Citation: 2011TCC247
Date: 20110509
Docket: 2010-3222(IT)I

BETWEEN:

TENAYA JEANNOTTE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on March 3, 2011
in Vancouver, British Columbia)

V.A. Miller J.

[1] The issue to be determined in this appeal is whether the Minster of National Revenue (the "Minister") properly assessed taxes under section 120.4 on the dividends received by the Appellant in 2006.

[2] Section 120.4 was added to the *Income Tax Act* (the "*Act*") in 2000 and is applicable to the 2000 and subsequent taxation years. The purpose of section 120.4 was to prevent high-income individuals from being able to reduce their taxes by income splitting with their minor children. The tax levied by this section is more commonly referred to as the "kiddie tax".

[3] The Appellant was represented by her grandfather, Ray Jeannotte. He stated that he was the individual who was most knowledgeable about the trust which had been created with the Appellant and her sister as beneficiaries.

[4] Mr. Jeannotte explained the steps taken to create the trust. It was his evidence that, in 1994, on advice from a tax accountant, the Appellant became the shareholder of 480554 B.C. Ltd. Mr. Jeannotte was advised that the money used to purchase the shares for the Appellant should not come from a family member. Mr. Jeannotte arranged for Mr. R[1] to lend the money to the Appellant. The documents tendered

with the court to support these statements were a "Non-Negotiable Promissory Note" dated September 1, 1994 signed by an unknown guardian for the Appellant; a cheque dated September 1, 1994 made payable to the Appellant for $15 and marked: Loan to Make Share Purchase; a letter dated August 27, 1994 to the Appellant from Mr. R stating his agreement to lend $15; and, a cheque to 480554 B.C. Ltd. for 26 cents for the purchase of shares.

[5] In 1997, 333 Common shares of 486368 B.C. Ltd. were transferred from 480554 B.C. Ltd. to Tenelle Financial Corp. (the "Corporation"). Mr. Jeannotte explained that the Corporation's name was composed of the Appellant's name and her sister's name. On April 30, 1997, the Vaughn Jeannotte Financial Trust (the "Trust") was created with Vaughn Jeannotte, the Appellant's father as trustee.

[6] Mr. Jeannotte stated that the purpose of the Trust was not to split income or to effect "dividend sprinkling" but to ensure that there were funds for his granddaughters' education. The Trust was created at the time when his granddaughters' parents were getting a divorce. It was the Appellant's position that the funds in the Trust were her funds because she had borrowed the money to purchase the shares of 480554 B.C. Ltd. Mr. Jeannotte stated that there were many more documents which would support the Appellant's position but he did not have the documents with him.

[7] The issue in this appeal is whether the facts of this appeal satisfy the conditions in section 120.4 such that the Appellant is liable for the tax imposed under this section. I will discuss the facts in this appeal in relation to the section.

Legislation and the Facts

[8] The charging provision for the tax is subsection 120.4(2) which reads:

> (2) **Tax on split income** -- There shall be added to a specified individual's tax payable under this Part for a taxation year 29% of the individual's split income for the year.

[9] The terms "specified individual" and "split income" are defined in subsection 120.4(1) as follows:

> **"specified individual"**, in relation to a taxation year, means an individual who
>
> (*a*) had not attained the age of 17 years before the year;

> (*b*) at no time in the year was non-resident; and
>
> (*c*) has a parent who is resident in Canada at any time in the year.

> **"split income"**, of a specified individual for a taxation year, means the total of all amounts (other than excluded amounts) each of which is
>
> (*a*) an amount required to be included in computing the individual's income for the year
>
> (i) in respect of taxable dividends received by the individual in respect of shares of the capital stock of a corporation (other than shares of a class listed on a designated stock exchange or shares of the capital stock of a mutual fund corporation), or
>
> (ii) because of the application of section 15 in respect of the ownership by any person of shares of the capital stock of a corporation (other than shares of a class listed on a designated stock exchange),

[10] In 2006, the Appellant met the definition of a "specified individual". She was born on October 23, 1990 and was 15 at the beginning of the 2006 taxation year. At all times in 2006, she was resident in Canada and had a parent who was resident in Canada.

[11] The Minister of National Revenue (the "Minister") assumed that a dividend of $25,000 (taxable amount of $31,250) was paid by the Corporation to the Trust who distributed it to the Appellant. The Appellant, who is a beneficiary of the Trust, received the dividend in respect of shares of the capital stock of the Corporation.

[12] Mr. Jeannotte confirmed that the Minister's assumptions were correct. He also agreed that the dividend was not paid on shares of a class listed on a designated stock exchange or shares of the capital stock of a mutual fund corporation.

[13] The dividend received by the Appellant in 2006 meets the definition of "split income" in section 120.4 and it is not an "excluded amount". The definition of "excluded amount" is:

> **"excluded amount",** in respect of an individual for a taxation year, means an amount that is the income from a property acquired by or for the benefit of the individual as a consequence of the death of

> (*a*) a parent of the individual; or
>
> (*b*) any person, if the individual is
>
> > (i) enrolled as a full-time student during the year at a post-secondary educational institution (as defined in subsection 146.1(1)), or
> >
> > (ii) an individual in respect of whom an amount may be deducted under section 118.3 in computing a taxpayer's tax payable under this Part for the year.

[14] In the circumstances of this appeal, the shares giving rise to the dividend were not acquired by or for the benefit of the Appellant as a consequence of the death of a parent or any other person and the "split income" is not an "excluded amount".

[15] The dividends received by the Trust from the Corporation and distributed to the Appellant, a specified individual, retained their character for the purposes of section 120.4[2]. All of the conditions in section 120.4 have been met and the Appellant has been properly assessed.

[16] Contrary to the Appellant's position, there is no need to identify the property transfer or the person who made the loan to the Appellant in order for section 120.4 to apply. The definition of "split income" in section 120.4 and the charging provision in subsection 120.4(2) avoid this need.

[17] Mr. Jeannotte stated that the law was not fair and asked that the Court interpret section 120.4 in a manner consistent with his argument. However, the Court must interpret the section as it finds it. As stated by Rothstein J.A., as he then was, in *Chaya v Canada*[3] at paragraph 4:

> [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.

[18] The appeal is dismissed.

Signed at Ottawa, Canada, this 9th day of May 2011.

"V.A. Miller"

V.A. Miller J.

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[1] I have referred to the person as Mr. R because his name, Tenaya's last name and the name of Tenaya's guardian have been redacted from the documents submitted to the Court.

[2] Subsection 108(5) of the *Income Tax Act*.

[3] 2004 FCA 327

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REASONS FOR JUDGMENT BY:	The Honourable Justice Valerie Miller
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DATE OF REASONS FOR JUDGMENT:	May 9, 2011

APPEARANCES:

Agent for the Appellant:	Ray Jeannotte
Counsel for the Respondent:	Patrick Grayer (Articling Student)

COUNSEL OF RECORD:

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