Dockets: 2011-933(IT)I
2013-1563(IT)I

BETWEEN:

ABBEY K. SIRIVAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on November 8, 2013, at Toronto, Ontario.

Before: The Honourable Justice Robert J. Hogan

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Rita Araujo

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is allowed in accordance with the attached reasons for judgment, and the assessment is referred back to the Minister of National Revenue for reconsideration and reassessment to allow an additional deduction of $4,975 in respect of the Appellant's lodging expenses for 2008. The appeal from the assessment made for the 2011 taxation year is dismissed in accordance with the attached reasons for judgment.

Signed at Montréal, Québec, this 22nd day of January 2014.

"Robert J. Hogan"

Hogan J.

Citation: 2014 TCC 24
Date: 20140122
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REASONS FOR JUDGMENT

Hogan J.

I. Introduction

[1] This is an appeal under the informal procedure from assessments made under the *Income Tax Act* (the "ITA") for the Appellant's 2008 and 2011 taxation years. The issue before me is whether the Appellant, a tax officer with the Canada Revenue Agency (the "CRA") during the periods at issue, was entitled to deduct certain expenses as moving expenses under section 62 of the ITA.

II. Factual Summary

[2] From February 2002 to January 2008, the Appellant worked as a tax officer for the CRA in Ottawa. He resided in a townhouse which he owned in Ottawa.

[3] In January 2008, he moved to Toronto to take up a new position with the CRA. The first week he lived in a hotel. Afterwards, he rented a room in a private home.

[4] The Appellant testified that he intended to purchase a home in Toronto but postponed the purchase because he was required to work at different locations. For about 20 weeks during the relevant period, the Appellant was required to return to

Ottawa to work on a large case that was under appeal. He was reimbursed for only eight of the 20 weeks for which he incurred travel expenses. Moreover, for most of the period, there was uncertainty as to which CRA office he would report to in Toronto. Higher housing prices in Toronto also prevented the Appellant from acquiring a home there in 2008.

[5] In March 2011, the Appellant finally sold his Ottawa residence. He claimed approximately $5,000 in respect of his home ownership expenses. According to the Appellant, the Ottawa residence was unoccupied during 2011. In prior years, the Appellant had rented out rooms to relatives to help cover his home ownership expenses. His cousin, Tefiro Kyeyune, testified that he moved out of the Appellant's residence in 2010. However, he could not confirm that the home was unoccupied in 2011.

[6] The following table is a summary of the expenses which were claimed by the Appellant and disallowed by the Minister of National Revenue:

Year	Expense	Amount claimed	Amount allowed	Amount in dispute
2008	Room rental in Toronto	$5,250	$275	$4,975
	9 trips to Ottawa	$677.57	$196.88	$480.69
2011	Ottawa home ownership expenses	$5,000	$0	$5,000
	Travel expenses	$940.16	$0	$940.16
	Storage and moving expenses	$4,828.80	$4,268.80	$560

III. Positions of the Parties

[7] The Appellant argues that the expenses claimed by him are deductible as moving expenses under section 62 of the ITA.

[8] With respect to the expenses disallowed for the 2008 taxation year, the Respondent argues that paragraph 62(3)(*c*) of the ITA limits lodging expenses to those incurred for a maximum period of 15 days, which represent an amount of $275

in the present case. The Respondent further submits that the disallowed travel expenses related to the Appellant's work assignment and accordingly do not qualify as moving expenses.

[9] With respect to the expenses disallowed for the 2011 taxation year, the Respondent argues that the same expenses were claimed by the Appellant as rental expenses in 2010 and were allowed. Furthermore, the Appellant failed to show that the property was unoccupied in 2011.

IV. Analysis

[10] This matter concerns the application of section 62 of the ITA. That section reads as follows:

