

BETWEEN:

ABDELTIF FARAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of Khadija Dakiri,
2012-2694(IT)I, on January 9, 2013, at Montréal, Quebec.
Before: The Honourable Justice Lucie Lamarre

Appearances:

For the appellant: The appellant himself
Counsel for the respondent: Stéphanie Côté

JUDGMENT

The appeal from the reassessment made pursuant to the *Income Tax Act* (ITA) by the Minister of National Revenue (Minister) dated April 11, 2011, for the 2010 taxation year showing a nil balance is dismissed.

The appeal from the Minister's determination dated July 5, 2011, disallowing the goods and services tax credit for the period of July 2011 to June 2012 (2010 base year) pursuant to section 122.5 of the ITA is dismissed.

Signed at Ottawa, Canada, this 17th day of January 2013.

"Lucie Lamarre"

Lamarre J.

Citation: 2013 TCC 16
Date: 20130117
Docket: 2012-1649(IT)I

BETWEEN:

ABDELTIF FARAH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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REASONS FOR JUDGMENT

Lamarre J.

[1] The appellant is appealing from the reassessment dated April 11, 2011, made pursuant to the *Income Tax Act* (ITA) by the Minister of National Revenue (Minister) for the 2010 taxation year that indicates a nil balance.

[2] The appellant is also appealing from a determination by the Minister dated July 5, 2011, regarding the goods and services tax (GST) credit for the period of July 2011 to June 2012 (2010 base year). According to this determination, the appellant was not eligible for the GST credit for the period because his household income was too high, exceeding the \$45,740 limit in 2010.¹

[3] The appellant's income was \$90,763 for the 2010 taxation year and his spouse did not have any income that year. They had a dependent child under the age of 19 who lived with them during the year.

¹ The \$45,740 threshold was established according to a calculation pursuant to subsection 122.5(3) of the ITA. The calculation does not seem to be challenged. I understand that the appellant is challenging the calculation of the adjusted income that is taken into consideration when establishing the GST credit.

[4] The appellant is challenging this assessment and this determination on the ground that the majority of the \$90,758.36 income he received in 2010 came from the income replacement benefits from the Commission de la santé et de la sécurité du travail (CSST) for 2007 to 2010 inclusively, as confirmed by the document he submitted as Exhibit A-1.

[5] He claims that it is a personal injustice to have his right to the GST credit withdrawn because his income for 2010 does not reflect reality but rather, corresponds to a lump sum payment of annual benefits he was entitled to for 2007 to 2010 inclusively.

[6] Unfortunately for the appellant, I cannot allow his claim.

[7] The GST credit for which a taxpayer is eligible is calculated four times a year, in each specified month, according to the adjusted income of the base year. The months specified for the 2010 base year are July and October 2011 and January and April 2012 (subsection 122.5(4) ITA).

[8] To determine entitlement for the GST credit, the adjusted income for the base year must be established. The adjusted income, under the definition at subsection 122.5(1), is the total income for the year of the individual and of the qualified relation of the individual (in this case, Khadija Dakiri). The income is the income as calculated at Division B of Part 1 of the ITA, at section 3. It is not the taxable income as calculated at Division C of Part 1 of the ITA.

[9] The relevant legislative provisions are reproduced here:

INCOME TAX ACT

PART I — INCOME TAX

PART A — LIABILITY FOR TAX

2. (1) Tax payable by persons resident in Canada — An income tax shall be paid, as required by this Act, on the taxable income for each taxation year of every person resident in Canada at any time in the year.

2. (2) Taxable income — The taxable income of a taxpayer for a taxation year is the taxpayer's income for the year plus the additions and minus the deductions permitted by Division C.

...

DIVISION B — COMPUTATION OF INCOME

Basic Rules

SECTION 3. Income for taxation year — The income of a taxpayer for a taxation year for the purposes of this Part is the taxpayer's income for the year determined by the following rules:

