

TAX COURT OF CANADA

BETWEEN:

GURUCHANDRANATH TEELUCK

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

*** * * * ***

REASONS FOR JUDGMENT
THE HONOURABLE JUSTICE LITTLE
in the Courts Administration Service,
180 Queen Street West., Toronto, Ontario
on Thursday, August 30, 2007, at 9:30 a.m.

*** * * * ***

APPEARANCES:

Ms. Samantha Hurst (ph)

for the Respondent

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1 Toronto, Ontario
2 --- Upon resuming on Thursday, August 30, 2007
3 at 9:35 a.m.

4 THE REGISTRAR: This sitting of
5 the Tax Court of Canada at Toronto is resumed.
6 Before the Court is File No. 2006-3560(IT)I,
7 Guruchandranath Teeluck and Her Majesty The Queen,
8 for judgment. The Appellant is not present.
9 Mrs. Samantha Hurst for the Respondent is here.

10 JUSTICE LITTLE: Thank you,
11 Mr. Registrar.

12 I am going to give the Reasons for
13 Judgment on Teeluck versus The Queen.

14
15 A. Facts

16 The facts are:

- 17 (1) the Appellant was born in Mauritius;
18 (2) the Appellant moved to Canada in 1981 and he
19 has lived in Canada since 1981;
20 (3) the Appellant became a Canadian citizen in
21 1992;
22 (4) prior to October 2001 the Appellant lived as a
23 tenant in Apartment No. 207, 3561 Eglinton Avenue,
24 Toronto;
25 (5) in October 2001 the Appellant moved to a home

1 which he had purchased at 26 Thorndale Road in the
2 City of Brampton, Ontario;

3 (6) the Appellant is the son of Barossa Teeluck
4 hereinafter referred to as (the "Appellant's
5 Father" or "His Father");

6 (7) the Appellant's Father was born in Mauritius
7 on August 14, 1923. The Appellant's Father is
8 currently 84 years of age;

9 (8) the Appellant's Father has always lived in
10 Mauritius;

11 (9) when the Appellant filed his Canadian income
12 tax returns for the 1999, 2001 and 2003 taxation
13 years, he claimed that he was entitled to an
14 Equivalent to Spouse Claim with respect to His
15 Father;

16 (10) in filing his income tax returns, the
17 Appellant claimed the following tax credits with
18 respect to His Father: 1999, \$5,718; 2001, \$6,293;
19 and 2003, \$6,586. In these numbers I am using the
20 amounts claimed for federal income tax purposes.
21 There is a slight difference with respect to claims
22 made by the Appellant for Ontario tax purposes;

23 (11) by Notices of Assessment dated August 2, 2005,
24 July 21, 2005 and May 20, 2005 the Dependent Tax
25 Credit Claim by the Appellant for His Father was

1 allowed by the Minister of National Revenue (the
2 "Minister"). By Notices of Reassessment dated
3 June 8, 2006, October 3, 2005 and October 24, 2005
4 for the 1999, 2001 and 2003 years, respectively,
5 the Minister reassessed to disallow the Dependent's
6 Tax Credit Claim; and
7 (12) the Appellant filed an appeal to this Court.

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9 B. Issues

10 The issues to be decided are:

11 (1) whether the Appellant's Father was a resident
12 of Canada during the 1999, 2001 and 2003 taxation
13 years;14 (2) whether the Appellant maintained either alone
15 or jointly with one or more other persons a
16 self-contained domestic establishment in which he
17 lived with His Father and in which he supported His
18 Father during the 1999, 2001 and 2003 taxation
19 years;20 (3) whether the Appellant's Father was wholly
21 dependent on the Appellant at any time during the
22 1999, 2001 and 2003 taxation years; and23 (4) whether the Appellant is entitled to deduct an
24 amount for a wholly dependent person in respect of
25 His Father.

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2 C. Analysis and Decision

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4 First of all, I will quote briefly
5 from subsection 118(1) of the *Income Tax Act* (the
6 "Act"). It says:

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For the purpose of computing
the tax payable under this
Part by an individual [in
other words, by the
Appellant] for a taxation
year, there may be deducted
an amount determined by the
formula

$$A \times B$$

where

A is the appropriate
percentage for the year;
and

B is the total of

Then the *Act* talks about wholly
dependent person in paragraph 118(1)(b):

in the case of an individual
who does not claim a
deduction for the year
because of paragraph (a) and

1 who, at any time in the year,
2 (i) is
3 (A) a person who is
4 unmarried and who does
5 not live in a common-law
6 partnership or

7 Subparagraph 118(1)(b)(ii) reads
8 as follows:

9 whether alone or jointly with
10 one or more other persons,
11 maintains a self-contained
12 domestic establishment (in
13 which the individual [that is
14 the Appellant] lives and
15 actually supports in that
16 establishment a person who,
17 at that time, is ...

