

Docket: 2003-1713(IT)I

BETWEEN:

RÉMI PILOTE

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on August 29, 2003, at Chicoutimi, Quebec.

Before: The Honourable Justice François Angers

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Yannick Landry

JUDGMENT

The purported appeals from the assessments made pursuant to the *Income Tax Act* (the Act) for the 1998 and 1999 taxation years are quashed;

The appeal from the assessment made pursuant to the Act for the 2000 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 30th day of October 2003.

“François Angers”

Angers J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowitz, Translator

Citation: 2003TCC738
Date: 20031030
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BETWEEN:

RÉMI PILOTE

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Angers J.

[1] The appellant is appealing from assessments made for the 1998, 1999 and 2000 taxation years. The assessments for 1998 and 1999 are dated September 12, 2000, and the assessment for the 2000 taxation year is dated January 21, 2002. The Appellant did not submit a Notice of Objection for the assessments dated September 12, 2000, for the 1998 and 1999 taxation years, nor did he submit an application for an extension of time to submit a Notice of Objection. With respect to 2000, the issue concerns how much the Appellant received in workers' compensation benefits. The Respondent contends that these benefits amounted to \$20,082 whereas the Appellant says they amounted to \$33,273.

[2] First, I will address the Appellant's preliminary motion to obtain the right to submit an appeal from the assessments for the 1998 and 1999 taxation years, the notices of which are dated September 12, 2000. The Appellant claims that the January 21, 2002 assessment may have an impact on his income in 1998 and 1999 and, consequently, he should be able to appeal from the assessments for those two years, even if he did not object to them. The fact that the Appellant did not object to the September 12, 2000 assessments is admitted.

[3] For an appeal to be valid and for the Court to have the necessary jurisdiction to hear it, the Appellant must meet certain conditions as outlined in sections 165 and 169 of the *Income Tax Act* (the Act). Therefore, the Appellant would have to have objected to the assessment by serving on the Minister of National Revenue a Notice of Objection, in writing. Once such a notice is served, the taxpayer may appeal to this Court to have the assessment vacated or varied either after the Minister has confirmed the assessment or reassessed, or after 90 days have elapsed after service of the Notice of Objection and Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed. It is not necessary to mention the continuation of section 169. It is sufficient to say that the Appellant, who did not serve a Notice of Objection on the Minister for the September 12, 2000 assessments for the 1998 and 1999 taxation years and did not submit an application to extend the time to serve a Notice of Objection for these assessments, cannot appeal from these assessments before the Court. It follows that the appeals for these years must be quashed.

[4] One of the facts the Minister based his decision on in making the January 21, 2000 assessment is that the Appellant's employer was reimbursed by the Commission de la santé et de la sécurité du travail in 2000 in the amount of \$20,082. The reimbursement of this amount was proven by the submission of two T5007 forms that were given by the Commission to the Appellant and indicate the amounts that should have been paid to him during 1998 and 1999 when he was not working due to an accident and to which he was entitled. The amount of \$20,082, according to the evidence, was paid directly to the Appellant's employer in 2000 and included \$3,353 for 1998 and \$16,729 for 1999.

[5] It must be noted that the Commission de la santé et de la sécurité du travail is also the Appellant's employer. For the purpose of these reasons, I will refer to the Commission employer and the Commission insurer, depending on the situation, to distinguish between its roles.

[6] This matter dates back to November 1998 when the Appellant was a victim of an industrial accident. At the beginning, the Commission insurer refused to pay the benefits the Appellant was entitled to because it did not recognize that his accident was work-related. It was not until October 2000 that the Commission insurer recognized that the accident occurred in the Appellant's workplace it was at that time that a reimbursement, the amount of which is at issue, was paid to the Commission employer.

[7] The reimbursement represented the benefits the Appellant was entitled to receive as a result of the industrial accident and pursuant to the applicable law. The T5007s clearly indicate that the payment amount includes what the Commission employer paid the Appellant further to his claim to the Commission insurer.

