

BETWEEN: 1048547 ONTARIO INC., Docket: 2019-2458(IT)G
Appellant,
and
HIS MAJESTY THE KING, Respondent;

AND BETWEEN: KOSTANTINOS SKOTIDAKIS, Docket: 2019-2460(IT)I
Appellant,
and
HIS MAJESTY THE KING, Respondent;

AND BETWEEN: JOHN SKOTIDAKIS, Docket: 2019-2463(IT)G
Appellant,
and
HIS MAJESTY THE KING, Respondent;

AND BETWEEN: ANTIGONI SKOTIDAKIS, Docket: 2019-2464(IT)G
Appellant,
and
HIS MAJESTY THE KING, Respondent;

Docket: 2019-2467(IT)I

AND BETWEEN:

KOSTANTINA SKOTIDAKIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeals heard, on common evidence, on November 22, 2022 and
November 28, 2022 at Montreal, Quebec

Before: The Honourable Justice Dominique Lafleur

Appearances:

Counsel for the Appellant: Michel Jasmin

Counsel for the Respondent: Julien Dubé-Sénécal

JUDGMENT

In accordance with the attached Reasons for Judgment, and given the concessions made by 1048547 Ontario Inc. at the beginning of the hearing that the licence fees amounting to \$99,111 were not deductible in the computation of its business income:

- (i) the appeals of the reassessments made under the *Income Tax Act* for the 2014 and 2015 taxation years of John Skotidakis (docket number 20192463(IT)G) and Antigoni Skotidakis (docket number 2019-2464(IT)G) and the appeal of the reassessment made under the *Income Tax Act* for 1048547 Ontario Inc. for the taxation year ended December 31, 2015 (docket number 2019-2458(IT)G) are dismissed, with one set of costs in favour of the Respondent; and
- (ii) the appeals of the reassessments made under the *Income Tax Act* for the 2014 and 2015 taxation years of Kostantina Skotidakis

(docket number 2019-2467(IT)I) and Kostantinos Skotidakis
(docket number 2019-2460(IT)I) are dismissed, without costs.

Signed at Vancouver, British Columbia, this 28th day of February 2023.

“Dominique Lafleur”

Lafleur J

Citation: 2023 TCC 24
Date: 20230228
Docket: 2019-2458(IT)G

BETWEEN:

1048547 ONTARIO INC,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2019-2460(IT)I

AND BETWEEN:

KOSTANTINOS SKOTIDAKIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2019-2463(IT)G

AND BETWEEN:

JOHN SKOTIDAKIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2019-2464(IT)G

AND BETWEEN:

ANTIGONI SKOTIDAKIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent;

Docket: 2019-2467(IT)I

AND BETWEEN:

KOSTANTINA SKOTIDAKIS,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Lafleur J

I. OVERVIEW

A. Assessments

[1] 1048547 Ontario Inc (“Opco”) operates a business named “Skotidakis Goat Farm” that manufactures dairy products, including cheese and yogurt. The manufacturing facility, which is located in Saint-Eugène, Ontario, is 150,000 square feet. Opco buys local milk in Canada and in the United States and purchases cheeses and various equipment in Europe. Products manufactured by Opco are sold throughout North America, including Mexico. Opco’s clients are located in North America. Sales revenue increased steadily over the years, and in 2022, this revenue was approximately 200 million dollars. Currently, Opco has approximately 300 employees.

[2] For the taxation year ended December 31, 2015, the Minister of National Revenue (“the Minister”) reassessed Opco under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended (“ITA”), to disallow the deduction of various expenses totalling \$496,297 and to allow additional expenses totalling \$830,452 in the computation of Opco’s business income.

[3] Disallowed expenses consisted of licence fees (“Licence Fees”) totalling \$141,653 and travel expenses (I will refer to the travel expenses, which include meals and other expenses, as “travel expenses” in these reasons) of various members of the Skotidakis family totalling \$354,644. Disallowed Licence Fees consisted of a penalty in the amount of \$99,111 for the late remittance of payroll deductions. At the hearing, Opco conceded that the amount of \$99,111, consisting of a late-remittance penalty for payroll deductions, was not deductible in the computation of its business income. However, the balance of Licence Fees, amounting to \$42,542, remains at issue.

[4] For the 2014 and 2015 taxation years, the Minister reassessed John Skotidakis (“John”), the President of Opco, to include in the computation of his income \$211,621 and \$156,696, respectively, as shareholder benefits under subsection 15(1) of the ITA. These amounts represent part of the travel expenses, paid by Opco, of John, his spouse Peggy and his mother Maria, the deduction of which was disallowed in the computation of Opco’s business income.

[5] For the 2014 and 2015 taxation years, the Minister reassessed Antigoni Skotidakis (“Antigoni”), the Treasurer and Human Resources Director of Opco, to include in the computation of her income \$237,647 and \$181,737, respectively, as shareholder benefits under subsection 15(1) of the ITA. These amounts represent part of the travel expenses, paid by Opco, of Antigoni, her spouse Kyriakos and her mother Maria, the deduction of which was disallowed in the computation of Opco’s business income.

[6] For the 2014 and 2015 taxation years, the Minister reassessed Kostantina Skotidakis (“Kostantina”) to include in the computation of her income \$6,967 and \$19,624, respectively, as shareholder benefits under subsection 15(1) of the ITA. These amounts represent part of the travel expenses of Kostantina, paid by Opco, the deduction of which was disallowed in the computation of Opco’s business income. At the hearing, the Respondent took the view that benefits conferred on Kostantina should be included in her income as employee benefits under paragraph 6(1)(a) of the ITA. As an alternative position, the Respondent took the view that

benefits were conferred on Kostantina under subsection 15(1) of the ITA, or as a further alternative, under subsection 246(1) of the ITA.