> 62(1) **Moving expenses** - There may be deducted in computing a taxpayer's income for a taxation year amounts paid by the taxpayer as or on account of moving expenses incurred in respect of an eligible relocation, to the extent that
>
> (*a*) they were not paid on the taxpayer's behalf in respect of, in the course of or because of, the taxpayer's office or employment;
>
> (*b*) they were not deductible because of this section in computing the taxpayer's income for the preceding taxation year;
>
> (*c*) the total of those amounts does not exceed
>
> (i) in any case described in subparagraph (*a*)(i) of the definition "eligible relocation" in subsection 248(1), the total of all amounts, each of which is an amount included in computing the taxpayer's income for the taxation year from the taxpayer's employment at a new work location or from carrying on the business at the new work location, or because of subparagraph 56(1)(*r*)(v) in respect of the taxpayer's employment at the new work location, and
>
> (ii) in any case described in subparagraph (*a*)(ii) of the definition "eligible relocation" in subsection 248(1), the total of amounts included in computing the taxpayer's income for the year because of paragraphs 56(1)(*n*) and (*o*); and
>
> (*d*) all reimbursements and allowances received by the taxpayer in respect of those expenses are included in computing the taxpayer's income.
>
> (2) **Moving expenses of students** - There may be deducted in computing a taxpayer's income for a taxation year the amount, if any, that the taxpayer would

be entitled to deduct under subsection (1) if the definition "eligible relocation" in subsection 248(1) were read without reference to subparagraph (*a*)(i) of that definition and if the word "both" in paragraph (*b*) of that definition were read as "either or both".

(3) **Definition of "moving expenses"** - In subsection (1), "moving expenses" includes any expense incurred as or on account of

(*a*) travel costs (including a reasonable amount expended for meals and lodging), in the course of moving the taxpayer and members of the taxpayer's household from the old residence to the new residence,

(*b*) the cost to the taxpayer of transporting or storing household effects in the course of moving from the old residence to the new residence,

(*c*) the cost to the taxpayer of meals and lodging near the old residence or the new residence for the taxpayer and members of the taxpayer's household for a period not exceeding 15 days,

(*d*) the cost to the taxpayer of cancelling the lease by virtue of which the taxpayer was the lessee of the old residence,

(*e*) the taxpayer's selling costs in respect of the sale of the old residence,

(*f*) where the old residence is sold by the taxpayer or the taxpayer's spouse or common-law partner as a result of the move, the cost to the taxpayer of legal services in respect of the purchase of the new residence and of any tax, fee or duty (other than any goods and services tax or value-added tax) imposed on the transfer or registration of title to the new residence,

(*g*) interest, property taxes, insurance premiums and the cost of heating and utilities in respect of the old residence, to the extent of the lesser of $5,000 and the total of such expenses of the taxpayer for the period

(i) throughout which the old residence is neither ordinarily occupied by the taxpayer or by any other person who ordinarily resided with the taxpayer at the old residence immediately before the move nor rented by the taxpayer to any other person, and

(ii) in which reasonable efforts are made to sell the old residence, and

(*h*) the cost of revising legal documents to reflect the address of the taxpayer's new residence, of replacing drivers' licenses and non-commercial vehicle permits (excluding any cost for vehicle insurance) and of connecting or disconnecting utilities,

> but, for greater certainty, does not include costs (other than costs referred to in paragraph (*f*)) incurred by the taxpayer in respect of the acquisition of the new residence.
>
> . . .
>
> 248(1) **Definitions** - In this Act,
>
> "eligible relocation" means a relocation of a taxpayer where
>
> (*a*) the relocation occurs to enable the taxpayer
>
> (i) to carry on a business or to be employed at a location in Canada (in section 62 and this subsection referred to as "the new work location"), or
>
> (ii) to be a student in full-time attendance enrolled in a program at a post-secondary level at a location of a university, college or other educational institution (in section 62 and in this subsection referred to as "the new work location"),
>
> (*b*) both the residence at which the taxpayer ordinarily resided before the relocation (in section 62 and this subsection referred to as "the old residence") and the residence at which the taxpayer ordinarily resided after the relocation (in section 62 and this subsection referred to as "the new residence") are in Canada, and
>
> (*c*) the distance between the old residence and the new work location is not less than 40 kilometres greater than the distance between the new residence and the new work location
>
> except that, in applying subsections 6(19) to (23) and section 62 in respect of a relocation of a taxpayer who is absent from but resident in Canada, this definition shall be read without reference to the words "in Canada" in subparagraph (*a*)(i), and without reference to paragraph (*b*).

[11] In *Storrow v. The Queen*,[1] the Federal Court Trial Division interpreted subsection 62(3) as follows (at pages 598-99):

> The main issue, in this appeal, is whether the additional monies laid out by the taxpayer, when he moved, in acquiring a new residence reasonably comparable to his old residence, were

[1] [1979] 1 F.C. 595.

> ... amounts paid by him as or on account of moving expenses incurred in the course of moving from his old residence to his new residence ...