[8] What seems to have created some confusion in this case was that the Respondent initially allowed the Appellant a \$33,273 deduction from his income for the 2000 taxation year. When the Respondent received a copy of the T5007 forms from the Commission insurer, it changed its position and made the assessments that are the subject of these appeals, reducing the amount of the deduction to the total on the T5007s, that is, \$20,082.

[9] As evidence, the Appellant submitted a letter from the Commission employer (on which basis the initial deduction was allowed) dated November 2, 2000. The author of the letter did not testify but she seemed to indicate that a total of \$33,273 was recovered in 2000 to correct the situation—the situation where the Commission refused to admit the Appellant’s accident was related to his work—and a total of \$18,849.60 was paid in 2000 to correct this situation. The amounts of the workers’ compensations benefits supplied in the letter do not correspond to those on the T5007 forms established by the Commission employer. In the face of this anomaly, it is difficult for me to accept the totals provided in the letter from the Commission employer. I will therefore rely on the amounts indicated on the T5007 forms as established by the Commission insurer.

[10] In absence of explanations regarding the modification of the treatment of the Appellant’s case following the acknowledgment that his accident was an industrial accident, I conclude that the reimbursement made by the Commission employer for the Appellant in 2000 was \$20,082, a total that represents, in my opinion, the amounts of money he would have received in 1998 and 1999 had his accident been recognized as an industrial accident. The assessment only indicated the reimbursement by the Commission insurer to the Commission employer. I therefore cannot take into consideration the other adjustments that may have been made between the Appellant and the Commission employer for the period in 1998 and 1999 when the Appellant was not working due to his accident.

[11] In the computation of a taxpayer’s income, a benefit received under a workers’ compensation law of Canada must be included, pursuant to paragraph 56(1)(v) of the Act. However, the benefit amount may, pursuant to subsection 110(1)(f)(ii) of Act, be deducted in computing of taxable income. In the case at

bar, if the had Appellant received the amounts in question in 1998 and 1999, they would have been treated that way for tax purposes. However, because the Commission employer paid the Appellant his full salary during his absence from work and while awaiting a decision from the Commission insurer, it was entitled to receive, as a reimbursement, the amount that was paid by the Commission insurer once the accident was accepted as being related to the Appellant's work. Truthfully speaking, it is the Appellant who is entitled to the benefit, but as he was paid by his employer, the money was therefore paid directly to the employer, albeit on the Appellant's behalf.

[12] Paragraph 8(1)(n) of the Act allows for the following deduction in computing a taxpayer's income:

- 8.(1) In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto
 - n) an amount paid by or on behalf of the taxpayer in the year pursuant to an arrangement (other than an arrangement described in subparagraph (b)(ii) of the definition "top-up disability payment" in subsection 6(17)0 under which the taxpayer is required to reimburse any amount paid to the taxpayer for a period throughout which the taxpayer did not perform the duties of the office of employment, to the extent that
 - (i) the amount so paid to the taxpayer for the period was included in computing the taxpayer's income from an office or employment, and
 - (ii) the total of amounts so reimbursed does not exceed the total of amounts received by the taxpayer for the period throughout which the taxpayer did not perform the duties of the office or employment;

[13] In the case at bar, \$20,082 paid in 2000 by the Commission insurer to the Commission employer was included in the computation of the Appellant's income. Since the reimbursement was made for the Appellant by the Commission insurer,

he is entitled to the deduction, which the Minister allowed. The Minister therefore correctly established for the 2000 taxation year the amount of the deduction for the CSST benefits paid to the Appellant's employer as a reimbursement. For these reasons, the appeal from the assessment dated January 21, 2002, is dismissed and the appeals relating to the 1998 and 1999 taxations years are quashed.

Signed at Ottawa, Canada, this 30th day of October 2003.

“François Angers”

Angers J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowicz, Translator

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COURT FILE NO.: 2003-1713(IT)I

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REASONS FOR JUDGMENT BY: The Honourable Justice François
Angers

DATE OF JUDGMENT: October 30, 2003

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Yannick Landry

COUNSEL OF RECORD:

For the Appellant:

Name:

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