Docket: 2010-2278(IT)I

BETWEEN:

ADEANA GREENWOOD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 3, 2011, at Victoria, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

Agent for the Appellant:	Jack Greenwood
Counsel for the Respondent:	Rob Whittaker

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 15th day of April 2011.

"L.M. Little"

Little J.

Citation: 2011 TCC 214
Date: 20110415
Docket: 2010-2278(IT)I

BETWEEN:

ADEANA GREENWOOD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

FACTS

[1] The Appellant was unable to be in Court because she was suffering from a medical illness.

[2] The Appellant's husband, Jack Greenwood, represented the Appellant as her agent.

[3] The Appellant had been served with a Section 160 Assessment issued by the Canada Revenue Agency (the "CRA"), which dealt with a transfer of property in January, 2002.

[4] In October, 2007, the Tax Court issued an Order pursuant to a Consent to Judgment filed by the Department of Justice which reversed the Section 160 Assessment.

[5] In January, 2008, the Minister of National Revenue (the "Minister") sent a refund of tax, plus a further amount of $53,314.00, to the Appellant in the total amount of $245,018.70.

[6] The Respondent maintains that the amount of $245,018.70 included interest in the amount of $53,314.00 (the "Interest Income").

[7] The Agent for the Appellant maintains that the amount of $53,314.00 is not subject to tax in the 2008 taxation year.

[8] When the Appellant filed her income tax return for the 2008 taxation year, she did not report the amount of $53,314.00.

[9] The Minister initially assessed the Appellant's 2008 taxation year on April 9, 2009.

[10] By Notice of Reassessment (the "Reassessment") dated September 24, 2009, the Minister reassessed the Appellant's 2008 taxation year to include the amount of $53,314.00 as income. (Note: Form TTWC attached to the Reassessment and dated September 24, 2009 states that the amount of $53,314.00 was "Interest income received in 2008".) (Exhibit A-1, Tab 1)

[11] The Appellant filed a Notice of Objection to the Reassessment on November 9, 2009.

[12] The Minister issued a Notification of Confirmation on May 4, 2010 to confirm the Reassessment.

ISSUE

[13] The issue to be decided is whether the amount of $53,314.00 received by the Appellant in the 2008 taxation year is taxable income received by the Appellant for the 2008 taxation year.

ANALYSIS AND DECISION

[14] In the Notice of Appeal, the Appellant maintained that any amount paid to her by the Minister in 2008, as part of the refund in excess of the original amount of $191,204.97 seized from her in 2002, should be treated as liquidated damages in compensation for the improper seizure in the first place.

[15] The Notice of Appeal also states:

> … Alternatively, if the Court should determine that the said sum of $53,314.00 is interest, then it should be assessed pro-rate for each of the taxation years 2002 to 2008 inclusive.

[16] In a letter addressed to the Tax Court, dated July 14, 2010, the Agent for the Appellant stated that, at trial, the Appellant would submit that the Minister cannot reopen the 2002 to 2005 taxation years because those years are statute-barred.

[17] During the hearing, the Agent for the Appellant submitted that he did not put much faith in his suggestion that the amount of $53,314.00 was a "nothing" and therefore non-taxable.

[18] I told the Agent for the Appellant that the amount of $53,314.00 issued by the Minister to the Appellant would not qualify as a "nothing".

[19] During the hearing, the Agent for the Appellant said:

> …that the Minister was indebted to Mrs. Greenwood from the 16th of January, 2002, until he eventually refunded the money on the 16th of January, 2008. The Minister had possession of those monies for six years, and had it not been for me that in 2007 I made an application and pointed out the accounting errors that had been made, in the Surrey tax office, if I had not done that at that time the Minister would still have possession of those monies.
>
> (Transcript, page 50, lines 16 to 24)

[20] The Agent for the Appellant then said:

> … That the interest, if it is interest, this court agrees that it is interest, the *bona fide* interest, then it should be simply spread out over 2002, '03, '04, '05, '06 and that the entire *Income Tax Act* is founded, for individuals on the 12-month calendar year.
>
> …
>
> And that is it, Your Honour.
>
> (Transcript, page 52, lines 2 to 11)

[21] Counsel for the Respondent said:

…this appeal relates to the 2008 tax year, and the appeal is in respect of the Minister's reassessment of the appellant to include the sum of $53,314 as additional income on the basis of the reassessment.

…

And the issue as framed in the [N]otice of [A]ppeal is whether we now meet the test within the meaning of Section 12(1)(c) of the *Act*.

…I just want to summarize again the background so we're clear on sort of the events that led up to this payment by CRA in January, 2008. Your Honour, as you've heard, there was a seizure in 2002 of funds from the appellant, relating to a Section 160 assessment made of the appellant in January, 2002. That led to an *ex parte* application by CRA to have the funds paid into court, the funds being approximately $186,000. Those funds being from the proceeds of the sale of the townhome in Surrey.

Subsequently, approximately one year later, the CRA sought a Section 225.2 order in the British Columbia Supreme Court, which was granted by Madam Justice Dorgan. By the time the order was granted and the monies paid out, interest was added to the 186 in the approximate amount of $7,043, which meant the CRA received out of B.C. Supreme Court $191,704.97, which is the figure that's referred to in the Reply, ….