[7] For the 2014 and 2015 taxation years, the Minister reassessed Kostantinos Skotidakis (“Kostantinos”), the Vice-President of Opco, to include in the computation of his income \$29,049 and \$18,549, respectively, as shareholder benefits under subsection 15(1) of the ITA. These amounts represent part of the travel expenses of Kostantinos, paid by Opco, the deduction of which was disallowed in the computation of Opco’s business income. At the hearing, the Respondent took the view that benefits conferred on Kostantinos should be included in his income as employee benefits under paragraph 6(1)(a) of the ITA. As an alternative position, the Respondent took the view that benefits were conferred on Kostantinos under subsection 15(1) of the ITA, or as a further alternative, under subsection 246(1) of the ITA

[8] John, Antigoni, Kostantina and Kostantinos are siblings (I will refer to them as the “Siblings” in these reasons). At the hearing, of the four Siblings, only John testified. Ms. Josée Myre (Opco’s Financial Controller), Mr. Ralph Nahas (a tax specialist and consultant for the Skotidakis group), Chun-Xiang Bao (a chartered professional accountant), and the Canada Revenue Agency (“CRA”) auditor who performed the Appellants’ audits, Ms. Hua Lu, also testified.

B. Procedural History

[9] The five appeals were heard on common evidence on November 22 and November 28, 2022.

[10] By letter dated November 16, 2022, which was three business days before the scheduled hearing of the appeals, Michel Jasmin (who was not at that time counsel of record for any of the Appellants) requested an adjournment of the hearing, alleging that he would not be able to prepare adequately for it.

[11] On November 18, 2022, which was one business day before the scheduled hearing of the appeals, counsel of record for the Appellants in appeals 2019-2464(IT)G, 2019-2463(IT)G and 2019-2458(IT)G, Robert Fragasso, filed a motion to cease to act for ethical reasons and on the basis of a breakdown of the relationship between counsel and clients. On that same day, Mr. Jasmin filed another request for adjournment, alleging that he would not be able to prepare

adequately for the hearing because he was involved in another hearing. Also on the same day, the Court denied Mr. Jasmin's adjournment request.

[12] On November 21, 2022, which was the day before the scheduled hearing of the appeals, Mr. Jasmin filed with the Court a document entitled [TRANSLATION] "notification of representation by counsel". On that same day, Mr. Fragasso withdrew his motion to cease to act as Mr. Jasmin was now counsel of record for the Appellants in appeals 2019-2464(IT)G, 2019-2463(IT)G and 2019-2458(IT)G.

[13] At the beginning of the hearing on November 22, 2022, Mr. Jasmin did not request an adjournment of the hearing but proposed that the Court adjourn the hearing. According to Mr. Jasmin, since at least two days were required for the completion of the hearing of the appeals, it would be easier to proceed later, when the Court was available for two consecutive days. However, Mr. Jasmin stated that he was ready to proceed. Counsel for the Respondent did not agree with the proposition that the hearing be adjourned to another day.

[14] Given the fact that the reasons raised by Mr. Jasmin were not sufficient for the Court to agree with Mr. Jasmin's proposal to adjourn the hearing, the appeals were heard on November 22, 2022, which was the day fixed for the hearing of the five appeals by orders issued by the Court at the beginning of May 2021. It is to be noted that the Appellants did not file any documentary evidence at the hearing on November 22, 2022, nor when the hearing was continued on November 28, 2022. However, the Respondent filed a book of documents (exhibits R-1 to R-19).

II. ISSUES

[15] These appeals raise the following issues:

- (i) For the taxation year ended December 31, 2015, and given the concession made by Opco at the hearing that Licence Fees of \$99,111 for the late remittance penalty for payroll deductions were not deductible in computing Opco's business income, is Opco entitled to claim additional deductions totalling \$397,186 (composed of travel expenses totalling \$354,644 and Licence Fees totalling \$42,542) in the computation of its business income?
- (ii) For the 2014 and 2015 taxation years, should amounts totalling \$211,621 and \$156,696, respectively, be included in the computation of John's income as

shareholder benefits under subsection 15(1) of the ITA or, alternatively, as employee benefits under paragraph 6(1)(a) of the ITA?

(iii) For the 2014 and 2015 taxation years, should amounts totalling \$237,647 and \$181,737, respectively, be included in the computation of Antigoni's income as shareholder benefits under subsection 15(1) of the ITA or, alternatively, as employee benefits under paragraph 6(1)(a) of the ITA?

(iv) For the 2014 and 2015 taxation years, should amounts totalling \$6,967 and \$19,624, respectively, be included in the computation of Kostantina's income as employee benefits under paragraph 6(1)(a) of the ITA or, alternatively, as shareholder benefits under subsection 15(1) of the ITA or as benefits under subsection 246(1) of the ITA?

(v) For the 2014 and 2015 taxation years, should amounts totalling \$29,049 and \$18,549, respectively, be included in the computation of Kostantinos's income as employee benefits under paragraph 6(1)(a) of the ITA or, alternatively, as shareholder benefits under subsection 15(1) of the ITA or as benefits under subsection 246(1) of the ITA?

