

Docket: 2007-3292(IT)I

BETWEEN:

RANAPRATAP SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 10, 2008 at Toronto, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Bartleman

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2002 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 14th day of March, 2008.

"G. A. Sheridan"

Sheridan, J.

Citation: 2008TCC149
Date: 20080314
Docket: 2007-3292(IT)I

BETWEEN:

RANAPRATAP SINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant, Mr. Singh, is the sole director and shareholder of RPS Industries Inc. He is also employed by his company. In 2002, RPS Industries Inc. purchased a new BMW automobile which the Appellant used in carrying out his employment duties. He kept the BMW in his driveway at his home in Scarborough. In reassessing the Appellant's income for that taxation year, the Minister of National Revenue included in his income a standby charge benefit and an operational cost benefit in respect of the BMW.

[2] The Appellant represented himself and was the only witness to give evidence. As was explained to him at the hearing, he has the onus of proving wrong the assumptions upon which the Minister's decision was based.

[3] The reassessment was based on the following assumptions:

- (a) the Appellant was an employee of RPS throughout the 2002 taxation year;
- (b) the Appellant reported and received employment income from RPS, in the amount of \$75,000, which did not include any taxable benefits relating to an employer-provided automobile;
- (c) RPS, the Appellant's employer, made available to the Appellant an automobile, throughout the 2002 taxation year;

- (d) the Appellant used the said automobile, which was purchased and owned by RPS, throughout the 2002 taxation year;
- (e) the automobile was a 2000 BMW, purchased by RPS in June 2000, for the total amount of \$49,218 (including all taxes);
- (f) the Appellant was the sole shareholder and director of RPS, throughout the 2002 taxation year, and the only employee of RPS who drove the automobile and had the automobile made available to him;
- (g) the Appellant failed to keep an automobile mileage log book, or any other type of records, to establish the reasons for using, and the amount of use of, the automobile;
- (h) the Appellant's personal driving of the automobile would include him driving to and from his home, to and from his work premises;
- (i) as the Appellant did not provide any information to help establish his total km driven during the 2002 taxation year (including any type of breakdown as to what he considered personal and/or business mileage), it was assumed that he did not drive the automobile substantially for business during that taxation year;
- (j) as a result, a full standby charge benefit was included in the Appellant's income, for the 2002 taxation year, calculated as follows:
$$\$49,218 \text{ (total cost)} \times 2\% = \$11,812$$
- (k) in addition, an operating cost benefit was included in the Appellant's income, for the 2002 taxation year, which was calculated as 50% of the full standby charge benefit noted in subparagraph 8(j) above i.e. $\$11,812 \times 50\% = \$5,906$
- (l) as a result of the calculations noted in subparagraphs 8(j) and 8(k) above, the Appellant's employment income from RPS was increased by the amount of \$17,718 for the 2002 taxation year.¹

¹ Reply to the Notice of Appeal at paragraph 8.

[4] In respect of paragraph 8(j) above, given that the BMW was already two years old in 2002, the Appellant took issue with using the purchase price value in the calculation of the standby charge. He conceded, however, that he had nothing to support a different valuation. He did not dispute that the BMW had been “made available” for his use but testified that he used it almost exclusively for “business purposes” by which he meant, in his employment. His personal use was limited to the 17-kilometer round trip commute between his home and RPS Industries Inc., as well as the odd errand.

[5] The difficulty that the Appellant faced in advancing this position was the general lack of supporting documentation. He did not keep a log for the BMW because, he said, his accountant had told him he was under no legal obligation to do so. Consequently, he had no record of the kilometers driven in 2002 or any way of showing the proportion of personal to employment use of the BMW. Nor did he have any other records i.e., odometer readings or repair invoices which might have assisted in these determinations. Indeed, the only evidence of that sort came from counsel for the Respondent, who when it became clear the Appellant had arrived at the hearing without any corroborative documentation, obliged the Court by producing copies of certain invoices² that the Appellant testified to having given to the auditor. As it turned out, even these documents were of little use to the Appellant as they pertained to the 2000 taxation year, not the year under appeal. Further, the information contained in them was insufficient to establish with any reliability the kilometers driven in 2002.

[6] In the absence of any records to substantiate his position, the Appellant’s case boiled down to a plea to take his word that the BMW had been used almost exclusively for his employment.

[7] Whatever the Appellant’s accountant may have told him, the fact is that a taxpayer is obliged by the *Income Tax Act* to keep adequate books and records. The rationale behind this statutory duty is the self-reporting nature of the Canadian income tax system. What the taxpayer reports in his annual return must be capable of verification should the Minister make such a request. If it comes to an appeal in the Tax Court of Canada, by choosing not to keep proper records, the taxpayer simply increases the burden he already bears of proving the Minister’s assessment to be incorrect.

² Exhibits R-1, R-2 and R-3.

[8] In the present case, the Appellant struck me as a hard-working individual, sophisticated enough to build and maintain a thriving business. A man of his intelligence and experience surely knows the value of tracking in some fashion the use of an automobile made available for his use by his solely owned company. In not doing so, he took a calculated risk and must now face the consequences. Having failed to produce sufficient evidence to show that the Minister's reassessment was incorrect, the Appellant cannot succeed in his appeal. The appeal is therefore dismissed.

Signed at Ottawa, Canada, this 14th day of March, 2008.

"G. A. Sheridan"

Sheridan, J.

CITATION: 2008TCC149

COURT FILE NO.: 2007-3292(IT)I

STYLE OF CAUSE: RANAPRATAP SINGH AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 10, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: March 14, 2008

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Laurent Bartleman

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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