I agree with certain initial propositions put forward by counsel for the plaintiff:

> (a) Where a definition section uses the word "includes", as it does in subsection 62(3), then the expression said to be defined includes not only those things declared to be included, but such other things "... as the word signifies according to its natural import."
>
> (b) The words "moving expenses" must be construed in their ordinary and natural sense in their context in the particular statute.

The plaintiff submits that a moving expense is an expense of moving from one dwelling to another; it includes all costs directly and solely related to the move from the time of the decision to leave to the time of resettlement. The additional monies laid out to acquire a comparable residence in Vancouver, the interest on that amount, and the costs of registration, of installing the dishwasher and new locks were all incurred, it is said, because of the move from one residence to another.

For the defendant, it is contended the amounts in issue are not really expenses at all; they are the extra costs incurred, in this case, in replacing an asset, the old residence.

I agree generally with the defendant's contention.

The disputed outlays were not, to my mind, moving expenses in the natural and ordinary meaning of that expression. The outlays or costs embraced by those words are, in my view, the ordinary out-of-pocket expenses incurred by a taxpayer in the course of physically changing his residence. The expression does not include (except as may be specifically delineated in subsection 62(3)) such things as the increase in cost of the new accommodation over the old (whether it be by virtue of sale, lease, or otherwise), the cost of installing household items taken from the old residence to the new, or the cost of replacing or re-fitting household items from the old residence (such as drapes, carpeting, etc.). Moving expenses, as permitted by subsection 62(3), do not, as I see it, mean outlays or costs incurred in connection with the acquisition of the new residence. Only outlays incurred to effect the physical transfer of the taxpayer, his household, and their belongings to the new residence are deductible.

[12] In *A.G. of Canada v. Séguin*,[2] the Federal Court of Appeal adopted a similar interpretation:

> 8 According to the ordinary meaning of the words used, the provision includes those expenses incurred for physically moving, changing one's residence, and certain other expenses directly related to the actual move and resettlement, and not some amount intended to compensate for accessory damages that are unrelated to the actual move to and resettlement in the new residence. Thus, it excludes the interest expenses on the old residence that do not pertain directly to the physical move of the taxpayer and his family, but instead pertain to the bank loan he took out on his old residence.

[13] The Respondent submits that paragraph 62(3)(*c*) limits the general deduction of lodging expenses to a period of up to 15 days. It relies for this on Justice Favreau's decision in *Christian v. The Queen*:[3]

> 20 The disputed amount in respect of the claim for temporary living expenses (accommodation) is $4,550.88. The Minister has accepted an amount of $2,298, which represents 13 days and is within the 15-day maximum period allowed by paragraph 62(3)(*c*) of the Act. This statutory requirement allows of no exceptions and must be met. The Minister has accepted the claim for those expenses supported by receipts that were incurred while the Appellant stayed in the London area.

[14] I note that paragraph 63(2)(*c*) refers to the deduction of "the cost . . . of meals and lodging" for temporary accommodations. In the instant case, the Appellant's claim is for lodging alone, which is not specifically covered by paragraph 63(2)(*c*). In my opinion, the provision contemplates a claim for room and board expenses. If Parliament had intended to restrict lodging expenses to 15 days, it would have done so explicitly. Paragraph 62(3)(*c*) is meant to include things that might not otherwise be considered "moving expenses".

[15] The facts in *Christian* are also substantially different than those in the instant case. The evidence shows that in the present case the Appellant's employer prolonged the completion of the Appellant's move to Toronto. The Appellant could not find a permanent home because it was unknown to him where his exact workplace in Toronto would be and because his employer wanted him to divide his time between Toronto and Ottawa. The Appellant should not be penalized for accommodating the needs of his employer.

V. Conclusion

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[2] 97 DTC 5457.

[3] 2010 TCC 458.

[16] With respect to the balance of the disputed expenses, the Appellant has failed to prove that the amounts claimed by him are deductible under section 62. The travel expenses that were disallowed for 2008 were incurred in relation to the Appellant's employment. With respect to the amount claimed for the 2011 taxation year, the evidence shows that those expenses were deducted and allowed as rental expenses for the 2010 taxation year. In summary, the Appellant failed to show that the balance of the disputed expenses qualified as moving expenses for the purposes of section 62 of the ITA.

Signed at Montréal, Québec, this 22nd day of January 2014.

"Robert J. Hogan"

Hogan J.

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APPEARANCES:

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COUNSEL OF RECORD:

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