

Docket: 2011-4032(IT)I

BETWEEN:

DEANE STINSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 22, 2012 at Ottawa, Ontario
(Written submissions subsequently received)

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Paul Klippenstein

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Ottawa, Ontario this 18th day of January 2013.

“J. M. Woods”

Woods J.

Citation: 2013 TCC 22
Date: 20130118
Docket: 2011-4032(IT)I

BETWEEN:

DEANE STINSON,
and
HER MAJESTY THE QUEEN,
Appellant,
Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Deane Stinson, appeals an assessment made under the *Income Tax Act* that disallowed a deduction for an allowable business investment loss (ABIL) claimed in the 2008 taxation year.

[2] The appellant submits that he incurred a bad debt in the 2008 taxation year that qualified for deduction as an ABIL in the amount of \$215,403. Since the appellant did not have enough income in 2008 to fully utilize the deduction, he deducted a portion of the ABIL in 2008 and requested a carry-back of the excess, \$145,391.23, to the three preceding years. The earlier years are not at issue in this appeal.

Background

[3] The appellant is a retired chartered accountant who lives in Sault Ste. Marie, Ontario.

[4] For several years, the appellant and his immediate family were the sole

shareholders of Tille Investments Ltd. (“Tille”). It appears that from time to time Tille earned income from a variety of sources, such as business consulting, commercial real estate leasing, and investing.

[5] The appellant submits that over the years he and his spouse loaned money to Tille and that at December 31, 2008 the corporation owed \$430,061.72 to him and \$38,649.75 to his spouse.

[6] The appellant testified that the shares of Tille were transferred to unrelated persons in December 2008 at which time the only activity of the corporation was business consulting.

[7] The appellant further testified that he and his spouse made a formal demand for repayment of the loans when the ownership of the corporation changed. He said that management determined that the loans could not be repaid and therefore it was determined that the debt owed to him was a bad debt and eligible for deduction as an ABIL.

Analysis

[8] The issue in this appeal is whether the appellant incurred an ABIL on December 31, 2008 on the basis that his loans to Tille were uncollectible at that time.

[9] The central provisions that are relevant are subsection 50(1), paragraph 39(1)(c), and the definition of “small business corporation” in subsection 248(1) of the *Act*. Excerpts of these provisions are reproduced below.

50. (1) Debts established to be bad debts and shares of bankrupt corporation

- For the purposes of this subdivision, where

(a) a debt owing to a taxpayer at the end of a taxation year (other than a debt owing to the taxpayer in respect of the disposition of personal-use property) is established by the taxpayer to have become a bad debt in the year, or

(b) [...]

and the taxpayer elects in the taxpayer’s return of income for the year to have this subsection apply in respect of the debt or the share, as the case may be, the taxpayer shall be deemed to have disposed of the debt or the share, as the case may be, at the end of the year for proceeds equal to nil and to have reacquired it immediately after the end of the year at a cost equal to nil.

39. (1) Meaning of capital gain and capital loss [and business investment loss]

- For the purposes of this Act,

[...]

(c) a taxpayer's business investment loss for a taxation year from the disposition of any property is the amount, if any, by which the taxpayer's capital loss for the year from a disposition after 1977

(i) to which subsection 50(1) applies, or

(ii) to a person with whom the taxpayer was dealing at arm's length

of any property that is

(iii) a share of the capital stock of a small business corporation, or

(iv) a debt owing to the taxpayer by a Canadian-controlled private corporation (other than, where the taxpayer is a corporation, a debt owing to it by a corporation with which it does not deal at arm's length) that is

(A) a small business corporation,

(B) a bankrupt (within the meaning assigned by subsection 128(3)) that was a small business corporation at the time it last became a bankrupt, or

(C) a corporation referred to in section 6 of the *Winding-up and Restructuring Act* that was insolvent (within the meaning of that Act) and was a small business corporation at the time a winding-up order under that Act was made in respect of the corporation,

[...]

