

BETWEEN:

TOLASHWAR NARAINÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 8, 2014, at Toronto, Ontario

Before: The Honourable Justice Diane Campbell

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Christian Cheong

JUDGMENT

The appeal from an assessment made under the *Income Tax Act* for the 2006 taxation year is allowed, but only to the extent of permitting the following concessions made by the Respondent:

1. The amount to be included in the Appellant's income is reduced to a revised amount of \$285,647.19.
2. The Appellant shall be permitted to deduct legal fees in the amount of \$16,700 as an expense pursuant to subsection 60(0.1) of the *Act*.

The assessment is referred back to the Minister for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Costs shall be to the Respondent.

Signed at Ottawa, Canada, this 28th day of April 2015.

“Diane Campbell”

Campbell J.

Citation: 2015 TCC 104
Date: 20150428
Docket: 2013-2807(IT)G

BETWEEN:

TOLASHWAR NARAINÉ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Campbell J.

[1] This appeal concerns the Appellant's 2006 taxation year. There are two issues before me:

- (1) Whether the Minister of National Revenue (the "Minister") properly included certain amounts in the Appellant's income; and
- (2) the amount that the Appellant may be entitled to deduct in respect to legal expenses.

[2] At the commencement of the hearing, Respondent counsel advised the Court that the Minister was conceding several amounts in respect to this appeal. First, the Appellant's assessed income in 2006 is to be reduced by the amount of \$61,888 and second, the amount of \$16,700 in respect to legal fees was also conceded.

[3] The Appellant was initially assessed on August 11, 2008 to include the following amounts in his income:

Pension Income	\$ 2,444
Interest Income	248,863
Other Income	90,559

[4] On July 8, 2010, the Appellant was reassessed to include amounts in respect to rental income but no other adjustments in respect to the income inclusions were made.

[5] The Appellant had been employed with Ford Motor Company (“Ford”) until 1985, when he was released from his employment. The Appellant commenced an action with the Ontario Human Rights Tribunal (the “Tribunal”) which, unfortunately for all parties, meandered over the course of twenty-one years through a number of tribunals and courts. In the end, the Appellant was awarded and received from Ford the following amounts:

- (a) general damages of \$30,000;
- (b) pre-judgment interest of \$33,143.21 on those general damages;
- (c) special damages of \$90,559.04;
- (d) pre-judgment interest of \$100,047.27 on those special damages; and
- (e) post-judgment interest of \$115,673.30 in respect to both the general and the special damages.

[6] According to the 2006 Tribunal decision, at paragraph 14 (Respondent’s Book of Authorities, Tab 11), the total, of the aforementioned amounts, was subject to a garnishment of \$16,700 to be paid to the law firm of Koskie & Minsky that had briefly represented the Appellant for a period of time. Although it was Ford which paid the \$16,700 in legal fees, this amount was deducted from the total that the Appellant was otherwise entitled to and I assume this was the reason the Respondent conceded all of that amount in this appeal. The Appellant’s position, however, is that he was represented at other times throughout the years by other law firms and, in fact, that he cashed in his RRSPs to pay retainers and fees.

[7] The Respondent submitted that, taking into account the Respondent's concessions, the following amounts, totalling \$285,647.19, should be included in the income of the Appellant:

- (a) the special damages award of \$90,559.04 which the Respondent claims is a retiring allowance paid to replace lost wages;
- (b) pre-judgment interest of \$100,047.27 in respect to the special damages award;
- (c) post-judgment interest of \$86,888 on the special damages award;
- (d) pension income of \$2,444.88 received from RBC in 2006; and
- (e) net rental income of \$5,708.

[8] The Appellant's concessions in this regard relate to a deletion of the award of general damages together with an adjustment of post-judgment interest in this regard. The amounts in 7(d) and (e) are not in issue.

[9] The first question is whether the special damages award of \$90,559 was a retiring allowance as defined in subsection 248(1) of the *Income Tax Act* (the "Act"). The relevant portions of that definition, as far as this appeal is concerned, states that an amount received by a taxpayer will be a retiring allowance if it is received "... in respect of a loss of an office or employment ... whether or not received as, on account or in lieu of payment of, damages or pursuant to an order or judgment of a competent tribunal, ..." (emphasis added).

[10] I quote from paragraphs 20 and 21 of *Dunphy v The Queen*, 2009 TCC 619, 2010 DTC 1028, where Justice Sheridan stated the following in respect to the appropriate test to be applied:

[20] The jurisprudence is clear that the use of the words "in respect of" in the definition of "retiring allowance" is very broad in scope.

[21] To determine whether there is a sufficient nexus between the loss of employment and the payment received, the courts have held that the appropriate test is "but for the loss of employment would the amount have been received?" To paraphrase former Chief Justice Bowman in *Stolte v. R.*, the trick is to figure out what payment was for; the answer will depend on the facts in each case.

[11] It is apparent from the Tribunal's decision in this appeal and the evidence before me that the award of \$90,559 was to compensate the Appellant for lost employment income and benefits. At paragraph 50 of that decision, the Tribunal ordered, among other things, that Ford was "... to pay Mr. Naraine special damages to compensate for the income and benefits he would have been entitled to for the period from his discharge at Ford in August 1985 to his hiring at General Motors in the spring of 1987". The other monetary amounts of \$20,000 and \$10,000 were awarded as general damages to compensate for mental anguish and those amounts have not been included in income. Since this amount is clearly a compensatory amount for the Appellant's lost income and related benefits for the period of his termination at Ford until his hiring at General Motors, the amount was correctly included in the Appellant's income in the 2006 taxation year pursuant to subparagraph 56(1)(a)(ii) of the *Act*.

[12] With respect to the amounts awarded for pre-judgment and post-judgment interest on the award of \$90,559, these amounts are also properly included in the Appellant's income as interest income pursuant to paragraph 12(1)(c) of the *Act*.

[13] Although the Appellant claimed additional legal expenses, the onus is upon him to support that claim with evidence that would permit an additional amount in excess of the \$16,700 conceded by the Respondent. There was no documentary evidence introduced to support the allowance of any amounts beyond the \$16,700. The Appellant did provide a document at Exhibit A-2 entitled "retainer" in which he agreed to retain the law firm of Koskie and Minsky in the matter of his complaint and that he would compensate the firm at the hourly rate of \$150 for their anticipated services. However, this retainer engagement contains nothing in respect to a specific sum paid beyond the \$16,700, which the Tribunal ordered to be deducted from the total amount awarded to the Appellant and paid to the law firm of Koskie & Minsky. Consequently, even though the Appellant claims he cashed in RRSPs to pay legal fees, there is no evidence to support any amount paid by the Appellant for legal fees beyond the \$16,700 concession.

[14] In summary, the appeal is allowed to permit the following concessions made by the Respondent:

- (1) The amount to be included in the Appellant's income is reduced to a revised amount of \$285,647.19, as reflected at paragraph 7 of my Reasons.

- (2) The second amount that is conceded relates to the legal fees in the amount of \$16,700. The Appellant shall be permitted to deduct this amount as an expense pursuant to subsection 60(0.1) of the *Act*.

[15] The appeal is allowed, in part, but only to permit the Respondent's concessions.

[16] Costs shall be to the Respondent.

Signed at Ottawa, Canada, this 28th day of April 2015.

“Diane Campbell”

Campbell J.

CITATION: 2015 TCC 104

COURT FILE NO.: 2013-2807(IT)G

STYLE OF CAUSE: TOLASHWAR NARAINÉ and HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 8, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Diane Campbell

DATE OF JUDGMENT: April 28, 2015

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Christian Cheong

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

For the Respondent:

William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada