

Docket: 2007-1585(IT)I

BETWEEN:

AZAD KUMAR KAUSHIK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 9, 2009 at Hamilton, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: George Boyd Aitken

JUDGMENT

The appeal with respect to assessments made under the *Income Tax Act* for the 2003 and 2004 taxation years is allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is not required to include in the computation of income or taxable income the amounts received by his son as tuition reduction benefits from the University of Guelph.

The Registry is directed to reimburse the Court's filing fee to the appellant.

Signed at Toronto, Ontario this 11th day of June 2009.

“J. M. Woods”

Woods J.

Citation: 2009 TCC 318
Date: 20090611
Docket: 2007-1585(IT)I

BETWEEN:

AZAD KUMAR KAUSHIK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] On March 22, 2007, Azad Kaushik filed a notice of appeal in respect of assessments made under the *Income Tax Act* for the 2003 and 2004 taxation years.

[2] The issue concerns a free tuition program offered by Mr. Kaushik's employer, the University of Guelph. In the assessments, the Minister included an amount in computing Mr. Kaushik's income as a benefit from employment in respect of the program. The income inclusion was \$4,000 for each of the taxation years at issue.

[3] At the hearing, the respondent conceded this issue in its entirety. Counsel explained that the concession was made as a result of the decision of the Federal Court of Appeal in *The Queen v. Bartley* and *The Queen v. DiMaria*, 2008 FCA 390. The decision was rendered on December 9, 2008.

[4] The only issue for consideration by the Court is the matter of costs.

[5] Mr. Kaushik, who was self-represented at the hearing, seeks costs in relation to the appeal. He submits that the Canada Revenue Agency mishandled the appeal and should have conceded the issue earlier. He stated that one of his colleagues had an

identical assessment reversed at an earlier stage and he submits that this should have been done in his case as well.

[6] Counsel for the respondent informed me that he was unaware of a settlement with a colleague of Mr. Kaushik, and he strenuously objected to an award of costs to the appellant. To the contrary, he suggests that it may be appropriate to award costs to the respondent in accordance with a new provision in the rules of the Court providing for costs to the respondent where there has been undue delay: section 10(2) of the *Tax Court of Canada Rules (Informal Procedure)*. Counsel stated, though, that he was not strenuously inviting the Court to apply this provision.

[7] After considering the submissions of both parties, I have concluded that the parties should bear their own costs in this matter.

[8] I would first comment that this appeal was adjourned twice, first at the request of the appellant and then at the request of the respondent. In granting the second adjournment, which appears to have been opposed by Mr. Kaushik, the Court agreed to hold the matter in abeyance pending the above-noted decision in *Bartley and DiMaria*. The Court directed that the parties notify it of their intentions within 30 days of the decision.

[9] From my review of the file, it appears that the respondent did not respond to the Court within the 30-day directed deadline, notwithstanding that the Court had sent a letter to counsel reminding him of the deadline shortly after the decision was released. Counsel for the respondent did respond after about 90 days, and he informed the Court that the respondent needed a bit more time to consider its position.

[10] I do not understand why the respondent's response to the Court was so late, especially since the abeyance was granted over the objection of Mr. Kaushik. I fully appreciate that the respondent may have needed more time to consider its position on this issue, which apparently involves hundreds of taxpayers. However, that does not explain why the respondent did not write to the Court prior to its deadline outlining why it needed more time.

[11] On the other hand, it is also relevant that a written offer of settlement was sent by the respondent to Mr. Kaushik by priority post on May 13, 2009. The offer was contained in a form of consent to judgment which proposed that the appeal be allowed without costs. The offer was made a few weeks prior to the scheduled hearing date.

[12] The settlement offer was rejected by Mr. Kaushik. In a series of email exchanges, the respondent attempted to determine what additional relief Mr. Kaushik was seeking, but Mr. Kaushik declined to provide this information (Affidavit of Joelle Labrie, exhibit C).

[13] If Mr. Kaushik had informed the respondent that he was seeking costs, it is very possible that the hearing, with its attendant inconvenience and expense, could have been avoided. There is no indication that Mr. Kaushik did provide this information prior to the hearing date.

[14] Mr. Kaushik submits that the respondent should have conceded the matter earlier. I do not agree with this. Given the circumstances, including that there were hundreds of similar appeals and that the Federal Court of Appeal decision was only released on December 9, 2008, I am unable to conclude that the respondent was dragging its heels with respect to Mr. Kaushik.

[15] In all the circumstances of this appeal, I conclude that the parties should bear their own costs.

[16] In the result, the appeal will be allowed, without costs, and the assessments will be referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the appellant is not required to include in the computation of income or taxable income the amounts received by his son as tuition reduction benefits from the University of Guelph.

Signed at Toronto, Ontario this 11th day of June 2009.

“J. M. Woods”

Woods J.

CITATION: 2009 TCC 318

COURT FILE NO.: 2007-1585(IT)I

STYLE OF CAUSE: AZAD KUMAR KAUSHIK AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: June 9, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: June 11, 2009

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: George Boyd Aitken

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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