

Docket: 2010-3809(IT)I

BETWEEN:

LEONARDO FRENNA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 31, 2011, at Montreal, Quebec

Before: The Honourable Justice G. A. Sheridan

Appearances:

Agent for the Appellant: Franco Testani
Counsel for the Respondent: Valerie Messori

JUDGMENT

In accordance with the attached Reasons for Judgment, the appeal from the Notice of Determination by the Minister of National Revenue made under the *Income Tax Act* for the Goods and Services Tax Credit for the 2008 taxation is dismissed.

Signed at Ottawa, Canada, this 2nd day of September 2011.

“G. A. Sheridan”

Sheridan J.

Citation: 2011TCC411
Date: 20110902
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BETWEEN:

LEONARDO FRENNA,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Sheridan J.

[1] The Appellant, Leonardo Frenna, is appealing the determination by the Minister of National Revenue that he was not entitled to receive a Goods and Services Tax Credit (“GSTC”) of \$248 for the 2008 taxation year and which he received during the period July 2009 to June 2010.

[2] As the only issue was whether the Minister had properly applied the provisions of section 122.5 of the *Income Tax Act* governing entitlement to a GSTC, Mr. Frenna did not appear at the hearing of his appeal. He was represented by his father-in-law, Mr. Franco Testani. Mr. Testani has only limited hearing ability so he brought with him to assist in the presentation of his submissions his daughter, Ms. Sonia Testani, who is also the spouse of Mr. Frenna.

[3] The facts assumed by the Minister in paragraph 9 of the Reply to the Notice of Appeal are not in dispute:

- a) The Appellant lived separate and apart from anyone until June 2, 2008 at which time he commenced to cohabit with Sonia Testani;
- b) On June 6, 2009, the Appellant and Sonia Testani were married;
- c) Based upon the revised marital status of the Appellant on June 6, 2009 the Minister made a new determination of the family net income for the 2008

taxation year, to determine the same at \$77,367, and issued the Notice of Determination dated April 30, 2010 claiming overpayment of \$124 for the GSTC issued for the quarters of January and April 2010;

- d) The adjusted income of \$77,367 was based upon the income for the 2008 taxation year for the Appellant \$3,239 and the spouse \$74,128;
- e) The ceiling amount for the adjusted net income of a family for the GSTC for the 2008 taxation year was \$42,231;
- f) As at the time that the quarterly payments for the 2008 taxation year were made, July and October 2009 and January and April 2010 the Appellant was married and the Minister applied the family net income for the 2008 taxation year to determine the eligibility and amount for the GSTC for the quarterly payments for the taxation year 2008;
- g) As the Appellant had been issued the GSTC at \$62 per quarter, for July and October 2009 and January and April 2010, total \$248, the Minister determined by the issuance of the Notice of Determination issued January 5, 2011 that the Appellant had been overpaid \$248.

[4] Briefly stated, Mr. Testani's argument was that the Minister had wrongly taken into account the facts of Mr. Frenna's circumstances in 2008 in determining his entitlement to the GSTC received for the quarters July 2009, October 2009, January 2010 and April 2010. In support of his position, Mr. Testani provided the Court with all of the relevant documentation leading up to the assessment under appeal. The only difficulty with Mr. Testani's presentation is that his analysis of section 122.5 is incorrect.

[5] The purpose of section 122.5 is to get the GSTC into the hands of lower-income Canadians to offset the GST they will have to pay during the year. While that sounds simple enough, achieving this objective from a legislative perspective requires the use of highly technical language which is not particularly user-friendly. Briefly summarized, under subsection 122.5(3), a person is deemed to have paid GST from July to June of the year following the taxation year in which he applies for the GSTC as well as in January and April of the year after that; similarly, the GSTC payable during that period is calculated based on the information provided in the income tax return for the year he applies. To interpret subsection 122.5(3), regard must be had to the definitions in subsection 122.5(1), "adjusted income", "eligible individual" and "qualified relation". Equally important is the definition of the "months specified" for a taxation year under subsection 122.5(4).

[6] In her submissions, counsel for the Respondent explained the practical application of section 122.5 by making reference to the following passage in the Canada Revenue Agency publication, *GST/HST Credit*. The starting point for her analysis was to make a distinction between the “base year” and the “benefit year” as those terms apply to the calculation of the GSTC:

Base year and benefit year

The *base year* is the year of the income tax and benefit return from which information is taken to calculate the GST/HST credit entitlement for the benefit year. The base year is the calendar year just before the start of the benefit year.

The *benefit year* is the 12-month period during which the GST/HST credits are paid. The benefit year runs from July 1 of the year following the base year to June 30 of the next year. For example, GST/HST credit payments calculated on the 2010 income tax and benefit return will start being issued in July 2011, which is the beginning of the benefit year. For more information, see “When do we pay your credit?” on page 12.

