

Docket: 2021-1942(IT)I

BETWEEN:

RANDALL J. PRESTON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on October 11, 2022, at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Counsel for the Appellant:

Nathaniel Hills

Counsel for the Respondent:

Desmond Jung

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2017 taxation year is allowed without costs, and the matter is referred back to the Minister of National Revenue on the basis that the appellant carried on the business of artist management in the 2017 taxation year and is entitled to deduct the claimed business expenses of \$52,046 for that year.

The appeal with respect to the 2018 taxation year is quashed without costs, on the basis that no notice of objection was filed.

Signed at Vancouver, British Columbia, this 7th day of September 2023.

“Susan Wong”

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Wong J.

Citation: 2023 TCC 136  
Date: September 7, 2023  
Docket: 2021-1942(IT)I

BETWEEN:

RANDALL J. PRESTON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

## **REASONS FOR JUDGMENT**

Wong J.

### **I. Introduction/Overview**

[1] The appellant has a musically talented daughter. He decided to use his business management and contract negotiation skills to help manage her artistic career toward success. They entered into a personal management contract in which he would incur expenses up front and receive a commission if she signed with a major record label.

[2] The Minister of National Revenue did not agree that the appellant was in the business of artist management and therefore, disallowed his business expense deductions.

### **II. Preliminary matter**

[3] At the commencement of hearing, counsel for the appellant acknowledged that the appeal of the 2018 taxation year was invalid because no notice of objection had been filed. As the objection is a statutory prerequisite for appealing to this Court, the appeal with respect to 2018 is quashed.

### III. Issues

[4] The sole issue is whether the appellant carried on a business in managing his daughter as a musical artist in the 2017 taxation year.

[5] If so, then the \$52,046 claimed by the appellant as business expenses would be deductible, resulting in a net business loss of \$53,196 for that year.

### IV. Factual background

[6] The appellant began working in sales after high school and worked for several years as an account manager for Western Union, a money transfer company. That job led to a senior opportunity with a cheque-cashing firm which had three stores at the time. He became a shareholder/director and helped grow the business until it was sold to a publicly traded U.S. company called Curo Financial. He has been with Curo for 22 years and is their vice president real estate, a role which requires him to negotiate contracts and lease agreements, as well as do all the company's site selection.

[7] He described himself as an entrepreneur at heart. His daughter Chantal Preston was an aspiring singer/songwriter and while she did not win after competing in one of her first talent shows, one of the judges approached her afterwards to let her know that he would like to work with her. The appellant negotiated a contract with this judge which led to Chantal recording an unreleased album produced by this individual at an Ontario studio.<sup>1</sup>

[8] To facilitate the tax and business side of things, the appellant engaged an accountant named John Anderson to assist/advise him; Mr. Anderson was an accountant but also a musician with contacts in the music industry. With Mr. Anderson's assistance, he prepared a personal management contract which provided (among other things) that he would receive a 5 or 10 percent commission if Chantal achieved a major milestone while under his management, such as signing with a major record label. The agreement was signed only by Chantal and dated January 1, 2016.<sup>2</sup> It also provided that if none of the milestones were met within five years, she could terminate the contract.

[9] He testified that after one song from the Ontario album was played on the radio in 2016, they had to start all over because it was clear that the Ontario album would not produce revenue. He stated that in 2017, they began to work on establishing a network of industry contacts.

[10] He stated that he was unsuccessful in negotiating an agreement with a New York publisher to distribute Chantal's songs through that company. However, the publisher introduced them to a Nashville producer named Buddy Hyatt, who introduced them to other music people in Nashville. The appellant testified that in late 2017, he and Chantal decided to stay in Nashville to work with Mr. Hyatt on a new album which was completed but not released; the name Preston Media can be seen on the back of the album cover.<sup>3</sup>

[11] He summarized that most of 2017 was spent recording music demos, negotiating the terms and conditions for producing the Nashville album, travelling to Nashville, shooting the album cover, and doing social media to increase Chantal's profile, among other things. He described the process as labour-intensive and almost cost-prohibitive at the beginning, because it took one to two years to produce and master an album which would then be launched into the market.

[12] He stated that they brought the album back to Canada and shopped it around to potentially interested parties to mixed reviews. In 2019, they met a producer named Trevor Shelton who owned a Toronto record label called Rammit Records and signed a license agreement with Rammit in November of that year.<sup>4</sup> The license agreement gave Rammit ownership rights over Chantal's music, including the exclusive right to use master recordings, to distribute, and to issue remixes of songs to revive interest in them.<sup>5</sup> At Mr. Shelton's suggestion, certain songs from the album were remixed for possible introduction to radio.

