Citation: 2008TCC290
Date: 20070522
Docket: 2007-4406(IT)I

BETWEEN:

ZOFIA KIEFER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT
(Delivered orally from the bench on March 3, 2008,
in Vancouver, British Columbia.)

Margeson J.

[1] This is a difficult case, certainly, for the Appellant. I can understand where she is coming from and the great discouragement she has because she feels that she has been wronged by the system.

[2] It is quite obvious that she had, in effect, a garnishment order which was not an order of this Court, and of course, over which this Court has no jurisdiction to begin with. She believed that the government should have attached her husband's money under the garnishment order and did not. As a result she suffered.

[3] She believes that the only way she can make a protest is not to pay her income tax. Her position basically, from what I can see, is that "I'm not saying I don't owe the money, I wasn't properly assessed, I'm not saying I didn't receive the money, I'm not saying it wasn't spousal support, and I'm not saying I shouldn't declare it". In other words, she is admitting that the basis for the assessment is correct. That is the nub of this case, of course, as to whether or not the assessment is correct.

[4] This Court is a statutory court and it only has the remedies which have been referred to by counsel for the Respondent. This Court has the right to hear and determine appeals under the *Income Tax Act* and determine whether or not an assessment is correct, or an assessment is not correct.

[5] Counsel has referred to the various cases which have pointed that out, and I will just mention a couple of them in a minute. But there is no doubt that the argument made by counsel for the Respondent is well-taken. His recitation of the facts is correct. Nothing in the Reply to the Notice of Appeal has been rebutted and, as a matter of fact, the Appellant confirms that all of the presumptions contained in the Reply to the Notice of Appeal are indeed correct.

[6] It is obvious that she did not pay her 2003, 2004 and 2005 income tax assessment because she was protesting. Only 2005 is before me now because I have already dismissed the appeals with respect to 2002, 2003 and 2004 because no valid Notice of Objection was filed. There is no doubt that the husband was required to pay the support as alleged. According to her, he did not pay the $50,000 that was owed. She did not receive any payments under the Garnishee Order, even though her husband received $200,000 from the government. Her position was that she was ignored by the government. She protested by refusing to pay her income tax for the year 2005 and the other years I referred to.

[7] What she is asking the Court for is an Order compelling the government to enforce the Garnishee Order, plus costs, plus interest.

[8] She introduced Exhibit A-1, which was put in by consent, which sets out the various facts which have already been referred to in some documentation.

[9] In cross-examination, she agreed that she was married to Elmer F. Kiefer. He was required to pay child support and spousal support and, later on, according to her evidence, this was reduced to spousal support.

[10] The last Order that has been referred to, in Exhibit A-1, Appendix B, was the Order which requires her husband to pay spousal support. She agrees with that. He was required to pay spousal support only and not child support in that last order, for the various reasons which she gave, which I am not going to reiterate. I do not want to inflame her passions again by referring to very difficult times in her life. What is before me is what is referred to in the Reply, and that is what we are dealing with, spousal support. She admits that she received the spousal support.

[11] Exhibit R-1 was introduced by consent. It is an Order for $1,750 spousal support dated March 31, 1998. She said it was after a very difficult time in her life when she lost her child. She does say that she receives payments for support for herself through the family enforcement provisions statutes.

[12] She recognized Exhibit R-2, which was put in by consent. This is reference to the year 2005, a statement. She received these payments. They totalled $7,051.62. The allegations referred to by the Minister are proven beyond any question. He does not have to prove them, but there is no doubt in my mind that they are correct. The Respondent tendered the exhibit and called no evidence.

[13] In argument, counsel for the Respondent quite rightly and completely put forward the various arguments in support of his position that the appeal should be dismissed. Spousal support was properly added on to the Appellant's income for the year in question.

[14] There are only certain remedies that the Tax Court has available to it. Immaterial of what relief is sought by some taxpayers, the Court only has the authority to give remedies that the *Income Tax Act* allows it to give. Those are quite clear and distinct. They are quite limited in their scope.

[15] Counsel said that the Court cannot grant equitable relief, and so if the Appellant is seeking equitable relief, which would appear to be the case, this Court does not have jurisdiction to grant it.

