

Docket: 2012-511(IT)I

BETWEEN:

JOCELYN CANTIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on November 19, 2013, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Mélanie Bélec

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* in respect of the 2009 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Montréal, Quebec, this 16th day of January 2014.

“Rommel G. Masse”

Masse D.J.

Translation certified true
on this 28th day of February 2014
Daniela Guglietta, Translator

Citation: 2014 TCC 20
Date: 20140116
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Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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REASONS FOR JUDGMENT

Masse D.J.

[1] This is an appeal from a reassessment issued on January 6, 2011, in respect of the 2009 taxation year. In that assessment, the Minister of National Revenue (the Minister) disallowed a deduction of \$7,972 from the appellant's income with respect to his election to split pension income under section 60.03 of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th suppl.), as amended (the Act).

Factual background

[2] The appellant, Jocelyn Cantin, was born on November 24, 1943, and is 69 years old. He graduated from the École polytechnique of the University of Montréal with a Bachelor's degree in Electrical Engineering in 1970. He began to work at Hydro-Québec as an engineer in October 1978. Unfortunately, Mr. Cantin has been suffering from major depression since April 1994. He was treated with medication and psychiatric follow-up, but the effects of this illness on Mr. Cantin were such that he became unable to continue working. He is now at a therapeutic impasse, because no medication or therapy has been able to relieve his depression so he will be in a chronic state of depression for the rest of his life.

[3] Mr. Cantin became eligible for long-term disability benefits under an insurance policy contracted between Hydro-Québec as the insured, and Industrial Alliance life insurance company (Industrial) as the insurer. A copy of the policy was filed with the Court as Exhibits A-1 and I-8. Mr. Cantin received those benefits until age 65.

[4] Mr. Cantin turned 65 in November 2008. Thus, under the provisions of the insurance policy, the long-term wage loss benefits ended on November 30, 2008, and were replaced with pension supplement payments in accordance with the provisions of clause 5-C(b) of the insurance policy (Exhibit A-1). Mr. Cantin has been receiving the pension supplement since December 2008.

[5] This case concerns the 2009 taxation year. For that taxation year, Desjardins Trust issued to the appellant a T4RIF “Statement of Income from a Registered Retirement Income Fund” for \$10,485.85 (see Exhibit I-2). Industrial issued a T4A slip “Statement of Pension, Retirement, Annuity and Other Income” for \$15,953.76 (see Exhibit I-3). Mr. Cantin does not dispute those amounts as income. The total of those two sources of income, according to the T4RIF (Exhibit I-2) and T4A (Exhibit I-3) slips is: $\$10,485.85 + \$15,953.76 = \$26,439.62$.

[6] Mr. Cantin wanted to split his pension income between him and his wife. The effect of splitting his income was to reduce his income by the split amount and that amount was then added to his wife’s income. Because the income of Mr. Cantin’s wife was lower than that of Mr. Cantin, her income was taxable at a lower rate than that of Mr. Cantin. The result of the pension income split was that the couple was required to pay less in taxes as a couple. Thus, Mr. Cantin and his wife jointly completed Form T1032 in electing to split pension income and calculated \$13,218 as being the split-pension amount (see Exhibit I-1, line 116).

[7] According to Marlène Bourcier, Appeals Officer with the Canada Revenue Agency (the CRA), that amount consists in part of benefits paid to Mr. Cantin as disability insurance or income maintenance insurance. The CRA is of the view that the amount of \$15,973.76 paid to Mr. Cantin in disability insurance by Industrial is not qualified to be split pursuant to the provisions of the Act. Only the amount of \$10,485.85 paid to Mr. Cantin by Desjardins Trust as income from a Registered Retirement Income Fund is eligible to be split. Thus, only the amount of \$5,242 could be split and attributed to Mr. Cantin’s wife. Therefore, the CRA made adjustments to Mr. Cantin’s income to ensure the amount \$7,976 (the difference

between \$13,218, which is the amount that Mr. Cantin wants to split, and \$5,242, which is the amount eligible to be split) was added to his income.

