

Docket: 2021-1331(IT)I

BETWEEN:

ANNA WAI MAN WAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on February 21, 2023 at Vancouver, British Columbia

Before: The Honourable Justice Dominique Lafleur

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Jia Ling

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**JUDGMENT**

UPON hearing from the parties;

AND in accordance with the attached Reasons for Judgment, the appeal from reassessments made under the *Income Tax Act* for the Appellant's 2016 and 2017 taxation years is dismissed, without costs.

Signed at Montréal, Québec, this 3rd day of April 2023.

“Dominique Lafleur”

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Lafleur J.

Citation: 2023 TCC 38  
Date: 20230403  
Docket: 2021-1331(IT)I

BETWEEN:

ANNA WAI MAN WAN,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR JUDGMENT**

Lafleur J.

#### **I. OVERVIEW**

[1] Ms. Wan appeals to this Court from reassessments made by the Minister of National Revenue (the “Minister”) under the *Income Tax Act* (R.S.C. 1985, c. 1 (5th Supp.)) (the “Act”) disallowing the deduction of a portion of her advertising and promotion expenses (the “Advertising Expenses”), the disallowed portion being \$59,800 in 2016 and \$58,000 in 2017, in computing her employment income. I will refer to the 2016 and 2017 taxation years as the “Taxation Years”.

[2] The Minister is of the view that the Advertising Expenses were not made or incurred by Ms. Wan, or alternatively, if they were made or incurred, they were not made or incurred for the purpose of earning employment income, and thus, they were not deductible in computing her employment income. The Minister allowed other advertising and promotion expenses totalling \$32,493 in 2016 and \$17,602 in 2017.

[3] During the Taxation Years, Ms. Wan was employed as a family service advisor for Service Corporation International (Canada). Her employment duties included making cemetery arrangements for client families, selling pre-need arrangements for cemeteries and funeral homes, networking and building relationships to generate referrals, and establishing and maintaining strong business

relationships with client families. Ms. Wan was successful during the Taxation Years, earning employment income, together with commissions, totalling \$400,333 (\$355,905 of which was from commissions) in 2016 and \$446,845 (\$412,887 of which was from commissions) in 2017.

[4] The Advertising Expenses relate to services allegedly provided to Ms. Wan by corporations wholly owned by her spouse and daughter. In 2016, Ms. Wan claimed a deduction for advertising and promotion expenses totalling \$29,900 for services rendered by a corporation owned by her spouse and \$29,900 for services rendered by a corporation owned by her daughter. In 2017, Ms. Wan claimed a deduction for advertising and promotion expenses totalling \$29,000 for services rendered by another corporation owned by her spouse and \$29,000 for services rendered by another corporation owned by her daughter.

[5] At the hearing, the only person who testified was Ms. Wan.

## **II. THE ISSUE AND THE RELEVANT PROVISIONS OF THE ACT**

[6] The issue is whether the Advertising Expenses are deductible under paragraph 8(1)(f) of the Act in computing Ms. Wan's employment income.

[7] The relevant provisions of the Act read as follows:

**8(1)** In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto

...

**(f)** where the taxpayer was employed in the year in connection with the selling of property or negotiating of contracts for the taxpayer's employer, and

(i) under the contract of employment was required to pay the taxpayer's own expenses,

(ii) was ordinarily required to carry on the duties of the employment away from the employer's place of business,

(iii) was remunerated in whole or part by commissions or other similar amounts fixed by reference to the volume of the sales made or the contracts negotiated, and

(iv) was not in receipt of an allowance for travel expenses in respect of the taxation year that was, by virtue of subparagraph 6(1)(b)(v), not included in computing the taxpayer's income,

amounts expended by the taxpayer in the year for the purpose of earning the income from the employment (not exceeding the commissions or other similar amounts referred to in subparagraph 8(1)(f)(iii) and received by the taxpayer in the year) to the extent that those amounts were not

(v) outlays, losses or replacements of capital or payments on account of capital, except as described in paragraph 8(1)(j),

(vi) outlays or expenses that would, by virtue of paragraph 18(1)(l), not be deductible in computing the taxpayer's income for the year if the employment were a business carried on by the taxpayer, or

(vii) amounts the payment of which reduced the amount that would otherwise be included in computing the taxpayer's income for the year because of paragraph 6(1)(e);

...

**8(2)** Except as permitted by this section, no deductions shall be made in computing a taxpayer's income for a taxation year from an office or employment.

...

