

Docket: 2007-4244(IT)I

BETWEEN:

NANCY DRYDEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 28, 2008, at Sudbury, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Appellant:

Tony McKenzie

Counsel for the Respondent:

Suzanie Chua

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act*, notice of which is dated September 21, 2006 and with respect the Appellant's 2003 taxation year, is allowed in part and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the Reasons.

Signed at Ottawa, Canada, this 20th day of June 2008.

"Patrick Boyle"

Boyle, J.

Citation: 2008 TCC 386
Date: 20080620
Docket: 2007-4244(IT)I

BETWEEN:

NANCY DRYDEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on May 28, 2008, in Sudbury, Ontario.)

Boyle, J.

[1] Ms. Dryden is a Rural Route mail carrier under contract with Canada Post for mail delivery in the Parry Sound area. She is been doing that for twenty-seven years. Her appeal involves the 2003 taxation year. She disputes CRA's disallowance of her home office expenses, her cell phone expenses and some of her car maintenance and fuel expenses.

[2] I should begin by saying that based on the evidence before me this morning, Ms. Dryden was clearly heavy footed on these tax deductions, and that tested the credibility of some of her explanations. Also, the taxpayer was unable to fully receipt most of the expense headings deducted, at times by significant amounts. The results today may well have been different had better records been maintained or more reasonable amounts been claimed at the outset.

[3] The CRA disallowed all of her cell phone expenses. She had claimed approximately one hundred dollars a month for cell phone. She said she had it with her on her daily route and used it as needed to make and receive calls from the Post Office and when her car had broken and in the event of road hazards or accidents, etcetera. In this day and age, a person working from their car for 4½ hour days on country roads twelve months a year can reasonably be expected to be equipped with

a cell phone. I will be allowing Ms. Dryden's appeal to the extent of fifty dollars per month to reflect basic service availability and the limited evidence of actual use.

[4] With respect to the gas estimates allowed, I am satisfied that on the evidence before CRA and before me, CRA's approach on the reassessment was reasonable to the extent it was based on the distance of the route per the contract and the total kilometres driven. However, CRA based its fuel consumption on average statistics for city driving for the particular make and model, and I agree with the taxpayer's representative that this should be revised upward somewhat to reflect the inordinate amount of full stops and the heavy load on a rural mail route, compared with city driving, as well as the lesser road conditions. In the circumstances, the amount allowed for fuel should be increased by one-third.

[5] The CRA approach to dealing with Ms. Dryden's claim for vehicle maintenance on two cars appeared reasonable in the circumstances of which receipts and information Ms. Dryden made available to them, and nothing further was added at the hearing.

[6] With respect to the home office expenses claimed, over approximately ten thousand dollars, much of which was not evidenced with receipts, I am not satisfied by the taxpayer's evidence that the CRA reassessment was not correct. There was clearly very little done very seldomly at Ms. Dryden's home. The vast majority of her day and her responsibility under the Canada Post contract were done from her car and local post office. While there may have been some reasonable basis for a very modest business expense deduction for her home office, I cannot discern it from the case presented.

[7] I am allowing her appeal only in the limited respect described above regarding the cell phone and the gas, and direct CRA to reconsider the reassessment and to reassess in accordance with these Reasons.

Signed at Ottawa, Canada, this 20th day of June 2008.

"Patrick Boyle"

Boyle, J.

CITATION: 2008 TCC 386

COURT FILE NO.: 2007-4244(IT)I

STYLE OF CAUSE: NANCY DRYDEN v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Sudbury, Ontario

DATE OF HEARING: May 28, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: June 20, 2008

APPEARANCES:

Agent for the Appellant: Tony McKenzie

Counsel for the Respondent: Suzanie Chua

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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