III. CONCLUSION

[16] For the following reasons, and given the concessions made by Opco at the beginning of the hearing that the Licence Fees amounting to \$99,111 were not deductible in the computation of its business income:

- (i) the appeals of the reassessments made under the ITA for the 2014 and 2015 taxation years of John (docket number 2019-2463(IT)G) and Antigoni (docket number 2019-2464(IT)G) and the appeal of the reassessment made under the ITA for Opco for the taxation year ended December 31, 2015 (docket number 2019-2458(IT)G) are dismissed, with one set of costs in favour of the Respondent; and
- (ii) the appeals of the reassessments made under the ITA for the 2014 and 2015 taxation years of Kostantina (docket number 2019-2467(IT)I) and Kostantinos (docket number 2019-2460(IT)I) are dismissed, without costs.

IV. OTHER RELEVANT FACTS

[17] Another corporation, which I will refer to as Holdco, owns all the issued and outstanding participating shares of the share capital of Opco. All the issued and outstanding non-participating shares of the share capital of Opco are owned equally by John and Antigoni.

[18] John and Antigoni own all the non-participating shares of the share capital of Holdco, while all the issued and outstanding participating shares of the share capital of Holdco are owned as follows: John (36%), Antigoni (20%), Kostantina (20%) and Kostantinos (24%).

[19] John, Antigoni, Kostantina and Kostantinos are all employees of Opco. More particularly, John is the President of Opco and is the main person involved in business development. As part of his duties with Opco, he travels a lot. Antigoni is responsible for human resources. She hires new employees and deals with all other matters relating to human resources. Kostantinos is Opco's Vice-President. Kyriakos, Antigoni's spouse, is Opco's Plant Manager. No evidence was adduced at the hearing as to the duties performed by Kostantina in Opco.

[20] Finally, the evidence showed that Maria and Peggy are not employees of Opco.

V. POSITIONS OF THE PARTIES

A. The Appellants

[21] According to the Appellants, they met their burden of establishing that the Minister's assumptions of fact in making the reassessments at issue were wrong. The CRA auditor's testimony was vague, hesitant and showed that she did not understand the facts. It is clear that various expenses were accounted for twice. John's testimony was clear and transparent. All travel expenses paid by Opco were incurred for the purpose of gaining or producing business income, namely to meet suppliers worldwide or to develop Opco's business market. The travel expenses were not of a personal nature for John, Antigoni, Kostantina or Kostantinos and should not have been included in the computation of their income under the ITA.

[22] Furthermore, expenses not supported by any documents or credit card statements should not have been included in the computation of John's and

Antigoni's income as suggested by Ms. Myre, since neither John nor Antigoni was made aware of that discussion with Ms. Myre and the CRA auditor.

[23] Finally, according to the Appellants, subsection 15(1) of the ITA does not apply to a shareholder who owns only non-participating shares. As neither John nor Antigoni owns participating shares in Opco, they should not be assessed a benefit under subsection 15(1) of the ITA.

B. The Respondent

[24] The Respondent's position is as follows:

(i) In respect of Opco:

- the disallowed travel expenses were not incurred by Opco for the purpose of gaining or producing income from Opco's business and were properly disallowed under paragraph 18(1)(a) of the ITA; and
- the amount of \$42,542, consisting of Licence Fees, was never paid by Opco and hence was not incurred by Opco for business purposes and was properly disallowed under paragraph 18(1)(a) of the ITA.

(ii) In respect of John:

- Opco paid for personal travel expenses for John, his spouse (Peggy) and his mother (Maria). The travel expenses were never repaid to Opco and were never included in John's income and therefore these amounts should be included in John's income as shareholder benefits under subsection 15(1) of the ITA or, alternatively, as employee benefits under paragraph 6(1)(a) of the ITA.

(iii) In respect of Antigoni:

- Opco paid for personal travel expenses for Antigoni, her spouse (Kyriakos) and her mother (Maria). The travel expenses were never repaid to Opco and were never included in Antigoni's income and therefore these amounts should be included in Antigoni's income as shareholder benefits under

subsection 15(1) of the ITA or, alternatively, as employee benefits under paragraph 6(1)(a) of the ITA.

(iv) In respect of Kostantina:

- Opco paid for personal travel expenses for Kostantina, and these expenses were never repaid to Opco and were never included in Kostantina's income. Therefore, these amounts should be included in Kostantina's income as employee benefits under paragraph 6(1)(a) of the ITA. Alternatively, these amounts should be included in Kostantina's income as shareholder benefits under subsection 15(1) of the ITA or, otherwise, as benefits under subsection 246(1) of the ITA.

(v) In respect of Kostantinos:

- Opco paid for personal travel expenses for Kostantinos, and these expenses were never repaid to Opco and were never included in Kostantinos's income. Therefore, these amounts should be included in Kostantinos's income as employee benefits under paragraph 6(1)(a) of the ITA. Alternatively, these amounts should be included in Kostantinos's income as shareholder benefits under subsection 15(1) of the ITA or, otherwise, as benefits under subsection 246(1) of the ITA.

[25] The Appellants did not meet their burden of showing the Court that the disallowed travel expenses were incurred by Opco for the purpose of gaining or producing income from Opco's business. Furthermore, the Appellants did not meet their burden of showing that the Licence Fees were paid by Opco.

[26] On the one hand, Ms. Lu's testimony at the hearing was clear and reliable; also, the working papers filed as exhibits R-8, R-9, R-10, R-11, R-12, R-13, R-14, R-15, R-16, R-17, R-18, and R-19 are consistent with her testimony.