- (a) determine the total of all amounts each of which is the taxpayer's income for the year (other than a taxable capital gain from the disposition of a property) from a source inside or outside Canada, including, without restricting the generality of the foregoing, the taxpayer's income for the year from each office, employment, business and property,
- (b) determine the amount, if any, by which
 - (i) the total of
 - (A) all of the taxpayer's taxable capital gains for the year from dispositions of property other than listed personal property, and
 - (B) the taxpayer's taxable net gain for the year from dispositions of listed personal property,exceeds
 - (ii) the amount, if any, by which the taxpayer's allowable capital losses for the year from dispositions of property other than listed personal property exceed the taxpayer's allowable business investment losses for the year,
- (c) determine the amount, if any, by which the total determined under paragraph (a) plus the amount determined under paragraph (b) exceeds the total of the deductions permitted by subdivision e in computing the taxpayer's income for the year (except to the extent that those deductions, if any, have been taken into account in determining the total referred to in paragraph (a), and
- (d) determine the amount, if any, by which the amount determined under paragraph (c) exceeds the total of all amounts each of which is the taxpayer's loss for the year from an office, employment, business or property or the taxpayer's allowable business investment loss for the year,

and for the purposes of this Part,

- (e) where an amount is determined under paragraph (d) for the year in respect of the taxpayer, the taxpayer's income for the year is the amount so determined, and
- (f) in any other case, the taxpayer shall be deemed to have income for the year in an amount equal to zero.

...

Subdivision d — Other sources of income

SECTION 56. (1) Amounts to be included in income for year — Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

...

- (v) **Workers' compensation** — compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, a disability or death;

...

DIVISION C — COMPUTATION OF TAXABLE INCOME

110. (1) Deductions permitted — For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such of the following amounts as are applicable

...

- (f) **Deductions for payments** — any social assistance payment made on the basis of a means, needs or income test and included because of clause 56(1)(a)(i)(A) or paragraph 56(1)(u) in computing the taxpayer's income for the year or any amount that is

...

- (ii) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, disability or death, except any such compensation received by a person as the employer or former employer of the person in respect of whose injury, disability or death the compensation was paid,

DIVISION E — COMPUTATION OF TAX

Subdivision a – Rules applicable to individuals

SECTION 122.5: definitions

(1) The following definitions apply in this section.

"adjusted income" — "adjusted income", of an individual for a taxation year in relation to a month specified for the taxation year, means the total of the individual's income for the taxation year and the income for the taxation year of the individual's qualified relation, if any, in relation to the specified month, both calculated as if in computing that income no amount were

(a) included

(i) under paragraph 56(1)(*q.1*) or subsection 56(6),

(ii) in respect of any gain from a disposition of property to which section 79 applies, or

(iii) in respect of a gain described in subsection 40(3.21); or

(b) deductible under paragraph 60(*y*) or (*z*).

122.5(4) Months specified. For the purposes of this section, the months specified for a taxation year are July and October of the immediately following taxation year and January and April of the second immediately following taxation year.

[10] Section 2 (included in Division A, Part 1 of the ITA, on the liability for tax) clearly distinguishes between an individual's income and the taxable income on which the tax payable is calculated.

[11] Section 3 et seq. of Division B address the computation of income, which is referenced in the definition of adjusted income at section 122.5.

[12] Therefore, the allowance the appellant received in 2010 must be included in his income pursuant to paragraph 56(1)(*v*) of the ITA, which is part of Division B on the computation of income.

[13] The appellant noted that he paid back \$35,000 in social assistance benefits, received in prior years. This amount is taken into consideration in the deduction allowed in the computation of taxable income for 2010, pursuant to subparagraph 110(1)(*f(ii)*) of the ITA.

[14] Even though the taxable income is reduced by this deduction, it does not have any impact on the GST credit, which is determined based on income (as calculated under Division B of the ITA) and not based on the taxable income (as calculated under Division C of the ITA, which includes the deduction under subparagraph 110(1)(f)(ii)).

[15] The respondent was therefore correct to disallow the GST credit on the ground that the appellant's 2010 income exceeded the allowed limit.

[16] The appellant feels that he is the victim of discrimination and injustice. He did not provide evidence of discrimination in terms of a specific group. This is an application of tax provisions adopted by Parliament and that apply equally to all individuals in the same situation.

[17] For these reasons, I must dismiss both the appeal from the nil reassessment for 2010² and the appeal from the determination disallowing the GST credit.

Signed at Ottawa, Canada, this 17th day of January 2013.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 4th day of February 2013.
Elizabeth Tan, Translator

² For which there is no appeal possible: see *Interior Savings Credit Union v. The Queen*, 2007 FCA 151.

CITATION: 2013 TCC 16

COURT FILE NO.: 2012-1649(IT)I

STYLE OF CAUSE: ABDELTIF FARAH v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 9, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: January 17, 2013

APPEARANCES:

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|-----------------------------|-----------------------|
| For the appellant: | The appellant himself |
| Counsel for the respondent: | Stéphanie Côté |

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: William F. Pentney
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