

Docket: 2011-1797(IT)I

BETWEEN:

DENIS FILIATRAULT,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent

[ENGLISH TRANSLATION]

Appeal heard on October 27, 2015, at Montréal, Quebec.

Before: The Honourable Justice B. Paris

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Grégoire Cadieux

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2001 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Toronto, Ontario, this 10th day of March 2016.

"B. Paris"

Paris J.

Citation: 2016 TCC 58
Date: 20160310
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DENIS FILIATRAULT,

Appellant

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] The appellant is appealing a reassessment by the Minister of National Revenue (the "Minister") for the 2001 taxation year. The Minister added \$10,765 of taxable income received from a Registered Retirement Savings Plan ("RRSP") to the applicant's income under subsection 146(8) and paragraph 56(1)(h) of the *Income Tax Act* (the "Act"). The Minister issued the reassessment after the normal reassessment period under subparagraph 152(4)(a)(i) of the Act.

The facts

[2] In 2001, the appellant invested \$22,200 in the Coopérative de producteurs de bois précieux Québec Forestales (the "Coop") through his self-directed RRSP for the purchase of seedlings and precious woods from Costa Rica, which was to generate a return of 25% per year. The investment promoters also indicated that the Coop would pay the applicant an amount equal to 50% of the amount invested.

[3] The appellant admitted that the promoters gave him approximately \$10,000 in cash in an envelope shortly after he made the investment. The appellant says that he asked the promoter if he should report the amount as income, but was told that as it was a return on his investment, it was not taxable.

[4] On cross-examination, the appellant admitted to having signed a receipt prepared by the investment promoters for the money they gave him, and recognized his signature on the receipt. The receipt was for \$11,000. He also

changed part of his testimony with respect to the answer he was given when he asked the promoter if he had to report the money in the envelope. On cross-examination, the appellant said that the promoter answered: [TRANSLATION] "Do what you want. We don't send anything to the government." The appellant admitted that he did not report the money and did not inform the accountant who prepared his 2001 tax return, either.

Appellant's arguments

[5] The appellant is not disputing the fact that he received approximately \$10,000 from the Coop's investment promoter, and admits that he should have reported it in his 2001 tax return. However, he is contesting the amount of interest accumulated on the reassessment, which he finds exorbitant, and is complaining about the delays in resolving his case. He also suggests that the Court take the dishonest behaviour of the promoters, whom he trusted, into account.

Analysis

[6] The evidence clearly shows that the appellant misrepresented the facts by failing to report the amount he received in cash from the promoters. Because he invested in the Coop through his RRSP, all returns on the investment that he personally received constitute a withdrawal from an RRSP and must be included with his income in accordance with paragraph 56(1)(h) and subsection 146(8) of the Act. The provisions read as follows:

56 (1) Without restricting the generality of section 3, there shall be included in computing the income of a tax-payer for a taxation year,

...

Registered retirement savings plan, etc.

(h) amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;

Benefits taxable

146 (8) There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (as

defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

("Excluded withdrawals" are not relevant to this discussion.)

[7] "Benefit" is defined as follows in subsection 146(1) of the Act:

benefit includes any amount received out of or under a retirement savings plan. . .

[8] None of the exceptions listed in the definition of "benefit" apply in this case.

[9] I find that the appellant's failure to report the amount is either due to inattention or negligence on his part. Although he seems to have had doubts as to whether to report the money, he did not seek out advice from his accountant or any other professionals when preparing his return. That is not the behaviour of a wise or cautious person.

[10] I therefore conclude that the respondent discharged the burden of proof that required him to justify the late reassessment of the appellant.

[11] In terms of interest, the Court is not authorized to reduce the interest because of a late reassessment. However, I note that at any point after issuing the reassessment in June 2008, the appellant could have paid the required amount to avoid accumulating interest.

[12] For all of these reasons, the appeal is dismissed.

Signed at Toronto, Ontario, this 10th day of March 2016.

"B. Paris"

Paris J.

CITATION: 2016 TCC 58

COURT FILE NO.: 2011-1797(IT)I

STYLE OF CAUSE: DENIS FILIATRAULT AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 27, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris

DATE OF JUDGMENT: March 10, 2016

APPEARANCES:

For the appellant: The appellant himself
Counsel for the respondent: Grégoire Cadieux

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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