The following chart illustrates the link between the base year and the benefit year.¹

Base year (tax return)	Benefit year (payments)			
	July	October	January	April
2010	2011	2011	2012	2012
2009	2010	2010	2011	2011
2008	2009	2009	2010	2010

[7] Applying this approach to Mr. Frenna’s situation, his “base year” was 2008, the year he applied for the GSTC. It was upon the information contained in his 2008 income tax return that his entitlement to receive the GSTC in the “benefit year” i.e., from July 1, 2009 to June 30, 2010, was based. Using the chart above as a guide, one can see that for the base year 2008, quarterly installments were to be paid for 2008 in the “months specified” of July 2009, October 2009, January 2010 and April 2010.

[8] For the purposes of section 122.5, it is assumed that the circumstances as reported in the year the person applied for the GSTC will remain the same in the two following years; if that later turns out not to be the case, however, the person is required under subsection 122.5(6.1) to inform the Minister. Further, if such changes mean that at the time the person received the GSTC he was no longer eligible for it, the Minister may require him to repay the GSTC he received.

¹ At page 9.

[9] That is what happened in the present case. In 2008, Mr. Frenna properly reported that he was separated and had an income of \$3,239. The Minister accepted these circumstances and using the 2008 information as the base year, determined Mr. Frenna's eligibility to receive the quarterly GSTC payments of \$62 in the benefit year, July 2009 to June 30, 2010. It is not disputed that he received these amounts.

[10] However, on June 6, 2009, Mr. Frenna and Sonia Testani were married. When this became known to the Canada Revenue Agency (likely when they duly reported the change in their marital status in their 2009 returns), Mr. Frenna's entitlement to a GSTC had to be redetermined in light of the circumstances as they existed when the GSTC payments were received. By July 1, 2009, Sonia Testani had become Mr. Frenna's spouse and thereby, his "qualified relation" as defined in subsection 122.5(1) of the *Act*. As such, her 2008 income of \$74,128 had to be added to Mr. Frenna's in the calculation of their "adjusted income" for 2008. As their combined income of \$77,367 was well in excess of the cut-off for the GSTC entitlement of \$42,231, Mr. Frenna was assessed for the repayment of the quarterly amounts paid in 2009 and 2010.

[11] In these circumstances, there is no justification to interfere with the Minister's assessment and accordingly, the appeal must be dismissed. This conclusion is based on what I believe is the correct application of section 122.5; there is absolutely no suggestion that Mr. Testani (as Mr. Frenna's authorized representative), Mr. Frenna or Ms. Testani in any way misrepresented their situations to the tax officials.

[12] At the conclusion of the hearing of this appeal, I addressed certain other points Mr. Testani had made during his submissions to the Court. Although Ms. Testani noted my comments for her father's benefit, because of his hearing difficulty, I indicated I would repeat my comments in these Reasons. His submissions and my responses thereto are summarized below:

1. Mr. Testani was understandably distressed that the Canada Revenue Agency had failed to provide him with the documentation promised in response to his inquiries and the objection to Mr. Frenna's assessment. He went on to say that if the Minister wanted to assess on a certain basis, he should have to prove the basis for his determination was correct. On this latter point, under Canada's self-reporting tax system, except in certain circumstances not relevant to the present matter, the onus is on the taxpayer to prove his position in respect of the amount assessed is correct. As for the lack of documentation, it is unfortunate that Canada Revenue Agency officials did

not provide Mr. Testani with the sort of analysis presented by counsel for the Respondent; had they done so, this appeal might not have been necessary. However, the lack of such documentation does not, in itself, provide me with a legal basis to allow Mr. Frenna's appeal.

2. Mr. Testani submitted that if the Minister's assessment were based on the assumption that Mr. Frenna and Ms. Testani had been in a common-law relationship in 2008, then the Tax Court of Canada ought to order the Canada Revenue Agency to allow certain adjustments to Ms. Testani's 2008 income tax return² to take that assumption into account. As it turned out, that was not the Minister's position but even if it had been, I have no jurisdiction to make such an order as only the appeal of Mr. Frenna was before the Court.
3. In a similar vein, Mr. Testani argued that if the Minister had assumed that Mr. Frenna and Ms. Testani had been in a common-law relationship in 2008, the Canada Revenue Agency ought to have advised Ms. Testani to adjust her income tax return accordingly to take advantage of a deduction for Mr. Frenna. The Canada Revenue Agency is not under an obligation to provide such advice to taxpayers.
4. Finally, I referred Mr. Testani to the detailed information contained in the materials filed by counsel for the Respondent in her submissions, specifically, a highlighted copy of section 122.5 of the *Income Tax Act* and the Canada Revenue Agency publication, *GST/HST Credit*, in particular, page 9. For that reason, I have not reproduced the rather lengthy legislative provisions here.

[13] For the reasons set out above, the appeal is dismissed.

Signed at Ottawa, Canada, this 2nd day of September 2011.

“G. A. Sheridan”

Sheridan J.

² As set out in Mr. Testani's calculations in Exhibits A-12 and A-13.

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STYLE OF CAUSE: LEONARDO FRENNA AND HER
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PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: August 31, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: September 2, 2011

APPEARANCES:

Agent for the Appellant:	Franco Testani
Counsel for the Respondent:	Valerie Messori

COUNSEL OF RECORD:

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