18 (B) wholly dependent for
19 support on the individual
20 ...

21 (C) related to the
22 individual...

23 Then it talks about other items
24 that do not apply.

25 I believe that the important

1 points to note are (A) in which the individual
2 lives and actually supports in that establishment a
3 person who was related to the individual. The
4 father is clearly related. The Appellant is
5 clearly unmarried, but there is the problem of:
6 "Does the Appellant live with and support His
7 Father in that establishment"?

8 The evidence that I heard
9 yesterday established that the Appellant's Father
10 was not a resident of Canada during the 1999, 2001
11 and 2003 taxation years. In fact, while the
12 Appellant's Father visited the Appellant in 1998,
13 there was no evidence that the Appellant's Father
14 visited the Appellant in 1999, 2001 or 2003.

15 In arguing his position, the
16 Appellant referred to the Guide prepared by the
17 Canada Revenue Agency. The Appellant maintained
18 that he qualified for the tax credit because His
19 Father lived with him in a house that he maintained
20 and the Appellant specifically emphasized that he
21 lived with His Father -- in the past tense. The
22 Appellant suggests that these are the words in the
23 Guide -- that he has lived with him some time in
24 the past year.

25 I cannot agree with the

1 interpretation made by the Appellant because during
2 1999, 2001 and 2003 the Appellant lived in Canada
3 and the Appellant's Father lived in Mauritius. It
4 is noted that the Appellant maintained that he paid
5 the expenses for the house where His Father lived
6 in Mauritius.

7 I emphasize that according to the
8 words of the Act -- and I emphasize not the words
9 of the Guide -- the Appellant's Father must have
10 lived with the Appellant in the establishment. We
11 cannot ignore the specific words of the section.
12 This requirement to live with the dependent does
13 not apply if the dependent is a child of the
14 Appellant. Clause 118(1)(b)(ii)(A) says "except in
15 the case of a child of the individual, resident in
16 Canada".

17 That is the exception made to the
18 rule. The general rule is that the dependent must
19 live with the Appellant in the establishment in
20 which the Appellant lives.

21 The Appellant does not, in my
22 view, fit within the words contained in
23 paragraph 118(1)(b) and therefore he is not
24 entitled to claim the tax credit.

25 I also wish to note that to

1 qualify for the tax credit it is necessary to meet
2 the specific words of the Act. The words contained
3 in the Guide are not the words which must be
4 satisfied. The Act is the provision that must be
5 satisfied.

6 Before closing, I wish to note
7 that the Appellant filed a number of documents in
8 support of his position.

9 Exhibit A-4 is a money order
10 issued by the Canadian Imperial Bank of Commerce in
11 the amount of \$250. It was issued on March 31,
12 1997.

13 The second part of that exhibit is
14 a bank statement issued by the State Bank of
15 Mauritius in 2006.

16 The third document connected with
17 Exhibit A-4 is a statement from the Central
18 Electricity Board of Mauritius in 2006.

19 A further statement with
20 Exhibit A-4 is a statement from Mauritius Telecom
21 for February 2007 and another statement for July-
22 August 2006.

23 Exhibit A-5 is a money order
24 issued by the CIBC in the amount of \$250. This
25 money order was issued on March 31, 1997.

1 I wish to note that the money
2 order in Exhibit A-5 appears to be a copy of the
3 money order filed as Exhibit A-4. Same date, same
4 amount, same bank, same numbers.

5 In my review of the above
6 documents, I note that none of the documents that
7 were filed by the Appellant deal with any evidence
8 to support any claims for the 1999, 2001 and 2003
9 taxation years.

10 The appeals are dismissed without
11 costs.

12 Before closing, I wish to state
13 that in my opinion the Appellant appears to be an
14 exemplary son providing financial assistance and
15 support to his elderly father. However, in my
16 opinion, the Appellant does not come within the
17 specific words of the Act in order to claim the tax
18 credit. The appeals are dismissed.

19 --- Whereupon the Court concluded at 9:42 a.m.

I HEREBY CERTIFY THAT I have, to the best
of my skills and abilities, accurately recorded
by Stenomask and transcribed therefrom, the
foregoing proceeding.

Suzanne Hubbard, Stenomask Reporter

CITATION: 2007TCC688
COURT FILE NO.: 2006-3560(IT)I
STYLE OF CAUSE: Guruchandranath Teeluck and
Her Majesty the Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: August 29, 2007
REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little
DATE OF ORAL JUDGMENT: August 30, 2007

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Samantha Hurst

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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