

Docket: 2005-4203(GST)G

BETWEEN:

WILLIAM J. CAMPBELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of William J. Campbell
(2005-4204(IT)G) on May 10, 11, 15 and 17, 2007
at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Bruce Senkpiel

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act*, notice of which is dated October 17, 2003 and bears number 11BU0502474 is dismissed in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 7th day of December 2007.

"L.M. Little"

Little J.

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BETWEEN:

WILLIAM J. CAMPBELL,

Appellant,

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Appeals heard on common evidence with the appeal of William J. Campbell
(2005-4203(GST)G) on May 10, 11, 15 and 17, 2007
at Vancouver, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Bruce Senkpiel

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* in respect of the 1994 to 2000 taxation years are allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 7th day of December 2007.

"L.M. Little"

Little J.

Citation: 2007TCC501
Date: 20071207
Dockets: 2005-4203(GST)G
2005-4204(IT)G

BETWEEN:

WILLIAM J. CAMPBELL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS:

[1] The above appeals were heard together on common evidence.

[2] Under the name of Metro One Commercial the Appellant was involved in the following business activities from 1993 to 2004:

- sales of used furniture and office equipment;
- photocopier repair;
- the operation of a 1-900 number service which involved a free trip to a resort;
- production of music CDs and office equipment.

[3] The Appellant did not file income tax returns for the 1994 to 2000 taxation years until the Minister of National Revenue (the “Minister”) served Demands for Income Tax Returns on the Appellant.

[4] Following the service of the Demands the Appellant filed income tax returns for the 1994 to 2000 taxation years and declared losses in the following amounts:

<u>Taxation Year</u>	<u>Total Income (Loss) Reported</u>
1994	(\$15,868)
1995	(\$25,141)
1996	(\$34,736)
1997	(\$27,715)
1998	(\$37,507)
1999	(\$14,410)
2000	(\$24,241)

[5] By Notices of Reassessment dated January 9, 2004 the Minister reassessed the Appellant for the 1994 to 2000 taxation years on the basis that the Appellant understated his income for those taxation years by the following amounts:

<u>Taxation Year</u>	<u>Revised Income</u>
1994	\$39,952
1995	\$43,012
1996	\$48,049
1997	\$48,431
1998	\$62,905
1999	\$27,172
2000	\$37,163

[6] The Minister also imposed gross negligence penalties on the unreported business income.

[7] The Appellant filed Notices of Objection to the Reassessments. On August 17, 2004 the Minister issued a Notification of Confirmation confirming the Reassessments.

[8] The Minister also reassessed the Appellant for Goods and Services Tax ("GST"). The following adjustments were made by the Minister for the period January 1, 1995 to December 31, 2000 (the "Period").

1. The Appellant failed to report and remit \$16,480.56 in GST.
2. The Appellant over-claimed Input Tax Credits (ITCs) by \$14,147.13.

3. Penalties – The Minister imposed penalties for the 1995, 1996, 1997 and 1998 taxation years pursuant to subsection 298(4) of the *Excise Tax Act*.

[9] The Appellant filed Notices of Appeals to the Tax Court on November 15, 2005.

ISSUES:

[10] The issues are:

- a) whether the Appellant underreported his income in the 1994 to 2000 taxation years;
- b) whether the Appellant made or incurred any expenses in excess of the amounts allowed by the Minister for the purpose of gaining or producing income from a business for those years;
- c) whether the Minister properly assessed penalties pursuant to subsection 163(2) of the *Income Tax Act* in respect of the Appellant's failure to report his income in those years;
- d) whether the Appellant failed to report GST collectible in those years;
- e) whether the Appellant over-claimed ITCs in those years;
- f) whether the Minister properly assessed penalties pursuant to section 285 of the *Excise Tax Act* in respect of the Appellant's failure to report the GST collectible on the underreported income in those years; and
- g) whether the Appellant in filing his GST returns for the annual reporting periods ending on December 31 for 1995, 1996, 1997 and 1998 made misrepresentations attributable to neglect, carelessness or wilful default.

