

Docket: 2007-2072(IT)I

BETWEEN:

ARMEL LAROCHELLE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard October 2, 2007, at Québec, Quebec

Before: The Honourable Justice Alain Tardif

Appearances

For the Appellant: The Appellant himself

Counsel for the Respondent: Christina Ham

JUDGMENT

The appeal from the assessment established under the *Income Tax Act* for the 2003 and 2004 taxation years is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 8th day of November 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 23rd day of November 2007.

Elizabeth Tan, Translator

Citation: 2007TCC644
Date: 20071108
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REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal for the 2003 and 2004 taxation years.

[2] The issues in question are:

(a) Did the Minister of National Revenue (the "Minister") correctly determine the net income regarding the Appellant's building, as follows?

<u>DESCRIPTION</u>	<u>2003</u>	<u>2004</u>
Net rental income	\$4,884	\$5,365

(b) Did the Minister correctly determine the net losses of the Appellant's company, as follows?

<u>DESCRIPTION</u>	<u>2003</u>	<u>2004</u>
Net business losses	(\$4,480)	(\$660)

- (c) Was the Minister justified in disallowing the Appellant's claims for amounts as expenses related to using part of his personal residence for business purposes, for \$1,456 and \$1,608 respectively?
- (d) Was the Minister justified in refusing the Appellant's claims for property tax amounts of \$612 and \$684, respectively, for the Appellant's woodlot for the 2003 and 2004 taxation years, and adding these amounts to the adjusted cost base of the lot?
- (e) The sections on which the Minister relied and the other related provisions are valid legislative instruments, compatible with the *Canadian Charter of Rights and Freedoms*.

[3] Given the content of the Notice of Appeal, I explained to the Appellant at length that he had the burden of proof. I specifically pointed out that he had to present evidence directly related to the basis of the assessment under appeal.

[4] I also indicated to the Appellant that the only jurisdiction the court has is to consider the evidence submitted in order to verify and analyze whether the assessments were established in accordance with the provisions of the Act.

[5] Observations and instructions were required regarding the content of the Notice of Appeal, from which I am reproducing some excerpts:

[TRANSLATION]

I challenge the following:

COMPANY:

I am NOT a COMPANY. I gathered everything that is:
not rental income,
not interest income,
not dividend income,
not capital gain income,
not retirement income,

and called it GESTION ARMEL LAROCHELLE. All that is tax-related is included, for example books I wrote and my Internet site that deals with the same subjects as my books (particularly cosmology). I spent more than eight years just on my Internet site. I am quite sure that the auditor did not even look at this work when he thought I used only 10% of my computer to create this site. I worked every morning, every afternoon and every evening. GESTION ARMEL also

includes a woodlot in Château-Richer. If I put all this under company, it is because there was no other appropriate place on the tax return.

I invite you to consult the site: <http://science-univers.qc.ca>

...

Charters of rights: Respect and human dignity

The Department of Revenue, to make more money, chops us up into pieces, a violation of humanity that goes against our charters of rights. I am a whole BEING and it is an inconceivable lack of respect to not take my entire being into consideration. I constitute a whole and no one should take each part of me and judge it without my whole being able to intervene and compensate as necessary. This is called DIVIDING to better COLLECT.

When the auditor says I did not have enough income to allow such expenses, he is wrong because I already have more than \$60,000.00 in income. I have enough income to allow all the expenses I presented. I therefore ask for this adjustment.

...

Admissible expenses:

These two statements are both equally valid:

- 1- "Your expenses are too high for the income you have. Therefore, you do not have the right to consider them as expenses"
- 2- "Your income is too high for the expenses you have, so your income should not be taxable"

The two statements also make no sense.

What would you do if one day I sold the 6,000 books that I have stored?

We are partners. Taxes must take risks as I do. If taxes do not participate in the expenses, why should it be able to benefit from the income?

JUSTICE requires taxpayers to be on an equal basis as Revenue Canada.