[27] On the other hand, Ms. Myre's testimony was vague and inconsistent with Ms. Lu's testimony, and lacked credibility. During the taxation years under appeal, Ms. Myre was Opco's Financial Controller. In her testimony, she was hesitant and did not remember what was said during the meetings that she had with the auditor. Since she was assigned to deal with the audit, it is not credible that, as Opco's

Financial Controller, she did not know which expenses were personal and which expenses were business-related.

[28] Furthermore, John's testimony was not credible when he testified that all disallowed travel expenses paid by Opco were incurred for business purposes. He did not provide any reasonable explanation nor any documentary evidence to justify the deduction of the expenses for Opco. He only made a bold statement that all the disallowed travel expenses were incurred for business purposes.

[29] Finally, the Respondent asks the Court to draw two adverse inferences. Firstly, since Antigoni, Kostantina and Kostantinos did not come to testify at the hearing, an inference should be drawn that their testimony would have shown that the disallowed travel expenses were personal in nature and not business-related. Secondly, because the Appellants did not submit any receipts or other documentary evidence to support the nature of the travel expenses at issue, an inference should be drawn that the receipts would have shown that the expenses were personal in nature and not incurred for business purposes.

VI. DISCUSSION

A. Preliminary Issue: Jurisdiction of the Court

[30] In his testimony, John stated that after the audit, Opco decided not to challenge the disallowance of the deduction of the various travel expenses at issue. John also stated that he was not made aware at any time during the audit that the expenses so disallowed would be included in the computation of his income or the income of his siblings. According to John, he and his siblings should have been made aware of the tax consequences resulting from the disallowance of the deduction of the travel expenses in computing Opco's business income, but the CRA auditor failed to inform them of these consequences.

[31] However, whether the CRA auditor had informed the Siblings or not is not relevant for the purposes of the appeals to this Court. Section 12 of the *Tax Court of Canada Act*, RSC 1985, c T-2 provides that the Court has jurisdiction to hear appeals made under the ITA. This Court's jurisdiction "... is to determine the validity and correctness of the assessment based on the relevant provisions of the [ITA] and the facts giving rise to the taxpayer's statutory liability. Logically, the conduct of a tax official who authorizes an assessment is not relevant to the determination of that statutory liability" (*Ereiser v. The Queen*, 2013 FCA 20 at para 31).

B. Issues Raised by the Appeals

[32] For the following reasons, which I shall elaborate upon later herein, after reviewing all the evidence adduced at the hearing, I find that Opco did not establish, even on a *prima facie* basis, that the Minister was incorrect in assuming, in making the reassessment, that the travel expenses were personal in nature and were not incurred by Opco for business purposes, as well as in assuming that the Licence Fees were not incurred by Opco.

[33] I also find that the Siblings did not establish, even on a *prima facie* basis, that the Minister was incorrect in assuming, in making the reassessments, that they had received a benefit from Opco, either as a shareholder benefit under subsection 15(1) of the ITA or as an employee benefit under paragraph 6(1)(a) of the ITA.

[34] I find that Ms. Myre's and John's testimony lacked credibility and reliability. On the contrary, Ms. Lu's testimony was credible and reliable.

[35] Furthermore, the Appellants did not submit any documentary evidence to support their testimony that Opco incurred all the disallowed travel expenses for business purposes and that these expenses were not personal in nature for the Siblings. In addition, no evidence was adduced by the Appellants at the hearing in respect of the Licence Fees.

[36] The Court must also draw the two negative inferences discussed at paragraph 29 as requested by the Respondent.

[37] Accordingly, the Respondent's position must prevail in these appeals.

(i) Opco's reassessment for the taxation year ended December 31, 2015

[38] The first issue with respect to this reassessment is whether travel expenses totalling \$354,644 were properly incurred by Opco for the purpose of gaining or producing business income and whether the travel expenses were deductible in computing Opco's business income under the ITA.

[39] The second issue with respect to this reassessment is whether the Licence Fees totalling \$42,542 were paid by Opco to the Receiver General and whether they were deductible in computing Opco's business income under the ITA.

[40] The relevant provisions of the ITA are subsection 9(1) and paragraph 18(1)(a):

9(1) Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

...

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

(a) 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;

...

[41] The ITA contains no definition of the term "profit". A taxpayer may adopt any method of calculating profit that is in accordance with the ITA, established case law and well-accepted business principles, as long as it gives an accurate picture of its economic reality (*Canderel Ltd v. R*, [1998] 1 SCR 147, at paras 53-54. Furthermore, specific provisions of the ITA should be examined to determine whether an expense can be claimed as a deduction in computing income for income tax purposes.

[42] For the following reasons, since Opco did not adduce sufficient evidence at the hearing, I find that the travel expenses totalling \$354,644 were not made or incurred by Opco for the purpose of gaining or producing business income, but were personal travel expenses of the Siblings and other family members and were therefore not deductible in computing Opco's business income. The appeal with respect to this issue is therefore dismissed.

[43] Also, for the following reasons, since I conclude that there was a lack of evidence adduced at the hearing by Opco, I find that the Licence Fees of \$42,542 were not made or incurred by Opco and, consequently, were not deductible in computing Opco's business income. Therefore, the appeal with respect to this issue is also dismissed.

(ii) Travel Expenses Paid by Opco in Respect of the Taxation Year Ended December 31, 2014

[44] Although Opco's taxation year ended December 31, 2014 is not at issue in this appeal, I also find that the evidence showed that travel expenses paid by Opco totalling \$507,245 were personal travel expenses of the Siblings and other family members.

(iii) The Appellants' Reassessments (Other than Opco) for 2014 and 2015

Reassessments of John and Antigoni

[45] With respect to the reassessments of John and Antigoni, the issue is whether the travel expenses paid by Opco have to be included in the computation of John's and Antigoni's respective incomes as benefits conferred on them by Opco as shareholders of Opco under subsection 15(1) of the ITA.

