

Docket: 2008-2067(IT)I

BETWEEN:

SUKHWINDER SINGH BINNING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on March 18, 2009, at Vancouver, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Pavanjit Mahil

---

**JUDGMENT**

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 30<sup>th</sup> day of September 2009.

"Gaston Jorré"

---

Jorré J.

Citation: 2009 TCC 487

Date: 20090930

Docket: 2008-2067(IT)I

BETWEEN:

SUKHWINDER SINGH BINNING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Jorré J.**

[1] The Appellant appeals from a reassessment of his 2003 taxation year. The reassessment in issue proceeded on the basis that the Appellant was not entitled to claim a business loss of \$30,005.12 because the expenses were not incurred for the purpose of earning income from a business.

[2] The Appellant has been employed full-time at Raintree Lumber Specialties Ltd. since 1991. He is a supervisor at the mill. His brother, Jagvinder Binning, is a singer in India.

[3] The Appellant testified that he had a proprietorship named GSK Enterprises and that its sole business was producing his brother's music albums and videos. He referred to himself as the producer.

[4] Although he referred to himself as the producer, his testimony was that his sole function was to provide funds to pay for his brother's recordings. He does absolutely nothing else in relation to the recordings or the sale thereof.

[5] He reported the following gross revenues and expenses from GSK Enterprises:

- (a) in 2001, no revenues and expenses of \$24,810;
- (b) in 2002, no revenues and expenses of \$34,528;
- (c) in 2003, revenues of \$1,684.38 and expenses of \$31,689.50;
- (d) in 2004, no revenues and expenses;
- (e) in 2005, a loss of \$19,078 was claimed and, after that, GSK Enterprises ceased its activities.

[6] The Appellant has no specialized training or knowledge of the music business.

[7] In 2003, the Appellant signed an agreement with Rythm Audio & Video Co. (Pvt.) Ltd. (“Rythm”) in New Delhi, India, whereby he paid 770,000 rupees or about C\$24,000 for audio production costs of an album and two music videos. The agreement appears to be dated August 25, 2003.

[8] In return, Rythm agreed to market the album in four months and pay him 7% of the gross revenues of the album.

[9] He received 7% of 770,000 rupees or 53,900 rupees, an amount of C\$1,684.38 in December 2003. Rythm paid the money to his brother who in turn passed it on to him.

[10] The Appellant could not explain why the gross sales were identical to the costs paid to Rythm to produce the album.

[11] He also did not know why he received royalties at about the same time as the marketing of the record was to start.

[12] Almost all of the remaining expenses claimed for the business in 2003 were for travel.

[13] For losses to be deductible, there must be a source of income.

[14] The Supreme Court of Canada decision in *Stewart v. Canada*<sup>1</sup> summarizes the test for determining whether there is a source of income, as follows:

In summary, the issue of whether or not a taxpayer has a source of income is to be determined by looking at the commerciality of the activity in question. Where the activity contains no personal element and is clearly commercial, no further inquiry is necessary. Where the activity could be classified as a personal pursuit, then it must

---

<sup>1</sup> 2002 SCC 46 at paragraph 60.

be determined whether or not the activity is being carried on in a sufficiently commercial manner to constitute a source of income. . . .

[15] In this case, it is clear that there is no commerciality or businesslike behaviour. For example, it is striking that the Appellant received royalties of exactly 7% of the production costs of the album in late 2003, but has no idea why.

[16] One would expect a business person to be very interested in understanding how it could be that gross sales equal the production costs. One would also expect inquiries as to why there has not been a single rupee of sales after 2003.

[17] More generally there is an absence of the businesslike conduct that one would expect if this were a profit-seeking venture. There is no plan. There is no evidence of efforts to try to make sure the business becomes profitable or to ensure that royalties are in fact being received.

[18] All of this is incompatible with there being a source of income.

[19] It is laudable for the Appellant to have been supportive of his brother. Unfortunately, I must dismiss the appeal.

Signed at Ottawa, Canada, this 30<sup>th</sup> day of September 2009.

"Gaston Jorré"

---

Jorré J.

CITATION: 2009 TCC 487

COURT FILE NO.: 2008-2067(IT)I

STYLE OF CAUSE: SUKHWINDER SINGH BINNING v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 18, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: September 30, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Pavanjit Mahil

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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