[11] In his argument the Appellant raised the following points:

Audit

[12] The Appellant maintained that the Canada Revenue Agency (the “CRA”) should not have carried out a net worth audit in this situation.

[13] In considering whether the CRA Auditor (Ms. Yang) was justified in carrying out a net worth in this situation, I have considered the following points:

(a) The Appellant did not file income tax returns for the 1994 to 2000 taxation years until the Minister sent Demands for Income Tax Returns.

(b) Following the receipt of the Demands from the Minister the Appellant filed income tax returns for the 1994 to 2000 taxation years and reported losses for each year. The total of all losses reported was \$179,618.00.

(c) The evidence before the Court also established that the Appellant had been prosecuted in the Province of Alberta for failing to file income tax returns for the 1985, 1986 and 1987 taxation years. The Appellant entered a guilty plea on April 21, 1987.

(d) It was also established that the Appellant filed for bankruptcy on October 15, 1992 and that he has never been discharged from bankruptcy.

(e) The evidence filed by the Respondent’s Auditor indicated that the Appellant’s financial records were incomplete.

[14] The following additional points should be noted:

(a) The Appellant did not use a double entry accounting system.

(b) The Appellant operated several businesses under his main company - Metro One Commercial. However, he failed to report the revenue and expenses from different sources.

(c) The CRA auditor testified that the books and records were incomplete.

(d) Since the Appellant reported losses of \$179,618.00 for the 1994 to 2000 taxation years the Auditor questioned how the Appellant could support his lifestyle while suffering losses in this amount.

[15] Based on the facts as outlined above, I have concluded that the Minister was justified in carrying out a net worth audit.

Re: Deposits to the Appellant's Bank Account

[16] The Appellant said that he lent money to a number of individuals or purchased inventory from these individuals:

1. Delia Roulstone (the Appellant's common-law spouse)
2. Lowell Campbell (the Appellant's son)
3. David Campbell (the Appellant's son)

[17] The Appellant noted that the Minister included cheque transfers or loan repayments from these individuals as his income.

[18] In argument the Appellant referred to these transactions and said:

...This boosted my deposits higher than what my sales were and this gave me the ability to cover expenses that normally my sales wouldn't be able to support.
(Transcript page 3 – lines 22-24)

The Appellant also said:

...In all, there were loans going back and forth and payments for inventory, advertising, telephone, utilities, transport and rents and storage, et cetera,...
(Transcript page 5 – lines 14-17)

[19] Counsel for the Respondent filed a letter from Mr. Wong of Pacific Regent Financial Services dated May 23, 1997 (Mr. Wong was the Appellant's accountant). This letter refers to Delia Roulstone and says:

Delia is Bill's common-law wife and as well she is a partner of Metro One Office Furniture. Payments to Delia were draws or loans from Metro One Office Furniture. (See Exhibit R-1, Tab 4)

[20] The net worth calculation prepared by Ms. Yang indicated that the Appellant made the following payments to Delia Roulstone:

<u>Taxation Year</u>	<u>Total Income Reported</u>
1994	\$3,600.00

1995	\$6,902.00
1996	\$12,832.00
1997	\$9,120.00
1998	\$815.00
1999	\$625.00
2000	\$2,475.00

[21] The CRA Auditor also testified that Delia Roulstone was on social assistance from 1993 to 1996 and reported accumulated losses of \$53,848.00 from 1997 to 2001.

[22] In the audit Ms. Yang considered payments made by the Appellant to Delia Roulstone as income of the Appellant.

[23] Based on the above comments, I have concluded that Delia Roulstone did not have the financial ability to lend funds to the Appellant.

Re: Loans and Repayments from Son – Lowell Campbell

[24] The Appellant argued that payments that he made to his son Lowell should not be treated as the Appellant's income.

[25] Counsel for the Respondent noted that Ms. Yang testified that Lowell Campbell was on social assistance from 1993 to 1995 and that he had no ability to lend any funds to the Appellant.

