

Docket: 2004-95(IT)I

BETWEEN:

BARBARA ROBSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 17, 2004, at Hamilton, Ontario

Before: The Honourable Justice Gerald J. Rip

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Craig Maw

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2001 taxation year is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is entitled to a reduction of net federal income tax owing in the amount of \$1,060.91 for 2001.

Signed at Ottawa, Canada, this 21st day of April 2005.

Gerald J. Rip

Rip J.

Citation: 2005TCC287
Date: 20050421
Docket: 2004-95(IT)I

BETWEEN:

BARBARA ROBSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Rip J.

[1] Barbara Robson has appealed her income tax assessment for 2001 in which the Minister of National Revenue included in her income the amount of \$24,205 she received from Manulife Financial as a result of her claim under an insurance policy with Manulife.

[2] Ms. Robson had been employed by Hamilton Health Sciences (HHS) and Manulife had been the long-term disability carrier for employees of HHS. At all relevant times HHS made all the contributions to the long-term disability plan for the benefit of its employees, including Ms. Robson.

[3] Ms. Robson was injured in an automobile accident in August 1996. She applied under the policy, among other things, for income replacement benefits during her periods of disability. The claims were refused. She sued Manulife in the Ontario Court (General Division) for income replacement benefits, medical and rehabilitation expenses, mediated expenses, among other claims. Eventually the litigation was settled and Ms. Robson received \$24,205.01 from Manulife¹.

¹ The actual settlement was for \$35,000; the amount of \$24,205 is net of legal fees and disbursements.

[4] In assessing, the Minister reviewed the form T4A, Summary of Pension, Retirement Annuity and Other Income, issued by Manulife and noted that the amount of \$24,205 was paid to Ms. Robson in 2001 and that she did not include the amount of \$24,205 in her tax return for 2001. The Minister's position is that the amount of \$24,205 should be properly included in Ms. Robson's income.

[5] The trial of this appeal was heard on August 17, 2004. After hearing submissions of the parties, I asked the parties for further information to determine whether a lesser amount may be included in Ms. Robson's income in accordance with paragraph 6(1)(f) of the *Income Tax Act* or whether there was information not before the Minister or me that could be obtained after trial and assist the appellant.

[6] I had also held my decision in abeyance pending the Supreme Court of Canada judgment in *Tsiaprailis v. Canada*², which was rendered on February 25, 2005. A copy of the reasons for judgment was sent to Ms. Robson for her review.

[7] I agree with the view of respondent's counsel that paragraph 6(1)(f) of the *Act* does not assist the appellant since, among other things, she did not personally contribute to the long-term disability plan either in 2001, when she received the money, or in previous years.

[8] I also agree that based on *Tsiaprailis*, the amount of \$24,205 was an amount payable on a periodic basis. The Statement of Claim against Manulife is based on the insurer's refusal to pay the benefits due Ms. Robson under the policy but nowhere - not the Statement of Claim, not the reporting letter of Ms. Robson's lawyer - is there a description of what portion of the payment was for damages and what portion was for unpaid benefits under the policy. Essentially, Ms. Robson received close to the \$27,139.83 she would have received from Manulife had her original claim been accepted.

[9] After the trial, Ms. Robson submitted to the Canada Customs and Revenue Agency ("CCRA") a form T1198, signed by the Manager of Manulife dated October 6, 2004 to determine whether the appellant is entitled to a lump sum deduction calculated with reference to sections 110.2 and 120.31 of the *Act* including the amount of \$24,205 received by the appellant in 2001 from Manulife. Counsel has advised that CCRA prepared the calculation and the respondent now agrees that the appeal should be allowed on the basis that the appellant is entitled

² 2005 SCC 8.

to a reduction of net federal income tax owing in the amount of \$1,060.91 for her 2001 taxation year pursuant to sections 110.2 and 120.31 of the *Act*.

[10] Since receiving this advice from respondent's counsel the trial coordinator of the Tax Court of Canada has written Ms. Robson asking if she agrees with the calculation.

[11] By fax dated April 19, 2005 Mrs. Robson advised the Court that she wished to withdraw her appeal to the Court. A withdrawal in these circumstances would be contrary to her interests, bearing in mind that the respondent agrees that she is entitled to a reduction of federal tax for 2001 of \$1,060.91. I, therefore, do not accept Mrs. Robson's withdrawal.

[12] The appeal will be allowed, without costs, to reduce the amount of federal income tax owing by the appellant in the amount of \$1,060.91 for 2001.

Signed at Ottawa, Canada, this 21st day of April 2005.

Gerald J. Rip

Rip J.

CITATION: 2005TCC287
COURT FILE NO.: 2004-95(IT)I
STYLE OF CAUSE: Barbara Robson v. Her Majesty the Queen
PLACE OF HEARING: Hamilton, Ontario
DATE OF HEARING: August 17, 2004
REASONS FOR JUDGEMENT BY: Gerald J. Rip
DATE OF JUDGMENT: April 21, 2005

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Craig Maw

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Ontario