[16] He referred to the opening provisions in the statute, section 56.1 and subsection 56.1(b). These are the basis upon which the Minister made the assessment that he has.

[17] She referred to the case, *Callon v. R.*, at Tab 7. Basically, the same type of thing that happened here. The Appellant was under the impression that she would not be liable to pay income tax on the amount. She was asking for relief on compassionate grounds, and the Federal Court has quite succinctly said:

> It is beyond the powers of this Court to grant such relief, just as it was beyond the powers of the Tax Court Judge, and the Minister to do so.

That case is applicable here.

[18] Counsel said that the spousal support payments were properly included in income. Counsel said that the facts set out in paragraph 10 of the Reply have been properly met. The evidence indicated that paragraphs 10(a), (b) and (c) of the Reply have all been established beyond any question whatsoever. The Court agrees with that submission. He submitted that the appeal should be dismissed.

[19] With respect to remedies, he referred to subsection 171(1) of the *Income Tax Act* which clearly sets out that the Tax Court has power to dismiss an appeal or to allow an appeal to vary the assessment by remitting it back to the Minister of National Revenue for reassessment and reconsideration based upon certain findings of the Court. Those are the powers of the Tax Court. Unfortunately they are nothing more.

[20] Counsel also referred to Tab 4 of his Book of Authorities, *Hrab v. R.*, particularly at page 6. Quite succinctly put, the Court said:

> The jurisdiction of the court arises from the provisions set out in Division J of the *Act*, section 169, which gives the taxpayer the right to appeal to this court to have an assessment vacated or varied.

Section 171, as I said before, gives the Court the power to dispose of an appeal by dismissing it, allowing it, vacating the assessment, varying the assessment or referring the assessment back to the Minister for reconsideration and re assessment.

[21] In response to the request by the Appellant for relief, Justice Teskey said:

> I am satisfied that the jurisdiction of this Court is limited to the computation of a taxpayer's income, taxable income, and the amount of tax that is payable. The assessment must be a challenge to one of the component parts used by the Minister to arrive at a taxpayer's liability for the year in question.

That is what is before me. He referred to a number of other cases which are in support of that position. That is what this Court's power is.

[22] The Court is bound by the law, what the law says. It cannot vary it. It cannot change the law to suit a taxpayer. It cannot change the law to suit itself, no matter how compassionate it might feel towards a taxpayer. The Tax Court must take the law as it finds it. Counsel referred to *Chaya v. R.*, which is Tab 8, particularly paragraph 4 on page 2:

> 4. The applicant says that the law is unfair, and he asks the Court to make an exception for him. However the Court does not have that power. The Court must take the statute as it finds it. It is not open to the Court to make exceptions to statutory provisions on the grounds of fairness or equity. If the applicant considers the law unfair, his remedy is with Parliament, not with the Court.

The other case referred to, *Rogutski v. R.*, is basically the same effect.

[23] Unfortunately for the Appellant's position, the Tax Court is without jurisdiction in this case to give the Appellant the relief which she seeks. She asks the Court to make an Order to compel the government to enforce the garnishee, and to order that she have costs plus interest, and she says when the government does that, when the government complies with the Garnishee Order she has, she will pay her taxes.

[24] That is not the issue before me. I do not have jurisdiction to grant that relief. I only have jurisdiction to consider the correctness of the assessment before me. I am satisfied beyond any doubt at all, that the assessment before me is a valid assessment and that I cannot grant the relief which the Appellant seeks. This is not a court of equity. This is not a court that can grant relief based on compassionate grounds. I must have statutory jurisdiction to do that. I do not have that, as far as I am concerned.

[25] The Court, unfortunately, and unsatisfactorily, I am sure, for the Appellant, will have to dismiss the appeal and confirm the Minster's assessment.

[26] Counsel has already referred the Appellant to the fairness provisions, so called, now renamed, whereby she can seek an order from the Minster regarding the interest. She will not get any relief from paying the tax on the money that she owes, but she can seek relief from paying the interest, and that is her right to apply, if she wishes to do so. This Court has no jurisdiction to deal with that, at this stage, anyway, as the law is now. That is the only remedy she has, as far as I can see.

Signed at Ottawa, Ontario, this 22nd day of May 2008.

"T. E. Margeson"

Margeson J.

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APPEARANCES:

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