[26] Counsel for the Respondent also noted that by letter dated May 23, 1997, Mr. Wong (the Appellant's accountant) wrote to the CRA (Note – This letter relates to the 1995 – 1997 period). The letter said:

Since Lowell is Bill's son, most of the payments to Lowell were for his allowance as well as for Lowell to obtain cash for purchasing office furniture. Lowell did not earn enough (sic) the weekly insurable earnings for him to qualify the source deductions.
(Exhibit R1-Tab 4)

[27] It should also be noted that the Appellant did not call Delia Roulstone, Lowell Campbell or David Campbell to testify as to the loans and repayments or the purchases of inventory.

[28] Based on the above comments, I have concluded that the comments made by the Appellant with respect to loans and repayments received from Delia Roulstone or his sons Lowell and David or the purchase of inventory from them are not credible.

Discrepancies between Sales Reported and Deposits to the Bank Account:

[29] Ms. Yang testified that she compared the sales reported by the Appellant on his income tax returns to the bank deposits that he had made in his bank account and she determined that significant discrepancies were found for the years 1994 to 2000 except 1997 when the Appellant inherited \$50,000.00

Credibility of Appellant

[30] During the hearing the Appellant testified that all Metro One businesses had ceased operating in 2003. However, Counsel for the Respondent established that the following business activities are still being carried on by the Appellant:

- He is currently advertising vehicles, electronics, RVs and boats for sale on website skydeal.net: Exhibit R3.
- Advertising copiers and office furniture for sale “for Office Shop” on his skydeal.net website.
- He admitted that the skydeal.net website was created in June 2003.
- The skydeal.net website runs under the Metro One Commercial Service banner: see first page of website.
- He is currently still advertising CDs and books for sale on his “billcampbellcanada.com” website: Exhibit R4.
- He admitted that on a CIBC Aerogold VISA application that he filed out on November 18, 2003, that he stated his current employment was with Metro One, that his position was President, and that he earned \$55,000.00 per year.
- He admitted that in 2005 he still had a bank account under the name Metro One Office Furniture.

Re: Further Deductions

[31] During her testimony Ms. Yang said that based on her analysis there are some additional expenses that she would now allow but she did not have sufficient evidence when she carried out her audit. Counsel for the Respondent also agreed with this comment. Counsel for the Respondent said that the percentage of expenses to be allowed was a judgment call.

[32] I have considered this point and I have concluded that the Appellant should be allowed to deduct an additional 30% of the expenses that were disallowed in the income tax Reassessment.

Conclusion

[33] The Appellant also called Mr. Malik as a witness. Mr. Malik attacked the calculations used by Ms. Yang in her net worth audit. I reject Mr. Malik's evidence on this point.

[34] Mr. Malik also maintained that the Appellant received loans from family, friends and associates. As I have indicated above, the Appellant's comments about loans from family, friends and associates are not credible. Furthermore, there was no evidence provided by the Appellant or Mr. Malik to establish this point.

[35] The onus of proof is on the Appellant to prove that the Reassessments were incorrect.

[36] I have carefully analysed the testimony of the Appellant and examined all of the books, records and documents that were filed as exhibits. I have concluded that the Appellant did not satisfy the onus of establishing that the Reassessments were incorrect.

[37] I have also concluded that the gross negligence penalties were properly imposed by the Minister for Income Tax purposes and Excise Tax purposes.

[38] The appeals filed under the *Income Tax Act* are allowed to enable the Minister to allow a deduction of 30% of the expenses that were disallowed in the income tax Reassessments.

[39] The appeal filed under the *Excise Tax Act* is dismissed.

Signed at Vancouver, British Columbia, this 7th day of December 2007.

“L.M. Little”

Little J.

CITATION: 2007TCC501

COURT FILE NOS.: 2005-4203(GST)G
2005-4204(IT)G

STYLE OF CAUSE: William J. Campbell and
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATES OF HEARING: May 10, 11, 15 and 17, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: December 7, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Bruce Senkpiel

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada