

Citation: 2010TCC294
Date: 20100607
Docket: 2008-2245(IT)I

BETWEEN:

S. ROSS KEUS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2008-2246(IT)I

BETWEEN:

T. BRUCE KEUS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

Docket: 2008-2248(IT)I

BETWEEN:

CORNELIUS KEUS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on April 9, 2010, in Halifax, Nova Scotia.)

V.A. Miller, J.

[1] At the hearing of these appeals, Cornelius Keus withdrew his appeal. The appeals of Ross Keus (Ross) and Bruce Keus (Bruce) were heard on common evidence.

[2] The issues in these appeals were whether the following outlays or expenses were made or incurred by the Appellants for the purpose of gaining or producing income from business:

	2000	2001	2002
Bookkeeping		\$10,498.75	\$2,000.00
Interest	\$15,308.28	15,508.48	16,178.31

[3] The only provision of the *Income Tax Act* relied on by the Respondent, was paragraph 18(1)(a) which reads:

18. (1) General limitations -- In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) **general limitation** -- an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

[4] Ross and Bruce are brothers. They are commercial fishermen who have worked as partners since April 1, 1996 under the name Keus Brothers (the "Partnership"). It was their evidence that in April, 1996 they purchased a fishing enterprise from Garfield Robbins for the amount of \$200,000.

[5] The brothers did not have the money to complete the purchase and their parents assisted them in acquiring the necessary funds. It was their evidence that their father and mother, Cornelius and Elizabeth Keus, gave them approximately \$135,000 which they raised by mortgaging their home to CIBC for approximately \$100,000 and by borrowing approximately \$35,000 on a demand loan from CIBC. Ross and Bruce used the fishing vessel and equipment as collateral to borrow the remaining \$65,000 which was necessary to complete the purchase. This evidence was not shaken on cross examination and it was confirmed by Cornelius Keus.

[6] Prior to 2001, the firm of Yonker & Roche prepared the Appellants' income tax returns. Marian Scriven became the bookkeeper for the Partnership in February 2001. She stated that she was hired to set up the books for the Partnership as Yonker and Roche had been engaged to prepare income tax returns only. They had never prepared any books for the Partnership. It was her evidence that she prepared and filed amended returns for the Appellants' 1996, 1997, 1998 and 1999 taxation years and that she prepared and filed the original returns for the Appellants' 2000, 2001 and 2002 taxation years.

[7] Ms. Scriven stated that her fees for preparing the books and the tax returns were \$2,000 for each year. She stated that she was paid \$10,000 in 2001. She required that the Appellants pay her \$4,000 up front. She received \$4,000 in February 2001 and the remaining \$6,000 sometime in 2001. She received the majority of her payments by bank transfers. It was her evidence that she did not want cheques as it was a problem to cash cheques from a different province. The Appellants reside in Prince Edward Island and Ms. Scriven resides in Nova Scotia.

[8] In addition to the books and the income tax returns, Ms. Scriven prepared two documents for the Appellants in 2001 - a Partnership Agreement and a document titled Confirmation of Financing. She stated that her fee for preparing these documents was \$498.75.

[9] The only documentary evidence that was presented to the court to substantiate that the Appellants paid any fees to Ms. Scriven were two cheques. Both cheques were dated December 13, 2001; one cheque was for the amount of \$500 and the other was for the amount of \$498.75. Ms. Scriven stated that the cheque in the amount of \$500 was part of her fees for preparing the General Ledger and income tax returns for the 2002 taxation year.

[10] I note that in 2000 and 2002, no accounting fees were claimed as an expense in the calculation of the Partnership income. Ms. Scriven stated that she included the accounting fees in the item titled Miscellaneous on the Statement of Fishing Income and Expenses. In 2001, the amount of \$2,498.50 was claimed as an accounting expense by the Partnership.

[11] I have reviewed the Statement of Fishing Income and Expenses and the General Ledger which were prepared by Ms. Scriven for the Partnership for each year in issue. I find that both the Statements of Fishing Income and Expenses and the General Ledgers are riddled with errors.

[12] As an example, the accounting fees paid to Yonker & Roche in 2000 were listed in the Statement of Fishing Income and Expenses and the General Ledger as Miscellaneous. In 2000, the interest and bank charges were listed in the General Ledger as \$7,389.02 whereas this item was reported in the Statement of Fishing Income and Expenses as \$15,389.02. Ms. Scriven estimated that the Partnership had incurred an additional \$8,000 in interest expenses. In 2001, the total interest and bank charges on the General Ledger were \$8,557.61. On the Statement of Fishing Income and Expenses for 2001, the Partnership reported an interest expense of \$15,557.61. This amount included interest amounts which were claimed twice; ineligible interest expenses; and, estimated interest expenses.