[13] The appellant stated that while none of the songs from the album have been played on the radio, the album served as a publicity vehicle to build her credibility by showing that she was in Nashville and other songs of hers have received radio play. To that end, the appellant produced copies of royalty statements issued by SOCAN,<sup>6</sup> a regulatory body which issues music licences for the use of Canadian-made music and pays royalties to artists whose music is played. He testified that SOCAN paid Chantal royalties with respect to the playing of one song in 2016 and that it was tracking two other songs being played on the radio in Canada and the U.S.

[14] The appellant testified that he began this activity as a sole proprietorship using his personal name Randy Preston and then changed to using the name Preston Media unofficially. In October 2019, he registered his proprietorship for an Ontario master business licence<sup>7</sup> under the name Preston Media and later in 2019, incorporated under the name Preston Media Inc.

[15] His accountant Mr. Anderson testified that while the appellant kept and provided him with records for a variety of categories of expenses, he (Mr. Anderson) chose to limit the claimed deduction for 2017 to core recording and production outlays based on how the appellant's proprietorship was operating at that point in time.<sup>8</sup> He also stated that the 2017 return was the first return filed by him for the appellant.

## V. Legal framework

[16] It is well established that for the purposes of the *Income Tax Act*, there must be an income source in order for there to be income in a taxation year.<sup>9</sup> Where the income source is a business, then a taxpayer's income for a particular tax year is their profit from the business in that year.<sup>10</sup> Where the allowable expenses incurred exceed the revenue earned, then the profit becomes a loss.<sup>11</sup>

[17] The litmus test for whether there is an income source continues to be the two-step approach set out by the Supreme Court of Canada in *Stewart*<sup>12</sup>, i.e.:

- (i) Is the activity in question undertaken in pursuit of profit, or is it a personal endeavour?<sup>13</sup>

In other words, does the taxpayer intend to carry on the activity for profit and is there objective evidence to support that subjective intention?<sup>14</sup> The taxpayer must show that their predominant intention is to make a profit from the activity and that the activity has been conducted so as to be consistent with objective standards of business-like behaviour.<sup>15</sup>

- (ii) If it is not a personal endeavour, is the source of the income a business or property?<sup>16</sup>

In this appeal, the parties agree that if there is an income source, it is a business (not property).

[18] Where the activity: (a) appears to be clearly commercial, (b) contains no personal or hobby element, and (c) the evidence is consistent with the view that the activity is conducted for profit, then a source of income exists for the purposes of the Act.<sup>17</sup> However, where the activity could be considered a personal pursuit, then one must ask if the activity is being carried on in a sufficiently commercial manner so as to be a source of income.<sup>18</sup>

[19] When determining whether a taxpayer is carrying on the activity in a sufficiently commercial manner, the non-exhaustive list of objective factors include: (1) profit and loss experience in past years, (2) the taxpayer's training, (3) the taxpayer's intended course of action, and (4) the capability of the activity to show a profit.<sup>19</sup> The factors will vary depending on the nature and extent of the activity.<sup>20</sup> This determination is not an evaluation of the taxpayer's business acumen but, rather, the commercial nature of the activity in question.<sup>21</sup>

[20] The question of whether a business exists is separate from the deductibility of expenses.<sup>22</sup> In order to be deductible against business income, the expense must be incurred for the purpose of gaining or producing income from the business.<sup>23</sup> It will not be deductible against business income if it is a personal or living expense<sup>24</sup> or if it is unreasonable in the circumstances.<sup>25</sup>

## **VI. Analysis and discussion**

[21] With respect to whether the appellant's artist management activity was undertaken in pursuit of profit, or whether it was a personal endeavour, it is clear there was a personal element because the artist in question was his daughter. Therefore, one must ask whether the activity was carried on in a sufficiently commercial manner so as to be a source of income.

[22] The appellant's daughter had entered a number of talent competitions and received promising feedback from a judge, who ultimately produced an album with her. Therefore, it is understandable why the appellant might decide to support Chantal in pursuing a musical career in earnest. Given his entrepreneurial success in growing a business until it was sold to a publicly traded U.S. company as well as his subsequent years spent negotiating contracts for Curo, it is also understandable that his mind would turn to a contractual arrangement with his daughter with a view to using his skill set to help move her career forward. On the other hand, he was not a signatory to the personal management contract whereas he likely would have been in an arm's length situation.