(Transcript, page 52, line 17 to page 53, line 18)

[22] Counsel for the Respondent then said:

So, the consent order and the order of the court led the CRA to return the monies plus what CRA alleges is interest in January of 2008.

(Transcript, page 58, lines 12 to 14)

[23] Counsel for the Respondent continued:

We submit that when CCRA has funds and it returns funds to a taxpayer, its normal practice is, it will return the funds plus interest. And that's clearly, we submit, what was done in this case. I have included the CCRA -- Your Honour, it's in Exhibit R-1. I've included the CCRA book "Resolving the dispute, objection and appeals". And I simply want to make the point that when CCRA holds money and it loses an appeal, it returns the money with interest. …

…

> "In all cases interest will continue to accrue on any amount payable. You can pay all or part of the amounts and you will receive a refund with interest if you are successful."

So, clear CRA policy is the taxpayer pays money, and it's ultimately successful, they will get the money back plus interest.

(Transcript, page 65, line 20 to page 66, line 16)

Your Honour, subsection 12(1)(c) of the *Act* is reproduced in the blue book, respondent's book of authorities, at tab 1A. And I'm sure Your Honour is well familiar with this section, which basically provides that interest shall be included in computing the income of the taxpayer. Interest is defined as any amount received or receivable by the taxpayer in the year as, on account of –

…

> "There shall be included in computing the income of the taxpayer… (c) interest - any amount received or receivable by the taxpayer in the year as, on account of, or in lieu of payment of, or in satisfaction of interest to the extent the interest was not included in computing the taxpayer's income."

(Transcript, page 66, line 20 to page 67, line 13)

[24] Counsel for the Respondent referred to the Tax Court decision of *Mackinnon v The Queen*, 2007 TCC 658, 2008 D.T.C. 2052, and said:

> "Counsel for the respondent submits that even though the *Act* does not define the term 'interest', it has been defined by the Supreme Court of Canada in the *Re: Farm Security Act* case in the following passage by Mr. Justice Rand …"

And I emphasize this.

> "'Interest is, in general terms, the return or consideration or compensation for the use or retention by one person of a sum of money, belonging to, in a colloquial sense, or owed to, another. There may be other essential characteristics but they are not material here.'"

(Transcript, page 70, lines 10 to 23)

[25] Counsel for the Respondent also referred to the Tax Court decision in *Coughlan v The Queen*, 2001 D.T.C. 719, and said:

> So I submit, Your Honour, that's exactly the case here. The interest here was clearly compensation for the retention by Canada of money belonging to the taxpayer, the [$]191,000. So we submit it's clearly interest under 12(1)(c).
>
> To put it another way, the appellant having been deprived of the use of the money as of January, 2002, became entitled to be fully compensated, which is what the CRA did. In short, the $53,000 represented an amount over and above the amount wrongfully withheld. And therefore we submit that is interest under 12(1)(c).
>
> (Transcript, page 73, line 18 to page 74, line 3)

[26] At page 76 of the transcript, Counsel for the Respondent said:

> Until the appeal was allowed by the Tax Court of Canada, pursuant to the order of October 1st, 2007, the right to receive the return of the funds to satisfy the Section 160 assessment did not arise. So we say there is no basis that this is to be taxed on an accrual basis.
>
> (Transcript, page 76, lines 16 to 21)
>
> So, we submit that that is again the situation here. It is monies -- this payment of [$]53,000, Your Honour, is monies which reflect the wrongful retention of monies from the appellant, and therefore it is interest.
>
> So Your Honour, really two submissions. Based on the law, it is clear that this payment of [$]53,000, Your Honour, would be classified as interest. It is a payment for the wrongful withholding of monies pursuant to the section 160 assessment. Secondly, based on the case law, it is clear that this payment having been received in 2008, must be taxed in the year of receipt. So there is no basis in our submission for any accrual analysis to be considered.
>
> (Transcript, page 80, line 13 to page 81, line 1)

[27] I agree with the position as outlined by Counsel for the Respondent. I have reached the following conclusions:

1. The amount of $53,314.00 that was paid to the Appellant in 2008 is interest and she is required to include the amount of $53,314.00 in computing her income for the 2008 taxation year; and

2. I have also concluded that there is no legal basis for the Appellant to *pro-rate* the amount of $53,314.00 over the years 2002 to 2008. The amount was received by her in the 2008 taxation year and it is to be included in her income for that year.

[28] The appeal is dismissed, without costs.

Signed at Vancouver, British Columbia, this 15th day of April 2011.

"L.M. Little"

Little J.

CITATION:	2011 TCC 214
COURT FILE NO.:	2010-2278(IT)I
STYLE OF CAUSE:	ADEANA GREENWOOD AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Victoria, British Columbia
DATE OF HEARING:	February 3, 2011
REASONS FOR JUDGMENT BY:	The Honourable Justice L.M. Little
DATE OF JUDGMENT:	April 15, 2011

APPEARANCES:

Agent for the Appellant:	Jack Greenwood
Counsel for the Respondent:	Rob Whittaker

COUNSEL OF RECORD:

For the Appellant:	
Name:	
Firm:	
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada