

BETWEEN:

CHRIS BRIAN JONES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on April 25, 2008 at North Bay, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

Agent for the Appellant: Shyla Jones

Counsel for the Respondent: Frédéric Morand

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years are allowed and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the following basis:

2003 taxation year

1. the Appellant inadvertently understated his income by \$337.12;
2. the Appellant is entitled to a deduction for meals and entertainment of \$900; and
3. the Appellant is entitled to a deduction for motor vehicle expenses of \$1,000;

2004 taxation year

1. the Appellant is entitled to a deduction for meals and entertainment of \$1,200;
2. the Appellant is entitled to a deduction for disability insurance expenses of \$869; and
3. the Appellant is entitled to a deduction for supplies of \$5,161.

Signed at Ottawa, Canada, this 15th day of May, 2008.

“G.A. Sheridan”

Sheridan, J.

Citation: 2008TCC293
Date: 20080515
Docket: 2007-4679(IT)I

BETWEEN:

CHRIS BRIAN JONES,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant, Chris Jones, is appealing the assessments of the Minister of National Revenue of his 2003 and 2004 taxation years. During those years, the Appellant was the sole proprietor of a plumbing business. In reassessing the Appellant's income, the Minister added an amount as unreported income and disallowed certain business expenses¹ claimed by the Appellant.

[2] The Appellant was represented at the hearing by his spouse, Shyla Jones who was the bookkeeper for the business during the years in question. As she was more familiar with the accounting end of the business, Ms. Jones testified on his behalf. The Appellant abandoned his claims for travel expenses in 2003 and 2004 and for "other expenses" of \$189 in 2004 at the hearing.

[3] The Respondent's only witness was Olga Lewis, the Canada Revenue Agency auditor who conducted the audit of the taxation years under appeal.

[4] Most of the adjustments made by the auditor to the amounts reported by the Appellant occurred because of the lack of books and records to support the claims made. The Appellant took the position that most of the records said to be lacking had indeed been furnished to the Canada Revenue Agency but that following the audit and/or objection process, some had not been returned.

¹ As set out in Schedule "A" to the Reply to the Notice of Appeal.

[5] The result of this impasse was that despite the uncomplicated nature of the legal issues involved, an entire day was required to hear the evidence, to sift through the various documents the Appellant was able to produce and to allow the parties time to review and consider various items unearthed during this process. I found both Ms. Jones and Ms. Lewis to be credible witnesses who had each in her way, devoted a lot of time to the matters in dispute. Ms. Jones, though not equipped with Ms. Lewis' expertise or experience, nonetheless launched a well organized and clearly presented case. Her thoroughness gave me some confidence in her general record-keeping ability. (It must also be remembered that during the years under appeal, she and the Appellant were novices in running their own business.) For her part, Ms. Lewis struck me as an experienced professional who adheres carefully to the procedural requirements demanded of her position as auditor.

[6] Having listened carefully to their testimony and reviewed in detail the documents in evidence, I am satisfied that the appeals of the 2003 and 2004 taxation years ought to be allowed on the basis set out below:

1. Under-reported Income: 2003

[7] During the course of her audit, Ms. Lewis discovered deposits totalling \$2,237 that she was unable to attribute to any other source than business sales. (When he first started the business in 2003, the Appellant was using one account for both business and personal banking, a factor which made more difficult Ms. Jones' bookkeeping tasks and Ms. Lewis' audit duties.) At the hearing, there was evidence to support the conclusion that \$1,899.88 of this amount represented the deposit of three income tax refund cheques. I am satisfied that this amount is attributable to that source and accordingly, only the balance of \$337.12 is to be included in sales for 2003.

2. Bad Debt: 2004

[8] The Minister disallowed \$2,502 of the \$3,620 the Appellant claimed as a bad debt deduction pursuant to paragraph 20(1)(p) of the *Income Tax Act*. According to Ms. Jones, this amount represented an unpaid bill for a client who had simply "disappeared" before they could collect for the services rendered. The phone numbers they had for the client were no longer in service and for reasons that are not entirely clear, it was ultimately decided it would be hopeless to pursue the debtor.

[9] Whether a debt is "bad" is a question of fact; the taxpayer must show that his belief in this regard and his efforts to recover the amounts owed were reasonable,

though it is not necessary that the Appellant exhaust all resources of collection before reaching this conclusion². In the present case, there was insufficient evidence of the existence of the debt; even if the debt had been established, the Appellant's efforts to collect on it fall short of what is reasonably required. Accordingly, the Appellant is not entitled to a bad debt deduction of \$2,502.