[46] According to subsection 15(1) of the ITA, if at any time a benefit is conferred by a corporation on a shareholder of the corporation, the amount or value of the benefit is to be included in computing the income of the shareholder, except to the extent that the amount or value of the benefit is a dividend or except if one of the exceptions described in paragraphs 15(1)(a) to (d) of the ITA applies. In these appeals, the amount of the benefit is not a dividend, and none of the exceptions apply.

[47] Subsection 15(1) of the ITA reads as follows:

15 (1) If, at any time, a benefit is conferred by a corporation on a shareholder of the corporation ... then the amount or value of the benefit is to be included in computing the income of the shareholder ... for its taxation year that includes the time ...

[48] Hence, the Court must determine whether a benefit was conferred by Opco on John and Antigoni and whether that benefit was conferred on John and Antigoni as shareholders of Opco. If that is the case, the Court must then determine the value of the benefit so conferred.

[49] Three categories of travel expenses are at issue in respect of John: (i) expenses identified as John's and his spouse's (Peggy) personal expenses paid by Opco with an Amex credit card under John's and Peggy's names: in 2014, \$62,470.18 and in 2015, \$75,220.43; (ii) expenses identified as Maria's (mother of the Siblings) personal expenses paid by Opco with an Amex credit card under Maria's name (half

of the amount was allocated to John and half to his sister Antigoni): in 2014, \$4,753.35 and in 2015, \$846.39; and (iii) expenses paid by Opco for which no credit card statements were provided to the auditor (half of the amount was allocated to John and half to Antigoni): in 2014, \$144,397.03 and in 2015, \$80,628.82.

[50] Similarly, three categories of travel expenses are at issue concerning Antigoni: (i) expenses identified as Antigoni's and her spouse's (Kyriakos) personal expenses paid by Opco with an Amex credit card under Antigoni's and Kyriakos's names: in 2014, \$88,496.56 and in 2015, \$100,261.58; (ii) expenses identified as Maria's personal expenses paid by Opco with an Amex credit card under Maria's name (half of the amount was allocated to Antigoni and half to her brother, John): in 2014, \$4,753.35 and in 2015, \$846.39; and (iii) expenses paid by Opco for which no credit card statements were provided to the auditor (half of the amount was allocated to Antigoni and half to John): in 2014, \$144,397.03 and in 2015, \$80,628.82.

[51] The travel expenses paid by Opco which, as I will explain later herein, I found were not made or incurred by Opco for the purpose of gaining or producing business income, are personal travel expenses of John and Antigoni. The payment of said travel expenses by Opco constitutes an appropriation of Opco's funds for the benefit of John and Antigoni. Hence, I find that a benefit was conferred by Opco on John and Antigoni.

[52] Furthermore, for reasons that I will explain later herein, since the Appellants did not adduce sufficient evidence at the hearing, I find that a benefit was conferred on John and Antigoni by Opco as shareholders of Opco in an amount equal to the benefit included by the Minister in computing their respective incomes under subsection 15(1) of the ITA.

[53] The reassessments were reasonable, and the appeals with respect to these issues are therefore dismissed.

Reassessments of Kostantina and Kostantinos

[54] With respect to the reassessments of Kostantina and Kostantinos, the issue is whether the travel expenses paid by Opco have to be included in the computation of Kostantina's and Kostantinos's respective employment incomes as benefits conferred on them by Opco as employees of Opco under paragraph 6(1)(a) of the ITA.

[55] According to paragraph 6(1)(a) of the ITA, subject to certain exceptions, the value of benefits of any kind received by a taxpayer, or by a person who does not deal at arm's length with the taxpayer, in the year by virtue of the taxpayer's office or employment, has to be included in computing the employment income of the taxpayer. In these appeals, none of the exceptions apply.

[56] Paragraph 6(1)(a) of the ITA reads as follows:

6 (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

(a) the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer, or by a person who does not deal at arm's length with the taxpayer, in the year in respect of, in the course of, or by virtue of the taxpayer's office or employment, except any benefit

...

[Emphasis added.]

[57] For Kostantina, one category of travel expenses is at issue, that is, expenses identified as Kostantina's personal travel expenses paid by Opco with an Amex credit card under her name and totalling \$6,967 in 2014 and \$19,624 in 2015.

[58] For Kostantinos, one category of travel expenses is at issue, that is, expenses identified as Kostantinos's personal travel expenses paid by Opco with an Amex credit card under his name and totalling \$29,049 in 2014 and \$18,549 in 2015.

[59] The travel expenses paid by Opco which, as I will explain later, I found were not made or incurred by Opco for the purpose of gaining or producing business income, are personal travel expenses of Kostantina and Kostantinos. The payment of said travel expenses by Opco constitutes an appropriation of Opco's funds for the benefit of Kostantina and Kostantinos. Hence, I find that a benefit was conferred by Opco on Kostantina and Kostantinos.

[60] Furthermore, for reasons that I will explain later herein, since the Appellants did not adduce sufficient evidence at the hearing, I find that a benefit was conferred on Kostantina and Kostantinos as employees of Opco, under paragraph 6(1)(a) of the ITA, in an amount equal to \$6,967 in 2014 and \$19,624 in 2015 for Kostantina, and \$29,049 in 2014 and \$18,549 in 2015 for Kostantinos.

[61] The reassessments are reasonable, and the appeals with respect to these issues are therefore dismissed.

