

Docket: 2011-2616(IT)I

BETWEEN:

TERESA BRUNO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 5, 2012 at Hamilton, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Alisa Apostle

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2007 and 2008 taxation years is allowed, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to additional deductions in the amounts of \$9,000 and \$3,500 for 2007 and 2008, respectively. Each party shall bear their own costs.

Signed at Ottawa, Ontario this 6th day of September 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 316
Date: 20120906
Docket: 2011-2616(IT)I

BETWEEN:

TERESA BRUNO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Teresa Bruno, operates Shades N Shutters, which is a business that specializes in supplying custom window coverings.

[2] In computing income from the business for the 2007 and 2008 taxation years, Ms. Bruno deducted the amounts of \$18,000 and \$7,000, respectively, on account of wages paid to her two children who provided services for the business.

[3] The issue is whether this deduction was properly disallowed by the Minister of National Revenue. The reassessments also made other adjustments to business income which are not disputed by Ms. Bruno.

[4] Ms. Bruno was the only witness at the hearing.

Background

[5] The Shades N Shutters business was established by Ms. Bruno and her husband in 2003. Although both spouses were involved in the business, there is no suggestion that it was operated in partnership. Based on the pleadings, it appears that the business was owned by Ms. Bruno and that her husband provided services as an independent contractor.

[6] In the 2007 taxation year, Ms. Bruno reported income from the business in the amount of \$11,944. In the 2008 taxation year, she reported a loss from the business in the amount of \$16,963.

[7] Ms. Bruno's two children were 15-16 and 13-14 in the years at issue and helped out in the business on weekends and holidays.

[8] According to Ms. Bruno's evidence, the younger child did less skilled tasks such as cleaning and answering phones, and the older child did mainly clerical work. Both children also spent time learning sales.

[9] Ms. Bruno entered into evidence a summary of the hours worked and wages earned by the children. Wages were payable at the rate of between \$10 and \$12 per hour. The summary showed that the children generally worked store hours on both weekend days during 2007 and on one weekend day during 2008, as well as on holidays in both years. The reduction in the hours worked in 2008 was explained by Ms. Bruno on the basis that the business was not doing as well in that year.

[10] The wages were not paid by cheque. Instead, Ms. Bruno paid for some of the children's personal expenditures which in aggregate are approximately equal to the wages shown on the summary. According to Ms. Bruno's testimony, the expenditures were luxury items that the children chose to purchase out of the money that they had earned. A list of the expenditures with a brief description was kept by Ms. Bruno.

[11] Ms. Bruno stated that her accountant advised her that she could not take a deduction for expenditures on the children's basic needs, but that she could take a deduction for luxury items. She said that she followed this advice and kept track of the expenses that would qualify.

[12] Ms. Bruno testified that she could veto any of the children's purchases that were inappropriate but that she usually approved them.

Analysis

[13] In order for expenditures of this nature to be deductible, they must be laid out for the purpose of earning income and not personal or living expenses of Ms. Bruno.

[14] The relevant legislation is contained in paragraphs 18(1)(a) and (h) of the *Income Tax Act*, which read:

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;

[...]

(h) **personal and living expenses** - personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

[15] At the outset, I would comment that the Crown did not argue that the wages were unreasonable based on the services performed and there was virtually no cross-examination of Ms. Bruno on this point. I will therefore accept that the amounts are reasonable.

[16] The Crown argued that the expenditures are not deductible because they are personal or living expenditures of Ms. Bruno and the children did not have sufficient discretion over the funds.

[17] Ms. Bruno suggested in her testimony that the expenditures are not personal because she would not purchase luxury items for her children unless they earned the money to pay for them. The evidence concerning the nature of the expenditures was not detailed enough for me to be satisfied on this point. It is more likely that the expenditures have both business and personal elements.

[18] What is the legal principle that applies in considering the deductibility of an expenditure that has both business and personal elements? The leading case is *Symes v The Queen*, 94 DTC 6001 (SCC), which dealt with the deductibility of child care expenses incurred by a taxpayer who practiced as a lawyer.

[19] In considering the interplay between s. 18(1)(a) and (h), the majority decision in *Symes* concluded that the prohibition for personal expenditures in s. 18(1)(h) does not apply to an expenditure that was laid out for the purpose of earning income. Justice Iacobucci stated, at page 6014:

Upon reflection, therefore, no test has been proposed which improves upon or which substantially modifies a test derived directly from the language of s. 18(1)(a). The analytical trail leads back to its source, and I simply ask the following: did the appellant incur child care expenses for the purpose of gaining or producing income from a business?

[20] Accordingly, if a taxpayer incurs an expense for the purpose of gaining or producing income from a business, the deduction will not be prohibited pursuant to s. 18(1)(h) on the basis that it also has a personal benefit to the taxpayer.

[21] Applying this principle to the facts in this case, if the children are owed wages in reasonable amount, a deduction may be claimed if the wages are paid in the form of purchasing luxury personal items chosen by the children.

[22] As for the Crown's argument that the children did not have sufficient discretion over the funds, this argument is based on the decision of Beaubier J. in *Bradley v The Queen*, 2006 TCC 500, 2006 DTC 3535. Paragraph 9 of that decision reads:

[9] But in a related family, parent-child situation, payment must be made and deposited as it would be to a stranger. The payee must receive and control the alleged payment in his or her name and be able to use it for his or her benefit without any further control by the payer. That did not happen in this case.

[23] This comment suggests that the children must have complete discretion over the expenditures made. I would respectfully disagree with this and note that *Bradley* is not a binding precedent since it was an informal procedure case. I see nothing wrong with parents having a veto over expenditures made by their children.

[24] Turning to the facts of this case, the difficulty that I have with Ms. Bruno's argument is that the evidence about the expenditures was not sufficiently detailed for me to be satisfied, even on a *prima facie* basis, that all the expenditures were made for the children's benefit, let alone that they were for luxury items.

[25] The evidence concerning the nature of the expenditures consisted mainly of Ms. Bruno's oral testimony and the list that she prepared. As for the oral testimony, it is self-serving and not sufficiently detailed for me to be satisfied on most of the expenditures. As for the accounting records, a great many of the descriptions of the expenditures were simply too general to be of great assistance.

[26] Based on the evidence as a whole, I am satisfied that some of the expenditures are luxury items for the children's benefit. However, the evidence is not detailed enough for me to determine which items qualify. It is appropriate in these circumstances, where the appeal is governed by the informal procedure, for the Court to make a rough estimate. On that basis, I propose to allow a deduction for 50 percent of the amounts claimed.

[27] In light of the mixed result, no costs will be awarded.

Signed at Ottawa, Ontario this 6th day of September 2012.

"J. M. Woods"

Woods J.

CITATION: 2012 TCC 316

COURT FILE NO.: 2011-2616(IT)I

STYLE OF CAUSE: TERESA BRUNO v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: July 5, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: September 6, 2012

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Alisa Apostle

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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