[23] The appellant demonstrated the deliberateness of his intent by specifically engaging an accountant with an understanding of the music industry in about 2016. The appellant's 2017 return was the first one filed by Mr. Anderson as his accountant and he deferred to Mr. Anderson's judgment in terms of the expenses deducted in connection with his proprietorship.

[24] The respondent questioned the commerciality of the appellant's financial outlays made up front with only the promise of a commission, combined with Chantal's contractual prerogative to terminate the agreement after five years. From the artist's perspective, it would seem necessary and commercially appropriate to retain the right to terminate the contract. From the personal manager's perspective, the commission arrangement carries the risk of financial loss on failure and the promise of lucrative gains on success, with a deadline by which to do so. The arrangement seems logical when considering the nature of the activity within the industry in question<sup>26</sup> because it protects the artist from staying in a personal management arrangement that does not fulfill its promise.

[25] The appellant also demonstrated a deliberateness of intent by building a network of industry contacts which led to the recording of an album in Nashville in 2017. It was clear from his testimony that while he had no experience in the music industry, he had put considerable effort into understanding it. The fact that Chantal eventually signed a license agreement with Rammit Records in 2019 as well as the evidence of their ongoing monitoring of radio play and royalties further supports intent, but is ancillary to my determination with respect to 2017.

[26] Putting aside the unpredictability of the music industry in terms of whether an artist achieves success, the radio play of Chantal's songs, royalties received, and the ongoing interest of music producers to work with her demonstrate that the activity is capable of showing a profit. The appellant carried on his activity of artist management in a sufficiently commercial manner so as to be a source of business income.

## VII. Conclusion

[27] The appeal with respect to the 2017 taxation year is allowed without costs, on the basis that the appellant carried on the business of artist management and is entitled to deduct the claimed business expenses of \$52,046 for that year.

[28] With respect to the 2018 taxation year, the appeal is quashed without costs on the basis that no notice of objection was filed.

Signed at Vancouver, British Columbia, this 7th day of September 2023.

“Susan Wong”





CITATION: 2023 TCC 136  
COURT FILE NO.: 2021-1942(IT)I  
STYLE OF CAUSE: RANDALL J. PRESTON AND HIS MAJESTY THE KING  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: October 11, 2022  
REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong  
DATE OF JUDGMENT: September 7, 2023

APPEARANCES:

Counsel for the Appellant: Nathaniel Hills  
Counsel for the Respondent: Desmond Jung

COUNSEL OF RECORD:

For the Appellant:

Name: Nathaniel Hills  
Firm: LaBarge Weinstein LLP

For the Respondent:

Shalene Curtis-Micallef  
Deputy Attorney General of Canada  
Ottawa, Canada

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<sup>1</sup> Exhibit A-2

<sup>2</sup> Exhibit A-1

<sup>3</sup> Exhibit A-5

<sup>4</sup> Exhibit A-8

<sup>5</sup> Exhibit A-9

<sup>6</sup> Exhibit A-6

<sup>7</sup> Exhibit A-4

<sup>8</sup> Exhibit A-3

<sup>9</sup> *Income Tax Act*, section 3; *Canada v. Paletta*, 2022 FCA 86 at paragraph 30

<sup>10</sup> *Income Tax Act*, subsection 9(1); *Canada v. Paletta*, 2022 FCA 86 at paragraph 31

<sup>11</sup> *Income Tax Act*, subsection 9(2); *Canada v. Paletta*, 2022 FCA 86 at paragraph 31

<sup>12</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII)

<sup>13</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 50

<sup>14</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 54

<sup>15</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 54

<sup>16</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 50

<sup>17</sup> *Canada v. Paletta*, 2022 FCA 86 at paragraph 36; *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 60

<sup>18</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 60

<sup>19</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 55

<sup>20</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 55

<sup>21</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraph 55

<sup>22</sup> *Stewart v. Canada*, 2002 SCC 46 (CanLII) at paragraphs 58 and 60

<sup>23</sup> *Income Tax Act*, paragraph 18(1)(a)

<sup>24</sup> *Income Tax Act*, paragraph 18(1)(h)

<sup>25</sup> *Income Tax Act*, section 67

<sup>26</sup> *Kaegi v. The Queen*, 2008 TCC 566 at paragraph 21; *Tramble v. The Queen*, 2001 CanLII 416 (TCC) at paragraph