[8] Ginette Larivière is employed by Industrial. Her task is to act as a liaison between Industrial and its lawyers in all cases involving Industrial. Apparently, there have been a number of disputes between Industrial and Hydro-Québec, on the one hand, and the appellant, on the other. Ms. Larivière explained to us that Industrial is a life insurance company that is responsible for managing Hydro-Québec's long-term disability insurance plan. Industrial is not at all responsible for Hydro-Québec's retirement plan. Ms. Larivière testified that all amounts paid to Mr. Cantin during 2009 were paid under a long-term disability insurance plan and not under a pension plan. In 2009, Industrial paid Mr. Cantin \$15,953.76, which is the same amount indicated on the T4A slip as disability insurance benefits. Industrial is neither the administrator of Hydro-Québec's pension plan nor the insurer of the pension plan. There is no connection between Industrial and the Hydro-Québec pension funds. All benefits paid to Mr. Cantin under the disability insurance plan are derived exclusively from Industrial and not Hydro-Québec.

Appellant's position

[9] In his Notice of Appeal, the appellant submits that the payments that were made to him by Industrial constitute retirement pension although those payments are not from a pension fund within the meaning of subsection 118(7) of the Act, and therefore, the payments are deductible for income splitting purposes under section 60.03 of the Act. The appellant submits that the benefits that are paid to him by Industrial constitute an annuity for services already rendered and are, therefore, a life annuity and not disability insurance benefits. This pension annuity continues without disruption until his death. Both the insurance policy and the plan administered by Industrial were intended only as a tool by which Hydro-Québec provides an income to employees with disabilities.

Respondent's position

[10] The respondent submits that payments received from an income maintenance insurance plan are not in any way a pension. The amount of \$15,953 that the appellant received from Industrial does not represent qualified pension income under subsection 118(7) of the Act. Accordingly, that amount does not qualify for pension income splitting under section 60.03 of the Act. For income to truly qualify for pension splitting under subsection 118(7) of the Act, it is necessary that the income be pension income; that is to say, a pension plan and not a disability insurance plan.

Since the amount indicated on the T4A slip represents income maintenance insurance, that income does not qualify for splitting as a pension plan.

Statutory provisions

[11] The relevant provisions of the Act in force in 2009 are as follows:

60.03 (1) The following definitions apply in this section

“eligible pension income”, of an individual for a taxation year, means the total of

(a) the eligible pension income (as defined in subsection 118(7)) of the individual for the year, and

(b) if the individual has attained the age of 65 years before the end of the year, the lesser of

(i) the total of all amounts each of which is a payment made in the year to the individual

(A) out of or under a retirement compensation arrangement that provides benefits that supplement the benefits provided under a registered pension plan (other than an individual pension plan for the purposes of Part LXXXIII of the *Income Tax Regulations*), and

(B) in respect of a life annuity that is attributable to periods of employment for which benefits are also provided to the individual under the registered pension plan, and

(ii) the amount, if any, by which the defined benefit limit (as defined in subsection 8500(1) of the *Income Tax Regulations*) for the year multiplied by 35 exceeds the amount determined under paragraph (a).

“joint election” in respect of a pensioner and a pension transferee for a taxation year means an election made jointly in prescribed form by the pensioner and the pension transferee and filed with the Minister with both the pensioner’s and the pension transferee’s returns of income for the taxation year in respect of which the election is made, on or before their respective filing-due dates for the taxation year.

“pensioner” for a taxation year means an individual who

(a) receives eligible pension income in the taxation year; and

(b) is resident in Canada,

(i) if the individual dies in the taxation year, at the time that is immediately before the individual's death, or

(ii) in any other case, at the end of the calendar year in which the taxation year ends.

“pension income” has the meaning assigned by section 118.

“pension transferee” for a taxation year means an individual who

(a) is resident in Canada,

(i) if the individual dies in the taxation year, at the time that is immediately before the individual's death, or

(ii) in any other case, at the end of the calendar year in which the taxation year ends; and

(b) at any time in the taxation year is married to, or in a common-law partnership with, a pensioner and is not, by reason of the breakdown of their marriage or common-law partnership, living separate and apart from the pensioner at the end of the taxation year and for a period of at least 90 days commencing in the taxation year.

