT)I

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REASONS FOR JUDGMENT BY: The Honourable Justice J. Scott Bodie

DATE OF JUDGMENT: February 14, 2025

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Farina Chaudhry
Sean Karmali

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Shalene Curtis-Micallef
Deputy Attorney General of Canada
Ottawa, Canada