(iv) Burden

[62] Pursuant to subsection 152(8) of the ITA, an assessment under the ITA is deemed to be valid and binding notwithstanding any error, defect or omission in the assessment.

[63] Generally, in tax appeals, the burden of proof rests on the appellant. The appellant bears the burden of demolishing the Minister's assumptions of fact and proving, on a balance of probabilities, the facts justifying his or her position.

[64] As explained by Justice L'Heureux-Dubé in *Hickman Motors Ltd. v. Canada*, [1997] 2 SCR 336 at paras 92–95 the initial onus on the taxpayer consists in demolishing the assumptions relied upon by the Minister to make the assessment by putting forward *prima facie* evidence showing the inaccuracy of said assumptions. If the taxpayer puts forward such *prima facie* evidence, then the burden of proof shifts to the Minister, who must prove the assumptions relied upon.

[65] A *prima facie* case is one “supported by evidence which raises such a degree of probability in its favour that it must be accepted if believed by the Court unless it is rebutted or the contrary is proved. It may be contrasted with conclusive evidence which excludes the possibility of the truth of any other conclusion than the one established by that evidence (*Stewart v. Canada (Minister of National Revenue – MNR)*, [2000] TCJ No 53 (QL) at para 23, cited with approval by Justice Trudel in *Amiante Spec Inc. v. Canada*, 2009 FCA 139 at para 23).

[66] More recently, the Federal Court of Appeal suggested that the burden in tax appeals should instead be applied as follows. In *Eisbrenner v. Canada*, 2020 FCA 93 (leave to appeal to the Supreme Court of Canada dismissed, 2020 SCCA No 268), Justice Webb stated:

[24] ... In *Sarmadi*, I reviewed the various cases that have discussed the onus of proof issue. I also reviewed the context of an appeal to the Tax Court. I concluded that:

[61] In my view, a taxpayer should have the burden to prove, on a balance of probabilities, any facts that are alleged by that taxpayer in their notice of appeal and that are denied by the Crown. In most cases this should end the discussion

of the onus of proof since the assumptions of fact made by the Minister in reassessing the taxpayer would generally be inconsistent with the facts pled by the taxpayer with respect to the material facts on which the reassessment was issued.

[62] If there are facts that were assumed by the Minister in reassessing a taxpayer and that are not inconsistent with the facts as pled by that taxpayer, it would also seem logical to require the taxpayer to prove, on a balance of probabilities, that these facts assumed by the Minister (and which are in dispute and are not exclusively or peculiarly within the Minister's knowledge) are not correct. Requiring a taxpayer to disprove the facts assumed by the Minister in reassessing that taxpayer simply puts the onus on the person who knows (or ought to know) the facts. It also puts the onus on the person who indirectly asserted certain facts in filing their tax return that would be inconsistent with the facts assumed by the Minister in reassessing such taxpayer.

[63] Once all of the evidence is presented, the Tax Court judge should then (and only then) determine whether the taxpayer has satisfied this burden. If the taxpayer has, on the balance of probabilities, disproven the particular facts assumed by the Minister, based on all of the evidence, there is no burden to shift to the Minister to disprove what the Tax Court judge has determined that the taxpayer has proven. Either the taxpayer has disproven the assumed facts or he, she or it has not.

[25] In paragraph 36 of *Sarmadi*, I had also noted that if the Minister alleges a fact that is not part of the facts that were assumed by the Minister in assessing a taxpayer or in confirming an assessment, then the Minister will have the onus of proof with respect to such facts (*Her Majesty the Queen v. Loewen*, 2004 FCA 146 at para. 11, 2004 D.T.C. 6321).

[67] I will not elaborate further on the burden that an appellant has to satisfy in tax appeals, as I find that given the very limited evidence adduced by the Appellants at the hearing, which is equivalent to a lack of evidence, and given my finding on the lack of credibility and reliability of such evidence, the Appellants did not meet the threshold of the *prima facie* standard, let alone the standard of the balance of probabilities, to show that the Minister's assumptions in making the reassessments were incorrect.

(v) Review of the Evidence

[68] In these appeals, the Appellants should have adduced detailed and cogent testimony, and supporting evidence where possible, to explain why the travel expenses were not personal in nature but were incurred by Opco for the purpose of

gaining or producing business income. For example, the Appellants could have succeeded by establishing, on a balance of probabilities, new facts not considered by the Minister when making the reassessments; by showing that the travel expenses were incurred for business purposes; or by demonstrating that the Minister's assumptions of fact in making the reassessments were wrong. However, the Appellants failed to do so.

[69] When assessing the credibility of a witness, I can consider inconsistencies, the attitude and demeanour of the witness, motives that the witness may have to fabricate evidence, and the "overall sense of the evidence". As stated by Justice Valerie Miller in *Nichols v. The Queen*, 2009 TCC 334, 2009 DTC 1203, at paragraph 23:

[23] In assessing credibility I can consider inconsistencies or weaknesses in the evidence of witnesses, including internal inconsistencies (that is, whether the testimony changed while on the stand or from that given at discovery), prior inconsistent statements, and external inconsistencies (that is, whether the evidence of the witness is inconsistent with independent evidence which has been accepted by me). Second, I can assess the attitude and demeanour of the witness. Third, I can assess whether the witness has a motive to fabricate evidence or to mislead the court. Finally, I can consider the overall sense of the evidence. That is, when common sense is applied to the testimony, does it suggest that the evidence is impossible or highly improbable.