“qualified pension income” has the meaning assigned by section 118.

“split-pension amount” for a taxation year is the amount elected by a pensioner and a pension transferee in a joint election for the taxation year not exceeding the amount determined by the formula

$$0.5A \times B/C$$

where

A

is the eligible pension income of the pensioner for the taxation year;

B

is the number of months in the pensioner's taxation year at any time during which the pensioner was married to, or was in a common-law partnership with, the pension transferee; and

C

is the number of months in the pensioner's taxation year.

Effect of pension income split

(2) For the purpose of subsection 118(3), if a pensioner and a pension transferee have made a joint election in a taxation year,

(a) the pensioner is deemed not to have received the portion of the pensioner's pension income or qualified pension income, as the case may be, for the taxation year that is equal to the amount of the pensioner's split-pension amount for that taxation year; and

(b) the pension transferee is deemed to have received the split-pension amount

(i) as pension income, to the extent that the split-pension amount was pension income to the pensioner, and

(ii) as qualified pension income, to the extent that the split-pension amount was qualified pension income to the pensioner.

118(7) Subject to subsections (8) and (8.1), for the purposes of this subsection and subsection (3),

“eligible pension income” of an individual for a taxation year means

(a) if the individual has attained the age of 65 years before the end of the taxation year, the pension income received by the individual in the taxation year, and

(b) if the individual has not attained the age of 65 years before the end of the taxation year, the qualified pension income received by the individual in the taxation year;

“pension income” received by an individual in a taxation year means the total of

(a) the total of all amounts each of which is an amount included in computing the individual's income for the year that is

(i) a payment in respect of a life annuity out of or under a superannuation or pension plan (other than a pooled registered pension plan) or a specified pension plan,

(ii) an annuity payment under a registered retirement savings plan, under an “amended plan” as referred to in subsection 146(12) or under an annuity in respect of which an amount is included in computing the individual’s income by reason of paragraph 56(1)(d.2),

(iii) a payment out of or under a registered retirement income fund or under an “amended fund” as referred to in subsection 146.3(11),

(iii.1) a payment (other than a payment described in subparagraph (i)) payable on a periodic basis under a money purchase provision (within the meaning assigned by subsection 147.1(1)) of a registered pension plan,

(iii.2) an amount included under section 147.5,

(iv) an annuity payment under a deferred profit sharing plan or under a “revoked plan” as referred to in subsection 147(15),

(v) a payment described in subparagraph 147(2)(k)(v), or

(vi) the amount by which an annuity payment included in computing the individual’s income for the year by reason of paragraph 56(1)(d) exceeds the capital element of that payment as determined or established under paragraph 60(a), and

(b) the total of all amounts each of which is an amount included in computing the individual’s income for the year by reason of section 12.2 of this Act or paragraph 56(1)(d.1) of the *Income Tax Act*, chapter 148 of the Revised Statutes of Canada, 1952;

“qualified pension income” received by an individual in a taxation year means the total of all amounts each of which is an amount included in computing the individual’s income for the year and described in

(a) subparagraph (a)(i) of the definition “pension income” in this subsection, or

(b) any of subparagraphs 118(7) qualified pension income (a)(ii) to 118(7) qualified pension income (a)(vi) or paragraph (b) of the definition “pension income” in this subsection received by the individual as a consequence of the death of a spouse or common-law partner of the individual.

(8) For the purposes of subsection (7), “pension income” and “qualified pension income” received by an individual in a taxation year do not include any amount that is

(a) the amount of a pension or supplement under the *Old Age Security Act* or of any similar payment under a law of a province;

(b) the amount of a benefit under the *Canada Pension Plan* or under a provincial pension plan as defined in section 3 of that Act;

(c) a death benefit;

(d) the amount, if any, by which

(i) an amount required to be included in computing the individual's income for the year

exceeds

(ii) the amount, if any, by which the amount referred to in subparagraph (i) exceeds the total of all amounts deducted (other than under paragraph 60(c)) by the individual for the year in respect of that amount;

(e) a payment received out of or under a salary deferral arrangement, a retirement compensation arrangement, an employee benefit plan or an employee trust; or

...

