

Stevens v The Queen, 2012 TCC 312

Writers' Deductions of Expenses Related to Producing Works

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At issue here was whether the expenses incurred were related to the source of income to which they purport to be related - in this case the writing of novels.

The Court held that the expenses incurred were personal and living expenses, and therefore were therefore not deductible pursuant to paragraphs 18(1)(a) and (h). However, the court also made comments that would appear to be in the alternative. One such finding was that the travel expenses incurred by a writer to produce a novel are incurred once and for all - therefore were capital outlays - and thus were prohibited by paragraph 18(1)(b). The Court also held that these same expenses were not related to the income producing activities as there was no "cause and effect relationship", and that they were unreasonable as they were much greater than the income from the source (for those taxation years in question).

COMMENT

There are several potential issues with the Court's reasoning and finding in this case, and they briefly are:

- The Courts reasoning that the business purpose of the travel expense was incidental to its personal purpose was supported by the taxpayers statement that the novel was completed before the trip. However, the Court did not deal with the same statement that continued to say that the expenses incurred in the tax-year in question were incurred because two chapters in the setting of the trip needed to be re-written.
- The Court said " The appellant spent 30 days in Paris on that trip, which is a long and expensive stay for a business trip" - however the length or expense of a stay ought not be determinative of a business purpose.
- The Court stated that the novel was yet unpublished, and recognised that writing a novel is a long and costly profess, but said that there is no cause and effect relationship between the expenses incurred and the income generated by those expenses. The Court surely must not be indicating that expenses incurred to produce a product for sale that precede the actual sale of the product are not related to the product, simply because the product has not yet been sold.
- The Court also stated that the travel expenses were unreasonable on the basis that they far exceeded the source of income. If this reasoning were to be correct, then a business could never incur losses as expenses that are large compared to revenues in any tax year would be not deductible as being unreasonable.

FACTS

This was an appeal under the informal procedure for the taxpayers 2007 and 2008 tax years,

where the MNR denied deductions for a number of expenses. The taxpayer was a part-time professor of English and carried on the activities of a professional writer. He had two previously published novels and was working on a novel not yet published.

He claimed travel expenses of 30 days in Paris and 7 days in London in 2007 (with his spouse, month in law and three-year-old son). The purpose of Paris was to research for his upcoming novel, and the taxpayer pointed to parts of the manuscript where information from the trips were used, and the purpose of London was to have his ex-spouse (an editor) review his manuscript.

He claimed taxi receipts for travel to the book store and library, but did not indicate the start and end trips on the receipts. The meal expenses were taken with this spouse and son to discuss the philosophical content of his published children's book. The entertainment expenses were for CD's because he likes to listen to music when he writes, and for children's films because he intends to write a script for a movie and cartoon series.

The taxpayer refused to provide receipts to the auditor, but he finally did so before the hearing.

ARGUMENTS

The taxpayer argued that all of the expenses were primarily for his professional activities as a writer.

The Crown argued that the expenses were primarily personal and living expenses, were not supported by receipts, and thus were to be denied pursuant to paragraphs 18(1)(a) and (h). Alternatively, if deductible, the meal and entertainment expenses ought to be limited as per section 67 and 67.1, and the travel expense be capital outlays pursuant to paragraph 18(1)(b).

ANALYSIS

The Cour began by referring and quoting from the relevant ITA provisions (ss 18(1)(a),(b),(h), 67, 67.1, 248(1) "personal and living expenses").

The Court referred to *Stewart v. Canada*, [2002 SCC 46](#), [2002] 2 S.C.R. 645, to make clear that just because the expense is personal and living expenses, this doesn't affect the characterization of the income produced therefrom. The Court also referred to *Symes v. Canada*, [\[1993\] 4 S.C.R. 695](#), at page 736, to say that courts, in order to ascertain the purpose and intention of taxpayers, must look for objective manifestations of the purpose, which is a question of fact.

Justice Favreau stated that the expenses in this case were borderline, because they all had significant personal and living components.

The Court held that the business purpose of the travel was only incidental to the personal component, and therefore not made to gain or produce income. This was based on the evidence of the taxpayer that the novel was completed by 2006, though the court did not say why the additional evidence that the taxpayer returned to Paris in 2007 because two chapters

needed to be re-written was not indicative of a business purpose. The Court said " The appellant spent 30 days in Paris on that trip, which is a long and expensive stay for a business trip" - however the length or expense of a stay ought not be determinative of a business purpose.

The Court went on to refer to a previous decision of the same justice, being *Henrie v. The Queen*, [2009 TCC 356](#), where the travel expenses of a writer were held to be capital outlays, which are prohibited by paragraph 18(1)(b). This is based on the "once and for all test" in *British Insulated and Helsby Cables v. Atherton*, [1926] A.C. 205 at pages 213-214, where it was stated:

. . . when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital. . . .

The Court went on to say that the novel was yet unpublished, and recognised that writing a novel is a long and costly process, but said that there is no cause and effect relationship between the expenses incurred and the income generated by those expenses. Furthermore, the court felt that the expenses were unreasonable when compared to the small income earned by the taxpayer from that activity.

The Court then turned to the question of the taxi expenses, and said that the evidence did not establish that they were not incurred for the purpose of traveling from his home to his place of work (the university), and thus were personal and living expenses - *Daniels v. The Queen*, [2004 FCA 125](#). The meal expenses were also held to be personal and living expenses, as they were mostly with his spouse and son (thus would have been incurred in any event). The entertainment expenses were denied on the basis that they were incurred for the personal enjoyment of the appellant, as there was insufficient evidence to permit a conclusion that they were incurred "exclusively for business purposes".