[70] Here, the credibility and the sufficiency of the evidence adduced at the hearing are determinative (*Landry v. The Queen*, 2009 TCC 399, 2009 DTC 1359 at para 47; *Roy v. The Queen*, 2006 TCC 226, 2008 DTC 3224). I have also considered the overall reasonableness of the reassessments in my determination of whether to allow the appeals.

[71] No supporting documentation was adduced in evidence to show that the disallowed expenses were incurred by Opco for the purpose of gaining or producing business income. However, I want to point out that there is no requirement that vouchers or receipts be provided for all expenditures claimed as deductions provided that the expenditures are proved by other credible evidence (see *McMillan v. The Queen*, 2011 TCC 393 (*McMillan*); *Chrabalowski v. The Queen*, 2004 TCC 644). Hence, there is no need to introduce every single receipt, but a taxpayer would have had to prove first, by some other credible means, that the expenditures were incurred and that they were incurred for the purpose of gaining or producing business income.

[72] I did consider these principles in assessing the evidence adduced at the hearing of these appeals, and I find that none of this evidence was credible to support the

Appellants' position that the disallowed expenses were expenses made or incurred by Opco for the purpose of gaining or producing business income.

Ms. Myre's Testimony and Ms. Lu's Testimony

[73] For the following reasons, I find Ms. Myre's testimony to be vague, not convincing and not credible. On the contrary, I find that Ms. Lu's testimony was credible and reliable.

[74] The evidence has shown that Ms. Myre, Opco's Financial Controller, was designated by John to coordinate the audit and be the contact person for information. Ms. Myre provided a bundle of credit card statements to the auditor. Ms. Myre and the auditor met three or four times.

[75] I find that the evidence has shown that the auditor reviewed the credit card statements submitted by Ms. Myre and was able to determine, in conjunction with Ms. Myre and on the basis of the destination and the persons travelling with one or more of the Appellants, which travel expenses were incurred for business purposes and which were of a personal nature for the Siblings and other family members. The auditor allowed the deduction of approximately \$200,000 of travel expenses without any other supporting documents other than the credit card statements: for example, travel expenses for a trip to Dubai for an annual milk show and trips to other places like Chicago, New York, Vancouver, San Diego and Washington. However, travel expenses for trips to Paris, Aruba, Nassau and Mont-Tremblant were not allowed, nor were expenses paid to Vacances Sunwing, as the auditor concluded that they were personal expenses paid by Opco for the benefit of the Siblings and other family members.

[76] I find that the evidence has shown that Ms. Myre had indicated to the auditor during the audit that there was no supporting documentation (including emails, itineraries, contact persons, details of conferences, etc.) to show the purposes of the disallowed travel expenses. There were credit card statements for some but not all of these travel expenses.

[77] I am not convinced by Ms. Myre's testimony to the effect that she did not remember if she had given the auditor supporting documentation for the travel expenses, other than credit card statements. If said supporting documentation was handed to the auditor at the audit stage, there is no reason justifying why it was not adduced in evidence at the hearing of the appeals.

[78] Ms. Lu testified with respect to the audit that she performed of the various books and documents of Opco, as well as with respect to her meetings with Ms. Myre. Contemporaneous notes of the meetings were taken by Ms. Lu (Exhibit R-9) that support Ms. Lu's testimony.

[79] For Opco's taxation year ended December 31, 2015, of the \$586,812 in travel expenses claimed as a deduction in computing Opco's business income for tax purposes, Ms. Lu disallowed a total of \$354,644.06. The disallowed travel expenses consist of the following: travel expenses totalling \$161,257.63, claimed by Opco without any supporting documents or credit card statements, and travel expenses totalling \$193,386.43, supported only by credit card statements.

[80] The travel expenses totalling \$161,257.63 claimed by Opco without any supporting documents or credit card statements included travel expenses paid by Opco on the Option MasterCard, Visa Desjardins and Visa credit cards. According to Ms. Lu's testimony, Ms. Myre agreed at the audit that these expenses were personal and should be allocated equally to both John and Antigoni. However, at the hearing, Ms. Myre testified that because she did not have the credit card statements, she would not have been able to determine whether an expense was personal or business-related.

[81] Again, I do not find Ms. Myre's testimony credible. Contemporaneous notes taken by Ms. Lu (Exhibit R-9) indicate that Ms. Myre stated that the Option MasterCard, Visa Desjardins and Visa credit cards were personal credit cards. It was also established at the hearing that it is Ms. Myre's handwritten comments that appear on Exhibit R-6 and that these comments clearly indicate an allocation of these expenses equally to John and Antigoni. At the hearing, no evidence was adduced to show that the expenses were of a business nature; also, no evidence was adduced to show that the expenses should not be allocated equally to John and Antigoni.

[82] The travel expenses totalling \$193,386.43 claimed by Opco and supported only by credit card statements were made on two Amex credit cards; one Amex card had two cardholders, namely John and Peggy, and one Amex card had many cardholders, including Opco's truck drivers, the Siblings and other family members (the Appellants' spouses and the Appellants' mother, Maria). The auditor examined the credit card statements and allocated the travel expenses to the cardholders, except for Peggy's expenses, which were allocated to John; Maria's expenses, which were allocated equally to John and Antigoni; and Kyriakos's expenses, which were allocated to Antigoni.

[83] For Opco's taxation year ended December 31, 2014 which is not at issue, the evidence showed that Ms. Lu disallowed a total of \$507,245 on the basis that these were personal and not business-related travel expenses: travel expenses totalling \$288,794.05, claimed by Opco without any supporting documents (and without credit card statements), and travel expenses totalling \$218,451.36, supported only by credit card statements. She applied the same reasoning for 2014 as she did for 2015.