Analysis

[12] The issue is whether payments received from a long-term disability insurance plan is qualified pension income with respect to the elected split-pension amount for the appellant. In my opinion, the answer to that question is clearly **no**.

[13] According to the provisions of the Act, the following is pension income qualifying for income splitting:

- the taxable portion of payments in respect of a life annuity under a superannuation plan, a pension fund or pension plan;
- if payments are received as a consequence of the death of a spouse or common-law partner or if the pensioner is 65 or older at the end of the year:
 - (a) annuity payments and payments out of or under a registered retirement income fund (including a life income fund);

- (b) annuity payments under a registered retirement savings plan (RRSP).

[14] Do the payments paid to the appellant in accordance with the insurance policy possess the qualities of a pension qualifying for pension income splitting within the meaning of section 60.03 and subsection 118(7) of the Act? The insurance policy (Exhibit A-1) is described as a [TRANSLATION] “Group health policy: monthly income in the event of long-term disability”. Industrial is described as being [TRANSLATION] “the Insurer” and Hydro-Québec is described as being [TRANSLATION] “the Insured”. The appellant is an [TRANSLATION] “employee” within the meaning of the phrase used in clause 1 of the policy. According to clause 2 of the policy, [TRANSLATION] “any person who meets the definition of ‘employee’ is eligible for insurance hereunder. . .”. Clause 3 refers to the [TRANSLATION] “start of the insurance”. The purpose of the insurance is set out in clause 4:

[TRANSLATION]

The Insurer pays a pension annuity in the amounts and in the manner provided in clauses 5—and 6—below, to any Employee insured hereunder who is totally disabled.

[15] Clause 5 refers to a [TRANSLATION] “waiting period”, “benefit period”, “benefit amount” before and after the normal retirement age, which is 65, and the terms of payment of the annuity. Clause 6 provides for the waiver of premiums for an insured disabled employee during the period when an annuity is paid to the employee under the insurance policy. Clauses 14 and 15 refer to [TRANSLATION] “[the]due date, calculation and modification of premiums” and “payment of premiums”. Clause 16 refers to an insurance [TRANSLATION] “contract” between the parties. Clause 19 covers the manner in which an employee may file a claim for benefits, the evidence needed to support a claim, the fact that the insurer has the right to require the individual to whom the claim pertains to attend a physician of its choice, and the payment of benefits or compensation provided for in the insurance policy.

[16] A close reading of the insurance policy shows that the contractual intention between Industrial and Hydro-Québec was to establish a long-term disability insurance plan for the benefit of Hydro-Québec employees. It is income maintenance insurance. There is nothing in the wording of the insurance policy that indicates an intention to create any type of pension plan. The fact that the insurance provides that benefits continue to be paid after age 65 in the form of a retirement pension supplement cannot convert disability benefits into retirement pension payments. The

payments made in accordance with the terms of the insurance policy are not provided by a superannuation plan, a pension fund, a pension plan, a registered retirement income fund or RRSP.

Conclusion

[17] I find that the payments received from a long-term disability insurance plan do not qualify for pension income splitting. Even though the wage loss benefits ended when the appellant reached the age of 65, they were replaced by retirement pension supplement payments. This does not change the fact that the appellant continues to receive disability insurance benefits even after having reached the age of 65. The amount of \$15,953.76 that the appellant received from Industrial does not represent qualified pension income within the meaning of subsection 118(7) of the Act. Accordingly, this amount does not create an entitlement for pension income splitting under section 60.03 of the Act.

[18] For these reasons, the appeal is dismissed.

Signed at Montréal, Quebec, this 16th day of January 2014.

“Rommel G. Masse”

Masse, D.J.

Translation certified true
on this 28th day of February 2014
Daniela Guglietta, Translator

CITATION: 2014 TCC 20

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STYLE OF CAUSE: JOCELYN CANTIN AND HER MAJESTY
THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 19, 2013

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse,
Deputy Judge

DATE OF JUDGMENT: January 16, 2014

APPEARANCES:

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Counsel for the respondent: Mélanie Bélec

COUNSEL OF RECORD:

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