**8(10)** An amount otherwise deductible for a taxation year under paragraph (1)(c), (f), (h) or (h.1) or subparagraph (1)(i)(ii) or (iii) by a taxpayer shall not be deducted unless a prescribed form, signed by the taxpayer's employer certifying that the conditions set out in the applicable provision were met in the year in respect of the taxpayer, is filed with the taxpayer's return of income for the year.

[Emphasis added.]

[8] At the hearing, the Respondent confirmed that the requirements found in subparagraphs 8(1)(f)(i), (ii), (iii) and (iv) of the Act were met and were not at issue in these appeals. The Respondent also confirmed that Ms. Wan had filed the prescribed T2200 forms referred to in subsection 8(10) of the Act for the Taxation Years and that this was not at issue in these appeals.

### III. CONCLUSION

[9] For the following reasons, the appeal from the reassessments made by the Minister under the Act for the Taxation Years is dismissed, without costs.

#### **IV. POSITION OF THE PARTIES**

##### ***(i) Ms. Wan***

[10] According to Ms. Wan, the Advertising Expenses were made for the purpose of earning employment income and should be deductible in computing her employment income. Specifically, she argues that she was more successful during the Taxation Years given the services rendered by her husband's and her daughter's corporations, and thus, the expenses were reasonable.

##### ***(ii) The Respondent***

[11] The Respondent is of the view that Ms. Wan did not make or incur the Advertising Expenses. Ms. Wan did not show, on a balance of probabilities, that she incurred the Advertising Expenses.

[12] The oral evidence adduced at the hearing is not sufficient to rebut the Minister's assumptions. Ms. Wan's testimony was vague and unreliable and she failed to meet the *prima facie* case to show that the Advertising Expenses were expended.

[13] Ms. Wan was required to retain books and records as per subsection 230(1) of the Act. The receipts adduced into evidence did not show a description of the services rendered or a method of payment like receipts ordinarily do in commercial transactions. No other supporting documentation such as time logs, bank statements, cheques, journal ledgers, records of calls made, or details of services rendered, was adduced at the hearing to corroborate the claim for the deduction of the Advertising Expenses.

[14] In the alternative, even if the Court finds that the Advertising Expenses were expended, they were not expended for the purpose of earning employment income.

[15] Furthermore, the Respondent asks the Court to draw an adverse inference from Ms. Wan's failure to call her spouse and daughter to testify at the hearing. Specifically, an inference should be drawn that their testimony would have shown that the Advertising Expenses were not expended by Ms. Wan or that the Advertising Expenses were not expended for the purpose of earning employment income (*Chaplin v. The Queen*, 2017 TCC 194, at para. 51).

#### **V. ANALYSIS**

[16] As explained by Justice L'Heureux-Dubé in *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336, at paras. 92–95, generally, in tax appeals, the burden of proof rests on the appellant. The appellant bears the burden of demolishing the Minister's assumptions of facts and proving on a balance of probabilities the facts justifying his or her position.

[17] According to paragraph 8(1)(f) of the Act, subject to conditions not at issue in these appeals, "... amounts expended by the taxpayer in the year for the purpose of earning the income from the employment ..." are deductible in computing a taxpayer's income from an employment. Thus, Ms. Wan had to show, on a balance of probabilities, that the Advertising Expenses were expended by her and that they were expended to earn employment income.

[18] For the following reasons, I find that, on a balance of probabilities, Ms. Wan did not show that the Advertising Expenses were expended by her. Her testimony was neither convincing nor credible. Ms. Wan should have adduced detailed and cogent testimony and supporting evidence, where possible, to show that the Advertising Expenses were expended by her. I find, on a balance of probabilities, that she did not do so.

[19] Furthermore, the absence of Ms. Wan's daughter and husband from the hearing leads me to draw an adverse inference, that is, that their respective testimony would have shown that she did not pay their corporations for the alleged marketing and promotion services.

[20] Ms. Wan testified that she joined Service Corporation International (Canada) in 2007. The essence of her work is to expand her relations and be in contact with many people. Therefore, she used different methods for marketing and advertising her services. Not only did she use newspaper ads, charity galas and radio advertising, Ms. Wan testified that she also used the services of her spouse and daughter. As death is a sensitive issue, few people are receptive to discussing it. Ms. Wan testified that in 2015, she started to reach out to more organizations and groups and to attend more functions in order to attract clients. She also decided to contact previous clients to determine whether they wanted to revisit some issues. She noticed an increase in her sales as a result of an increase in her marketing and advertising expenses.

