Kreuz v The Queen, 2012 TCC 238

Employee Deduction of Motorvehicle Expenses and *Res Judicata* in Tax Cases.

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There were two issues in this appeal:

- Ability to claim motor vehicle expenses by employee absent a form T2200 from employer
- Application of *Res Judicata* in tax cases

The Taxpayer was an occasional teacher who worked at different schools and deducted his motor vehicle expenses from employment income. The CRA denied the deduction on the basis that a valid T2200 form was not signed by the employer certifying that the requirements of paragraph 8(1)(h.1) were met. The taxpayer appealed the denial of motor vehicle expenses as a deduction from his employment income. He had previously argued appeals on the same basis, but introduced new evidence in this case. The CRA argued *Res Judicata* on the basis of previous decisions involving this taxpayer on the same issue. The taxpayer also argued *res judicata* in relation to a previous decision regarding one employer in one taxation year where the deduction was allowed by the TCC, but in that case the employer had issued the T2200 for that year but had stopped issuing the form for years after 2007.

The Court held that a taxpayer is allowed to bring an appeal each year, due to an assessment, and may argue the same issue using new evidence or different interpretations of the law.

Justice D'Auray began by her analysis by referring to the decision in *General Electric Canada co v R*, 2011 TCC 564 where Justice Campbell summarising the decision of the SCC in *Angle v Minister of National Revenue*, [1975] 2 SCR 248, where it was stated that *Res Judicata* and abuse of process are granted at the courts discretion to prevent the re-litigation of matters previously decided by a court. Abuse of process focuses on the integrity of the adjudicative process, while *res judicata* focuses on the parties. The taxpayer also relied on the "might or ought" principle, as outlined in *McFadyen v The Queen*, 2008 TCC 441, where Chief Justice Rip stated that "matters that properly should have been part of the original litigation but that the party failed to argue cannot be raised in subsequent litigation", to argue that the Minister should not have been allowed to call witnesses on the matter previously determined by the TCC.

The Court stated that obtaining a from T2200 from an employer is a condition precedent for being able to deduct motor vehicle expenses under paragraph 8(1)(h.1), and unless the employer has acted unreasonably or in bad faith in not providing the form, an employee cannot claim the deduction.

The court stated that the doctrine of *res* judicata is difficult to apply to tax appeals that do not

deal with the same taxation year. Justie D'Auray referred to the decision in *Hagedorn v Canada*, [1993] TCJ No 727 (TCC), where Justice Christie stated that an appeal to the TCC is as a result of an assessment and not the process or reasoning by which the assessment is arrived by. Thus, each taxation year is a different cause of action. What is being litigated in each case is whether the Minister has correctly assessed the amount owed by the taxpayer for the year as required by the ITA. She referred to the decision of Justice Paris in *Merrins v R*, 2006 DTC 3216, where it was stated that even if there is no difference in material facts between two taxation years, because each appeal "involves a different taxation year, an independent review of the facts and issues is required".

The Court stated that tax appeals often involved recurring issues, and that a taxpayer who lost an appeal in one taxation year is given a second chance to come to the TCC and argue the same issues in a different taxation year. In doing so, the taxpayer is able to bring evidence that was not called in the precious year, and is able to argue a different position in law.