John's Testimony

[84] For the following reasons, I find that John's testimony was vague, not convincing and not credible.

[85] His testimony was that all expenses referred to in the schedules to the replies to the notices of appeal were business expenses of Opco and should not be considered personal travel expenses of the Siblings and other family members.

[86] Disallowed travel expenses included the following expenses:

- (i) Maria: Expenses incurred in Sint Maarten and at various restaurants; however, the evidence showed that Maria is not an employee of Opco and, therefore, John's testimony that these are business expenses is not credible;
- (ii) Kostantinos: Travel expenses incurred at the Fairmont Tremblant in Mont-Tremblant, in Nassau and at a garden store in Saint-Eustache; no credible evidence was adduced as to the purposes of these expenses, and no supporting documentation was adduced at the hearing to show that these expenses were incurred by Opco for business purposes;
- (iii) Kostantina: Travel expenses incurred in Mont-Tremblant and at Marriott's Aruba Surf Club; no supporting documentation was adduced at the hearing. However, John testified that Kostantina was developing the business in Aruba, which I find is not credible. Furthermore, no evidence was adduced as to Kostantina's duties in Opco. In addition, the evidence showed that Opco's clients are located throughout North America (including Mexico) and hence, I find that it is not credible that expenses incurred in Aruba were business-related;

- (iv) Kyriakos: Travel expenses incurred by Kyriakos (Antigoni's husband) at Sépaq; John testified that an employees' meeting was held at Sépaq. However, no supporting documentation was adduced at the hearing. I find that it would have been an easy task to provide emails or an itinerary that would have certainly been sent to Opco's employees as well as an agenda for that employees' meeting. Travel expenses incurred at the Fairmont Mont-Tremblant, in Heraklion, in Santorini and in Paris were also disallowed. No credible evidence was adduced at the hearing as to the purposes of these expenses;
- (v) Antigoni: Travel expenses paid to Vacances Sunwing and Air Canada; no credible evidence was adduced at the hearing as to the purposes of these expenses; and
- (vi) John: Travel expenses incurred under John's name at the Ritz-Carlton in Aruba and at the Ritz-Carlton in Grand Cayman as well as some expenses incurred by John's spouse at Holt Renfrew Montreal and at various restaurants. As Peggy is not an employee of Opco, it is not credible that these expenses were incurred for the purpose of gaining or producing business income for Opco. Also, as mentioned above, the evidence showed that Opco's clients are located throughout North America, including Mexico. No evidence was adduced as to whether Opco was making business developments in Aruba and Grand Cayman.

[87] For 2014, similar types of expenses were disallowed by the auditor. For the same reasons as for 2015, I find that John's testimony is not credible.

(vi) Adverse Inferences

[88] An adverse inference can be drawn from a party's failure to call a witness, especially if the witness's evidence would have been central to establishing an important fact (*Imperial Pacific Greenhouses Ltd. v. The Queen*, 2011 FCA 79 at para 14).

[89] In the case at bar, the testimony of all the Appellants was central to establishing the nature of the travel expenses made or incurred by Opco and disallowed by the auditor. However, I did not receive any credible explanations justifying Antigoni's, Kostantina's and Kostantinos's absence at the hearing. I find

that I should draw an adverse inference from their failure to appear and that their testimony would have shown that the travel expenses were personal in nature and not related to Opco's business.

[90] Furthermore, I also conclude that it would have been reasonable to expect that some supporting documentation—namely emails, invitations to meetings, agendas of meetings, etc.—would have been adduced at the hearing indicating the purposes of the various travel expenses.

[91] According to subsection 230(1) of the ITA, Opco must maintain and have detailed information and documentation in support of its claim that the travel expenses were incurred for the purpose of gaining or producing business income. This subsection reads as follows:

230 (1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[92] That documentation would have allowed the Court to make a finding as to the nature of the travel expenses and as to whether the Licence Fees were paid or incurred by Opco. An adverse inference can also be drawn from that failure; this inference is that the receipts or other supporting documents would not have shown that the travel expenses were incurred by Opco for gaining or producing business income and that the Licence Fees were paid by Opco (*McMillan* at para 33).

Signed at Vancouver, British Columbia, this 28th day of February 2023.

“Dominique Lafleur”

Lafleur J

CITATION: 2023 TCC 24

COURT FILE NOS: 2019-2458(IT)G
2019-2460(IT)I
2019-2463(IT)G
2019-2464(IT)G
2019-2467(IT)I

STYLE OF CAUSE: 1048547 ONTARIO INC v. HIS
MAJESTY THE KING

KOSTANTINOS SKOTIDAKIS v. HIS
MAJESTY THE KING

JOHN SKOTIDAKIS v. HIS MAJESTY
THE KING

ANTIGONI SKOTIDAKIS v. HIS
MAJESTY THE KING

KOSTANTINA SKOTIDAKIS v. HIS
MAJESTY THE KING

PLACE OF HEARING: Montreal, Quebec

DATES OF HEARING: November 22 and 28, 2022

REASONS FOR JUDGMENT BY: The Honourable Justice Dominique Lafleur

DATE OF JUDGMENT: February 28, 2023

APPEARANCES:

Counsel for the Appellant: Michel Jasmin

Counsel for the Respondent: Julien Dubé-Sénécal

COUNSEL OF RECORD:

For the Appellant:

Name: Michel Jasmin

Firm: Michel Jasmin
Saint-Placide, Quebec

For the Respondent:

François Daigle
Deputy Attorney General of Canada
Ottawa, Canada