If you disallow my expenses, will you sign a waiver regarding the 6,000 books that are still not sold?

...

Examinations of details in the 2004 assessment notice

Maintenance and repairs: (1)

I included two electric bills in this column by mistake. The auditor refused them.

Secretarial: (2)

Of 3,022, the auditor disallowed \$2,908 of expenses. He only allowed \$114, the annual cost of my host.

He even claims that "It was personal and LIVING expenses...

I never purchased food for myself. I never even counted as expenses the food I purchased to feed those who came to meet with me to discuss my theories. Moreover, I never included any expense for my vehicle; I did, however, use it many times for the purposes of my activities.

Property tax: (3)

The last auditor disallowed the expense of taxes regarding my woodlot in Château-Richer (\$684).

He said "that my lot was not exploited commercially." One year I sold \$1,155 of wood, for which I paid taxes. Taxes are a recurring expense that is not of a "capital" type. If I cut wood every other year, are the taxes one year considered an expense and the other year they are considered "capital"?

Rent: (3)

This is a subject of disagreement. I have a 3-storey building on Saint-Joseph Street in Québec. I rent the ground floor to a jewellery store. I also rented the 2 apartments on the 2nd floor.

After a few years, I decided to install all I needed to write and publish my books there, and to create a 50Mb Internet site: bookcase, computer, phone, conference room, projection equipment, chairs, furniture, cupboards, Internet subscription, host subscription, quantizer, cards, posters, charts, etc.

Each of the two apartments has its own electricity meter for lighting and heating.

As for the 3rd floor, it is my personal residence. I have been living there since 1986.

The auditor disallowed these rental expenses. If I did my accounting this way it was to better establish the true costs of my activities. At any rate, it does not

change the final amount of taxes in the end. The taxes I do not pay under Gestion Armel Larochelle, I pay entirely in my rental income.

Electricity: (1)

The auditor disallowed electricity-heating. Why? I do not know. I have enough income to meet these expenses. Unless I am again being cut into pieces to better milk the payer. Divide in order to better collect.

Other expenses: (4)

It is mainly about the item SMALL INVOICES.

Of \$551 in small invoices, he only allowed \$56. He even refused invoices for postage for books that were sold.

Depreciation: (6)

I do not have a computer in my residence. For many years, I worked an average of 10 hours a day. Now I am older and I work less, much less. I still reply to e-mails (at least 2000 e-mails). I am no longer able to work as intensely. I lack concentration. When you go visit my site you will see that I did a tremendous amount of work on it that lasted for many years. This work had even begun when I was in Africa, over 35 years ago. Reducing my depreciation from \$474 to \$47 is simply an insult to my immense work. As a result, I ask for the amount I had calculated according to the previous auditor's method to be reinstated.

I did not find "attached for consultation a detailed table of the calculations of deductions for depreciation."

Results:

The reduction of expenses for 2004 was such that my expenses went from \$11,886 to \$262. A disallowment that equals \$11,624, a 97.8% disallowment.

[6] To make the Appellant's work easier, the Respondent suggested he present his evidence first. It was an excellent suggestion and the Court agreed with this procedure. So Martin Bouchard and Guylaine Fraser explained the work they carried out for these assessments.

[7] Mr. Bouchard indicated that he separated the Appellant's various activities. He then assessed the issue of income from rentals of the building the Appellant owned.

[8] He explained that he disallowed the rental amounts the Appellant paid to himself from the rental income. The inherent expenses were also disallowed in the analysis, which is perfectly legitimate.

[9] Second, Mr. Bouchard took into consideration that the Appellant could not show that the expenses claimed were directly related to one or more activities that would eventually lead to income, income from a possible business being completely marginal, even symbolic, for 2003 and 2004. The same approach was used for the woodlot in Château-Richer that produced \$1,155 in income just one year earlier.

[10] At the objection stage, Ms. Fraser explained that the Appellant did not submit new documents or facts, leading her to carry out the revision with only the documents that were already on file.