[21] Statements of accounts for the periods ending December 31, 2016 and December 31, 2017 from her spouse's and daughter's corporations (exhibits A-1 to A-4) as well as receipts issued by the said corporations to Ms. Wan (exhibits R-11, R-12, R-13 and R-15) were entered into evidence. Ms. Wan explained that her

daughter provided marketing services to her, which consisted in organizing events during various festivals and organizing various campaigns hosted by Ms. Wan. As for her husband, Ms. Wan testified that he made various cold calls to prospective clients in an attempt to increase her sales.

[22] However, Ms. Wan did not adduce any cheques or bank statements or any other supporting documents showing that the Advertising Expenses were paid by her. Moreover, Ms. Wan did not adduce evidence of invoices from these corporations or other supporting documentation such as scripts for the cold calls, a list of calls made, time logs, or a description of services rendered. Ms. Wan testified that as she was confident that her daughter and her spouse rendered the services that she paid for, so she did not need to request other supporting documentation. She also did not execute any formal service agreements with the corporations.

[23] Ms. Wan testified that she had paid the Advertising Expenses to her daughter's and spouse's corporations. However, as indicated above, no supporting documentation except for the receipts and statements of accounts were provided to the Court. I have not given any weight to this part of Ms. Wan's testimony as it is self-serving.

[24] As stated by this Court in *DiCosmo v. The Queen*, 2015 TCC 325 (affirmed by the Federal Court of Appeal in 2017 FCA 60):

[29] ... The deduction of employment expenses by taxpayers should generally be supported by contemporaneous documentation so that the Court can be satisfied that the deductions are proper. In this case, Mr. DiCosmo needed to provide sufficient evidence to support the deductions claimed ... . I find Mr. DiCosmo's testimony to be completely unsatisfactory in this regard.

[25] Furthermore, according to subsection 230(1) of the Act, Ms. Wan must maintain and have detailed information and documentation in support of her claim that the Advertising Expenses were expended by her and were expended for the purpose of earning employment income:

**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.

[26] As indicated by the Federal Court of Appeal in *Njenga v. The Queen*, 96 DTC 6593, at 6594:

The Income tax system is based on self monitoring. As a public policy matter the burden of proof of deductions and claims properly rests with the taxpayer. The Tax Court Judge held that persons such as the Appellant must maintain and have available detailed information and documentation in support of the claims they make. We agree with that finding. Ms. Njenga as the Taxpayer is responsible for documenting her own personal affairs in a reasonable manner. Self written receipts and assertion without proof are not sufficient.

[27] 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; *Chrabalowski v. The Queen*, 2004 TCC 644).

[28] There is no need for a taxpayer to introduce every single receipt, but the taxpayer would have had to first prove, by some other credible means, that the expenditures were incurred and that the expenditures were incurred for the purpose of earning employment income. Ms. Wan failed in that respect.

[29] Ms. Wan is a successful salesperson: she advertises regularly in local newspapers, on the radio, as well as at charity events. She usually keeps detailed documentation for supporting the deduction of her advertising expenses. In respect of the Advertising Expenses, she did not keep any documents showing that the amounts were expended except for the receipts and statements of accounts. I find this evidence unsatisfactory to support the claim for the deduction of the Advertising Expenses.

[30] When assessing the credibility of a witness, I can consider inconsistencies, the attitude and demeanour of the witness, motives 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.

[31] Here, the credibility and the sufficiency of the evidence adduced at the hearing is 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 these appeals.

[32] I did consider these principles in assessing the evidence adduced at the hearing of these appeals and, for the foregoing reasons, I find that no credible evidence was adduced at the hearing to support Ms. Wan's position. Furthermore, the evidence showed that during the Taxation Years, Ms. Wan's daughter was a full-time student at the University of British Columbia pursuing a Bachelor of Arts. I find that it is not credible that Ms. Wan's daughter would have rendered the alleged services to Ms. Wan given that she was pursuing a Bachelor of Arts at the same time.

[33] Finally, 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).

[34] In the case at bar, the testimony of Ms. Wan's spouse and daughter was central to establishing the fact that their corporations did receive the amounts at issue. However, I did not receive any credible explanations justifying their 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 Advertising Expenses were not expended by Ms. Wan.

Signed at Montréal, Québec, this 3rd day of April 2023.

“Dominique Lafleur”

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Lafleur J.

CITATION: 2023 TCC 38

COURT FILE NO.: 2021-1331(IT)I

STYLE OF CAUSE: ANNA WAI MAN WAN v. HIS MAJESTY THE KING

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: February 21, 2023

REASONS FOR JUDGMENT BY: The Honourable Justice Dominique Lafleur

DATE OF JUDGMENT: April 3, 2023

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Jia Ling

COUNSEL OF RECORD:

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