3. Meals and Entertainment: 2003 and 2004

[10] The Appellant claimed meals and entertainment expenses of \$1,063.09 and \$1,461 in 2003 and 2004, respectively. The Minister denied any amount under this head because the Appellant had not provided sufficient information regarding the business purpose of the purchases, some of the receipts showed they were for purchases outside of normal office hours, most were for small purchases from fast food or coffee outlets, and a certain number of the receipts included children's meals.

[11] While I do not find the amount claimed in each year unreasonable on its face, the Appellant would have had less trouble asserting his entitlement for the deduction had he kept better records: simply noting on the receipts such details as the client's name, the contract number or the location of the job site would have helped. As it was, it fell to Ms. Jones to justify the claims made. Given her firsthand experience with the Appellant's business, I accept her evidence that in the trades, it is *de rigueur* to bring coffee to meetings on site or to meet at a Tim Horton's to discuss a contract; though Ms. Lewis was of the opinion that this was not an industry practice, she provided no basis for her views. I am easily persuaded by Ms. Jones' testimony that in the construction industry, it is not uncommon to be at work both before and after what others may consider "normal working hours"; I also find reasonable her explanation that as the Appellant's right arm in the business, she was often accompanied by her young children when assisting her spouse with his business. With the exception of having included amounts for the children's food, I am unable to agree with the Minister's disallowance of the expenses claimed. The Appellant is entitled to a deduction for meals and entertainment of \$900 in 2003 and \$1,200 in 2004.

4. Motor Vehicle Expenses: 2003 and 2004

[12] For 2003, the Minister disallowed \$4,695 of the \$5,816.62 claimed by the Appellant. This had partly to do with the Minister's position that the Appellant's sole

² *Rich v. R.* 2003 FCA 38, [2004] 1 C.T.C. 308; *Kyriazakos v. R.* 2007 TCC 66, [2007] 3 C.T.C. 2038.

proprietorship did not commence until July 2003 and partly because of a duplication of claims. According to the Minister, any receipted “maintenance and repairs” amounts were included in the amount allowed under the global head of motor vehicle expenses. For that reason, the Minister disallowed the amount of \$380 claimed separately under “Maintenance & Repairs”.

[13] On a balance of probabilities, I am satisfied that the Appellant was self-employed as a plumbing sub-contractor for J-Mac from January to June 2003. However, during this period he was also taking additional training and had part-time employment; thus, the time spent in his sub-contracting work would have been markedly less than after July 2003. Accordingly, the Appellant is entitled to a further deduction for motor vehicle expenses of \$1,000 for 2003. The Minister properly disallowed the “maintenance and repairs” costs of \$380,

[14] For 2004, in addition to the auditor’s concerns over lack of receipts and duplication of expenses, there was also some confusion over which of the four vehicles variously owned by the Appellant and Ms. Jones were involved in the business. Further, no logs were kept for any of the vehicles. As a result, the Minister disallowed \$2,897 of the \$8,626.62 claimed by the Appellant. There was insufficient evidence before me to alter the Minister’s adjustment to this amount. Nor did the Appellant show that the Minister was wrong in disallowing his claim for fuel costs of \$457 or insurance costs of \$430 in 2004.

5. Insurance: 2004

[15] The Appellant is entitled to a deduction of \$869 for disability insurance purchased through Pencorp Life in 2004 in lieu of provincial workers’ compensation coverage.

6. Supplies: 2004

[16] The Minister disallowed \$5,161 of the \$30,547.07 claimed by the Appellant for supplies used in his plumbing business. According to the auditor, there were no receipts to support the disallowed portion. However, at the time of the audit, she did not have certain computer records which Ms. Jones was eventually able to retrieve. While I accept Ms. Lewis’ evidence that she fully complied with Canada Revenue Agency procedures to permit the Appellant to produce the computer records, for some reason, this was not done. Nonetheless, I am equally convinced by Ms. Jones’ testimony and the records produced at the hearing that the Appellant had in all

probability incurred an expense for the full amount claimed for supplies; accordingly, the Appellant is entitled to a further deduction for supplies of \$5,161.

[17] The appeals are allowed and referred back to the Minister of National Revenue for reconsideration and reassessment on the basis set out above in the Reasons for Judgment.

Signed at Ottawa, Canada, this 15th day of May, 2008.

“G.A. Sheridan”

Sheridan, J.

CITATION: 2008TCC293

COURT FILE NO.: 2007-4679(IT)I

STYLE OF CAUSE: CHRIS BRIAN JONES AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: North Bay, Ontario

DATE OF HEARING: April 25, 2008

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

DATE OF JUDGMENT: May 15, 2008

APPEARANCES:

Agent for the Appellant: Shyla Jones

Counsel for the Respondent: Frédéric Morand

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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