[11] She did, however, make a slight change by substituting 90% for 10% for use of the computer; the auditor had only granted 10%, with the change based on the ground that it was a piece of equipment the Appellant used only very little. That is more or less what was taken into consideration when establishing the assessments the Appellant is challenging in his appeal.

[12] Although the Respondent's evidence was essentially made up of explanations for the various grounds or reasons, the disallowments of one or more general bases—namely the disallowment of rental income from his personal use—led to the expenses related to the personal portion also being disallowed.

[13] Moreover, the auditors also dismissed the facts presumed by the Appellant, namely that he operated a company. Additionally, he himself admitted that he was not a company in his notice of appeal.

[14] Based on such an approach, all the components regarding expenses were dismissed, and not disallowed individually as irrelevant. In other words, the Respondent did not disallow the expenses individually, but rather at the level of their allowability, based on the principle that an expense not carried out for the purposes of earning income is not deductible.

[15] When asked to submit his evidence, the Appellant focussed on his individual expenses, clearly not understanding why and how the assessments had been established.

[16] He wanted to challenge the individuality of the expenses instead of showing that he truly did operate a company; therefore, he tried to show the relevance of certain expenses instead of submitting elements showing he operated a business of some sort.

[17] On this subject he basically confirmed he had already been questioned where the decision was that the expenses claimed were carried out for the purposes of earning or generating income.

[18] Presuming his status as a business operator was permanent or still valid, he concealed relevant or even essential elements of his evidence that would have shown the true existence of a real company that would have given rise to an analysis of expenses as an individual.

[19] He essentially restated what he said in his Notice of Appeal. He stated he forgot many documents and would have liked a few days or more to review each of the invoices and exhibits he had submitted at the audit.

[20] Clearly, the Appellant has a very personal view of his fiscal obligations. From this vision that is his alone, he comes to conclusions that are completely unfounded. I believe the Appellant would benefit from consulting a qualified person so that certain provisions of the Act regarding the right to deduct expenses could be explained.

[21] The Appellant's approach, from which certain excerpts were produced, shows the extent of his misunderstanding of the basis of the assessments being appealed.

[22] Despite the observations and precisions stated at the beginning of the hearing, the Appellant did not submit any evidence or element of evidence that would discredit the quality of the exercise that led to the new assessments.

[23] He expressed criticism, stated his disagreement, and complained that he did not have the possibility to talk face to face with the auditor, whom he said did not go on-site to make certain observations with his own eyes.

[24] Because of the nature of the case, it is perfectly normal and reasonable to proceed as the auditor did. Moreover, his understanding, analysis and finding were completely reasonable and justified.

[25] I cannot really make any analysis because the evidence is completely deficient; therefore, I must conclude that the reasoning, development, interpretation and findings are coherent and valid in terms of the fundamental elements available, namely regarding the lack of business income for the woodlot, and no commercial activity regarding the Appellant's apparent main occupation, that of writer.

[26] On this aspect of his case, the Appellant states he sold a few units of his books, which for the most part are stored at his home. He stated he thought, hoped and even dreamed that one day he would become a well-read and well-known author, but he did not explain how he expected to achieve this. He did repeatedly refer to his Website, which he created and which took a tremendous amount of work.

[27] Given the lack of evidence by the Appellant, it is completely inappropriate to try and analyze the expenses because the assessment did not include an analysis of such expenses. In fact, the assessments were essentially established on the ground of inadmissibility resulting from the lack of a business of any sort being operated.

[28] As a result, the evidence submitted does not meet the minimum requirement to be evaluated on merit; the Appellant simply did not meet his minimal obligation to submit relevant evidence.

[29] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 8th day of November 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 23rd day of November 2007.

Elizabeth Tan, Translator

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STYLE OF CAUSE: ARMEL LAROCHELLE AND HER
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PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: October 2, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: November 8, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Christina Ham

COUNSEL OF RECORD:

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