248. (1) Definitions - In this Act,

[...]

“small business corporation”, at any particular time, means, subject to subsection 110.6(15), a particular corporation that is a Canadian-controlled private corporation all or substantially all of the fair market value of the assets of which at that time is attributable to assets that are

(a) used principally in an active business carried on primarily in Canada by the particular corporation or by a corporation related to it,

(b) shares of the capital stock or indebtedness of one or more small business corporations that are at that time connected with the particular corporation (within the meaning of subsection 186(4) on the assumption that the small business corporation is at that time a “payer corporation” within the meaning of that subsection), or

(c) assets described in paragraphs (a) and (b),

including, for the purpose of paragraph 39(1)(c), a corporation that was at any time in the 12 months preceding that time a small business corporation, and, for the purpose of this definition, the fair market value of a net income stabilization account shall be deemed to be nil;

(Emphasis added)

[10] The respondent submits that claim of the ABIL was properly disallowed on the basis of any one of the following:

(a) Tille was not a small business corporation at any time in 2008,

(b) the appellant had not made any loans to Tille, and

(c) the appellant has not established that any loans became bad debts in 2008.

[11] I would first comment that the appellant’s case depends in large part on his own self-interested testimony and on a limited number of documents that were within the appellant’s control. I have found that there is insufficient documentation to establish the ABIL, and that and the appellant’s testimony and some of the documents entered into evidence are not reliable.

[12] As for the appellant’s testimony, there was no detailed and coherent testimony about any of the facts necessary to support the claim. In particular, the testimony was vague in relation to the business activities of Tille, the loans purportedly made to Tille, the purported change of ownership of Tille, and the circumstances to support a determination that the loans became bad in 2008.

[13] As for the documents that were entered into evidence, I have concluded that some of the key documents are not reliable. For example,

(a) The appellant provided to the Canada Revenue Agency (CRA)

promissory notes evidencing the debt that were purportedly signed by one of the new owners of Tille. The reliability of the notes is doubtful because there are different versions of the notes that have different wording and also different signatures.

- (b) The purported demand for payment made by the appellant (Ex. A-11) states an amount owing that does not correspond with the other evidence.
- (c) The purported change of ownership on December 12 and 20, 2008 whereby shares were transferred to unrelated persons (evidenced by a hand-written shareholders' ledger) is inconsistent with a statement made by the appellant in Tille's corporate tax return for the year ended April 30, 2009 that his sons were the only shareholders. The ownership by the sons is also reflected in an ABIL questionnaire that was provided to the CRA on January 31, 2011.
- (d) The appellant submitted a list of employees to the CRA which attempts to establish that Tille had at least five full time employees. The evidence surrounding these employment relationships was implausible.

[14] As for the appellant's testimony that new management determined that the loans were uncollectible at the end of 2008, I would note that (1) Tille's balance sheet as at April 30, 2009 which was included with its tax return recorded assets that were greater than liabilities, and (2) Tille has continued to carry on income-earning activities since 2008 with the appellant's involvement.

[15] The problems with the evidence were so profound that the relevant facts regarding the ABIL claim cannot be determined.

[16] I would conclude that the appeal should be dismissed on the ground that the appellant has failed to establish, even on a *prima facie* basis, that any debts became bad in 2008. In particular, I am not satisfied that any shares of Tille were acquired by unrelated persons in 2008, or that any debts owing to the appellant in 2008 became uncollectible in that year.

[17] The appeal will be dismissed.

Signed at Ottawa, Ontario this 18th day of January 2013.

“J. M. Woods”

Woods J.

CITATION: 2013 TCC 22

COURT FILE NO.: 2011-4032(IT)I

STYLE OF CAUSE: DEANE STINSON and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 22, 2012

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

DATE OF JUDGMENT: January 18, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Paul Klippenstein

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: William F. Pentney
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