[13] Counsel for the Respondent stated that Ms. Scriven did not act with due diligence when she prepared the General Ledgers and the Statements of Income and Expenses for the Partnership. I agree. However, the Appellants should not suffer because of Ms. Scriven's errors. I do believe that the Partnership did have Ms. Scriven file amended returns. I also believe that the Partnership paid her the amount of \$2,000 for preparing the General Ledger and income tax returns for each year. The Partnership is entitled to deduct the amount of \$10,498.75 and \$2,000 in 2001 and 2002 respectively.

[14] The Appellants have given documentary evidence to satisfy me that Cornelius and Elizabeth did have a mortgage on their home and that they, the Appellants did make the mortgage payments in April, May, July, August, September, October, November and December 2000, and June 2001.

[15] In the document titled Confirmation of Financing, the Appellants confirmed that they were responsible for making the payments on the loan secured by the mortgage on their parents' home. The difficulty faced by the Appellants is that the interest expenses for the loans of \$100,000 and \$35,000 were not incurred by the Appellants as is required by paragraph 18(1)(a) of the Act. These interest expenses were incurred by Cornelius and Elizabeth Keus and are not deductible by the Appellants.

[16] After reviewing all of the evidence, I have concluded that the Partnership did receive a loan (#4565150) in the amount of \$65,000 from the CIBC in 1996. I have also concluded that the proceeds of this loan was used to purchase the fishing enterprise from Garfield Robbins in 1996. There was no evidence given with respect to the amount of interest paid on this loan in 2000. In 2001 and 2002, the Partnership

is entitled to deduct an interest expense for this loan in the amount of \$3,127.29 and \$2,549.48 respectively.

[17] The Respondent has conceded (a) that the Partnership borrowed the amount of \$100,980 in 2002 to purchase a new fishing vessel and an engine; (b) that the Partnership incurred an interest expense in the amount of \$1,718.49 for this loan (#4565355); and (c) that the Partnership also incurred an expense of \$150.00 to register this loan.

[18] The Partnership claimed an expense for banking service charges in 2001 in the amount of \$171.14. This amount is reasonable and is allowed.

[19] In 2001 and 2002, the Partnership claimed an interest expense on a loan (#9052928208) that was used to purchase a truck. The evidence, at the hearing of these appeals, established that this truck was purchased by Ross and not the Partnership. The evidence also established that the truck was used by Ross in the fishing business. In the Reply to Notice of Appeal, the Respondent stated that the vehicles used in the fishing operation by the Appellants were used 100% for business purposes. I have concluded that Ross is entitled to deduct the interest expense incurred with respect to the truck. The interest expense was \$752.36 and \$922.33 in 2001 and 2002 respectively.

[20] In conclusion the Partnership is entitled to deduct bookkeeping fees in the amount of \$10,498.75 and \$2,000 in 2001 and 2002 respectively. It is also entitled to deduct interest and banking fees in the amount of \$3,298.43 and \$4,417.97.

[21] Bruce and Ross are each entitled to deduct 50% of the Partnership expenses.

[22] For all of the reasons stated above, the appeals are allowed as follows:

a) In 2001 and 2002, Bruce is entitled to deduct bookkeeping fees in the amount of \$5,249.38 and \$1,000 respectively; and, interest and banking fees in the amount of \$1,649.22 and \$2,208.99 in 2001 and 2002 respectively;

b) In 2001 and 2002, Ross is entitled to deduct bookkeeping fees in the amount of \$5,249.37 and \$1,000 respectively; and, interest and banking fees in the amount of \$2,401.58 and \$3,131.31

[23] Each party shall bear its own costs.

Signed at Ottawa, Canada, this 7th day of June 2010.

“V.A. Miller”

V.A. Miller, J.

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COURT FILE NO.: 2008-2245(IT)I
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APPEARANCES:

Counsel for the Appellant: Joe Cooper
Counsel for the Respondent: Shannon Williams

COUNSEL OF RECORD:

For the Appellant:

Name: Joe Cooper
Firm: Blackburn English

For the Respondent:

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada