Federal Court of Appeal  Cour d'appel fédérale

Date: 20180604

Docket: A-130-17

Citation: 2018 FCA 110

CORAM: **WEBB J.A.**
GLEASON J.A.
LASKIN J.A.

BETWEEN:

TERENCE O. FREITAS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on February 1, 2018.

Judgment delivered at Ottawa, Ontario, on June 4, 2018.

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: GLEASON J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

WEBB J.A.

[1] The issue in this appeal is whether a retired partner, who has been allocated income from his or her former partnership for any year after the year during which that person has ceased to be a partner, is required to make a contribution under the *Canada Pension Plan*, R.S.C. 1985, c. C-8 (CPP) as a result of the allocation of such income. This is an appeal from a decision of the Tax Court of Canada under the informal procedure (2017 TCC 46, [2017] D.T.C. 1023). The Tax Court Judge dismissed Mr. Freitas' appeal from a reassessment which confirmed that he was

liable for a CPP contribution in relation to income allocated to him after he retired from Deloitte & Touche LLP.

[2] For the reasons that follow I would allow the appeal.

I. Background

[3] Mr. Freitas retired as a partner from Deloitte & Touche LLP on May 31, 2007. For the following year, 2008, he was allocated income from the partnership as provided in the applicable partnership agreement. He included this income in his tax return for 2008. When he completed his income tax return for 2008, Mr. Freitas did not include any amount for a CPP contribution payable in relation to the income that was allocated to him by Deloitte & Touche LLP. He was subsequently assessed on September 11, 2009 on the basis that the income that was allocated to him resulted in a CPP contribution payable by him in the amount of $4,098.60. The assessment also included a deduction in computing his income for one half of this amount payable (paragraph 60(*e*) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (ITA)) and a non-refundable tax credit based on the other half (section 118.7 of the ITA).

[4] Almost 4 years later, after attending a meeting of retired partners, Mr. Freitas submitted a T1 adjustment request form and asked the Minister of National Revenue (Minister) to reassess the amount payable for 2008 by reversing the amount payable for the CPP contribution and by also reversing the corresponding amounts for the deduction and non-refundable tax credit.

[5] On May 20, 2014, the Minister reassessed Mr. Freitas in response to this request. In reassessing Mr. Freitas, the Minister reversed the deduction for one-half of the CPP contribution payable and the non-refundable tax credit based on the other half. The Minister, however, did not reverse the amount payable for the CPP contribution, on the basis that the excess contribution could not be refunded as Mr. Freitas did not make this request within the four year limitation period specified in paragraph 38(4)(*b*) of the CPP. The net result of this reassessment was that Mr. Freitas had a balance payable of $2,210.03 (not including interest). If the Minister, instead of reassessing Mr. Freitas, would have written to Mr. Freitas to explain that since the net result of what he was requesting was a refund of excess CPP contributions after the expiration of the four year limitation period for making this request, no refund would be issued and no reassessment would be made, Mr. Freitas would not have had the right to file any notice of objection.

[6] However, since he was reassessed Mr. Freitas served a notice of objection in relation to this reassessment. Following the Minister's review of the notice of objection, he was reassessed on December 22, 2015. This reassessment reflected the original assessment issued in 2009, i.e. a CPP contribution was payable in relation to the income that was allocated to him but he was also entitled to a deduction and a non-refundable tax credit.

[7] Mr. Freitas then appealed to the Tax Court of Canada. The December 22, 2015 reassessment was the one that was before the Tax Court of Canada. At the hearing before the Tax Court of Canada, the first issue that was addressed was whether the Tax Court has the jurisdiction to order the Minister to refund excess CPP contributions. The Tax Court Judge concluded that she did not have the jurisdiction to order the Minister to pay Mr. Freitas a refund

if there was an excess CPP contribution. This finding has not been appealed and Mr. Freitas acknowledges that the Tax Court does not have the jurisdiction to order the Minister to pay a refund of excess CPP contributions.

[8] The Tax Court Judge then reviewed the provisions of the ITA which included the amount that was allocated to Mr. Freitas in his income even though he had retired as a partner prior to the taxation year in issue. The Tax Court Judge also examined the provisions of the ITA related to retiring allowances and concluded that the income that was allocated to Mr. Freitas could not be considered to be a retiring allowance. The conclusion of the Tax Court Judge was that since this amount was included in his income as business income, it should also be treated as self-employed earnings for the purposes of the CPP. There is no discussion in the reasons of the Tax Court Judge of the particular wording of section 14 of the CPP and specifically the requirement of section 14 of the CPP that the self-employed earnings of an individual from a business be from a business carried on by the particular individual.

II. Additional submissions

[9] The reassessment that resulted in the notice of objection being filed arose as a result of a request by Mr. Freitas to adjust his income tax return for 2008. During the hearing of the appeal the question of whether this reassessment would be one that was issued under subsection 152(4.2) of the ITA was posed to the parties. If this reassessment was issued under that subsection then, as a result of subsection 165(1.2) of the ITA, there would be no right to file a

notice of objection to this reassessment and hence no right to appeal to the Tax Court of Canada. The parties filed additional written submissions on this point.

III. Issues

[10] The issues to be decided are:

(a) was the reassessment issued under subsection 152(4.2) of the ITA;

(b) was there a valid appeal before the Tax Court of Canada; and

(c) if there was a valid appeal before the Tax Court of Canada, is a CPP contribution payable in relation to the income allocated to Mr. Freitas for 2008?

IV. Standard of review

[11] The standard of review for any question of fact or mixed fact and law (for which there is no extricable question of law), is palpable and overriding error and for any question of law is correctness (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

V. Analysis

A. *Subsection 152(4.2) of the ITA*

[12] Under section 36 of the CPP, the provisions of Divisions I and J of Part I of the ITA (sections 150 to 180) apply, with such changes as are necessary, in relation to any amount payable under the CPP as a contribution for a year in respect of self-employed earnings as though such amounts were payable under the ITA.

[13] Subsection 152(4.2) of the ITA provides as follows:

(4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining — at any time after the end of the normal reassessment period, of a taxpayer who is an individual (other than a trust) or a graduated rate estate, in respect of a taxation year — the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is 10 calendar years after the end of that taxation year,	**(4.2)** Malgré les paragraphes (4), (4.1) et (5), pour déterminer, à un moment donné après la fin de la période normale de nouvelle cotisation applicable à un contribuable — particulier (sauf une fiducie) ou succession assujettie à l'imposition à taux progressifs — pour une année d'imposition, le remboursement auquel le contribuable a droit à ce moment pour l'année ou la réduction d'un montant payable par le contribuable pour l'année en vertu de la présente partie, le ministre peut, si le contribuable demande pareille détermination au plus tard le jour qui suit de dix années civiles la fin de cette année d'imposition, à la fois :
(*a*) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and	***a*)** établir de nouvelles cotisations concernant l'impôt, les intérêts ou les pénalités payables par le contribuable pour l'année en vertu de la présente partie;
(*b*) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 122.9(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.	***b*)** déterminer de nouveau l'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 122.9(2), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année ou qui est réputé, par le paragraphe 122.61(1), être un paiement en trop au titre des sommes dont le contribuable est redevable en vertu de la présente partie pour l'année.
(emphasis added)	(soulignement ajouté)

[14] This subsection provides that, for the purpose of determining the amount of any refund to which the taxpayer is entitled, the Minister may reassess that taxpayer following an application for such determination made by that taxpayer. If a reassessment is made under this subsection, there is no right to object to this reassessment (subsection 165(1.2) of the ITA). If there is no right to object, there is no right to appeal to the Tax Court of Canada since an appeal to the Tax Court of Canada must follow the serving of a notice of objection (section 169 of the ITA).

[15] While Mr. Freitas did request that the Minister reassess him and pay him a refund, the Minister determined that Mr. Freitas was not entitled to any refund. The result of the reassessment issued on May 20, 2014 was that Mr. Freitas owed $2,210.03. Instead of Mr. Freitas being entitled to a refund, his liability was increased. In my view, a reassessment that increases a person's tax liability is not one that was made for the purpose of determining a refund but instead would be made for the purpose of determining that person's liability under the ITA or CPP. Otherwise, whenever a taxpayer makes a request for a refund after the end of the normal reassessment period, the Minister, in addressing such request, could issue a reassessment that increases that person's tax liability regardless of whether there was any misrepresentation as described in subparagraph 152(4)(*a*)(i) of the ITA and that person would have no right to object to that reassessment (subsection 165(1.2) of the ITA). In my view, this would not be the correct result.

[16] This is also confirmed by the Technical Notes that were issued by the Department of Finance when subsection 152(4.2) was added to the ITA in 1991. The Technical Notes stated that:

> The purpose of new subsection 152(4.2), applicable to assessments and redeterminations made in respect of the 1985 and subsequent taxation years, is to give the Minister of National Revenue discretion to make a reassessment or a redetermination beyond the normal reassessment period when so requested by a taxpayer who is an individual or a testamentary trust in order to give the taxpayer a refund, or to reduce taxes payable. Thus, for example, if, after the expiration of the normal reassessment period an individual became aware that a claim for a deduction or a credit to which the individual was entitled was inadvertently not made, the Minister would have the discretion to reassess the return and give the taxpayer the benefit of the deduction or credit.
>
> A reassessment or redetermination to create a refund or reduce taxes payable will generally be made upon receipt of a written request made after the normal reassessment period by an individual or a testamentary trust where the Minister is satisfied that the request for the adjustment would have been processed if it had been made within the normal reassessment period.
>
> (emphasis added)

[17] This purpose is also reflected in the Technical Notes issued by the Department of Finance in relation to an amendment made to subsection 152(4.2) of the ITA in 1997:

> Subsection 152(4.2) gives Revenue Canada discretion to make a reassessment or a redetermination beyond the normal reassessment period when so requested by a taxpayer who is an individual or a testamentary trust in order to give the taxpayer a refund or to reduce taxes payable. …
>
> (emphasis added)

[18] While subsection 152(4.2) of the ITA has been amended several times, none of the amendments detract from the original purpose.

[19] Since the reassessment issued on May 20, 2014 increased Mr. Freitas' liability for 2008, this was not a reassessment that was made under 152(4.2) of the ITA.

B. *Validity of the Appeal to the Tax Court of Canada*

[20] The reassessment issued on May 20, 2014 was issued more than three years after the original assessment was issued on September 11, 2009. The Crown submitted that, if the reassessment was not issued under subsection 152(4.2) of the ITA, there was no other basis upon which this reassessment could have been issued, as the Minister was not relying on any alleged misrepresentation in issuing this reassessment. The Minister has the right to reassess any person at any time within the normal reassessment period (subsection 152(4) of the ITA). For an individual, the normal reassessment period is three years from the sending of the original assessment (paragraph 152(3.1)(*b*) of the ITA). The Minister can only reassess after the normal reassessment period if the person has made a misrepresentation as described in subparagraph 152(4)(*a*)(i) of the ITA or in certain other specified situations, none of which is applicable in this case.

[21] While the Minister may not have been relying on any misrepresentation made by Mr. Freitas and, therefore, had no basis to issue the reassessment on May 20, 2014, subsection 152(8) of the ITA provides that:

(8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this Act relating thereto.	**(8)** Sous réserve des modifications qui peuvent y être apportées ou de son annulation lors d'une opposition ou d'un appel fait en vertu de la présente partie et sous réserve d'une nouvelle cotisation, une cotisation est réputée être valide et exécutoire malgré toute erreur, tout vice de forme ou toute omission dans cette cotisation ou dans toute procédure s'y rattachant en vertu de la présente loi.

[22] As a result, the reassessment made on May 20, 2014 is deemed to be valid notwithstanding any error or defect or omission in the assessment or in any proceeding under the ITA relating thereto. While Mr. Freitas could have objected to this reassessment on the basis that it increased his tax liability beyond the normal reassessment period and there was no misrepresentation that would justify this reassessment, he chose not to raise this as a basis for the objection. Instead he chose to dispute the reassessment on its merits and therefore the validity of the reassessment should be assessed based on the merits of the reassessment.

[23] As a result, in my view Mr. Freitas had the right to object to the reassessment issued on May 20, 2014. Therefore, there was a valid appeal to the Tax Court of Canada in relation to the subsequent related reassessment issued on December 22, 2015.

C. *CPP contributions following retirement*

[24] Section 10 of the CPP provides that individuals are required to make contributions based on their contributory self-employed earnings for the year:

10(1) Every individual who is resident in Canada for the purposes of the *Income Tax Act* during a year and who has contributory self-employed earnings for the year shall make a base contribution for the year of an amount equal to the product obtained when the contribution rate for self-employed persons for the year is multiplied by the lesser of	**10(1)** Un particulier qui, pour l'application de la *Loi de l'impôt sur le revenu*, réside au Canada au cours d'une année et réalise au cours de l'année en question des gains cotisables provenant du travail qu'il exécute pour son propre compte verse pour cette année une cotisation de base d'un montant égal au produit obtenu par la multiplication du taux de cotisation des travailleurs autonomes pour l'année par le moins élevé des éléments suivants :

(*a*) the individual's contributory self-employed earnings for the year, minus the amount by which the individual's basic exemption for the year exceeds the aggregate of	***a*)** les gains cotisables provenant du travail que le particulier exécute pour son propre compte pour l'année, moins le montant par lequel son exemption de base pour l'année dépasse l'ensemble des montants suivants :
(i) all amounts deducted as prescribed on account of the individual's basic exemption for the year whether by one or more employers pursuant to section 8, and	**(i)** les montants déduits, ainsi qu'il est prescrit au titre de l'exemption de base du particulier pour l'année, par un ou plusieurs employeurs, conformément à l'article 8,
(ii) all amounts deducted as prescribed by or under a provincial pension plan on account of any like exemption for the year whether by one or more employers pursuant to that plan, and	**(ii)** les montants déduits, ainsi qu'il est prescrit, par ou selon un régime provincial de pensions, au titre de toute semblable exemption pour l'année, par un ou plusieurs employeurs en conformité avec ce régime;
(*b*) the individual's maximum contributory earnings for the year, minus the individual's salary and wages, if any, on which a base contribution has been made for the year and the amount, if any, that is determined in the prescribed manner to be the individual's salary and wages on which a contribution has been made for the year by the individual under a provincial pension plan.	***b*)** le maximum des gains cotisables du particulier pour l'année, moins ses traitement et salaire, s'il en est, sur lesquels a été versée une cotisation de base pour l'année et le montant, s'il en est, qui est déterminé de la manière prescrite comme étant ses traitement et salaire sur lesquels a été versée une cotisation pour l'année par lui en vertu d'un régime provincial de pensions.
(emphasis added)	(soulignement ajouté)

[25] Section 13 of the CPP provides that "[t]he amount of the contributory self-employed earnings of a person for a year is the amount of the self-employed earnings" subject to certain exceptions, none of which is applicable in this case. Section 14 of the CPP provides, in part, that:

14 The amount of the self-employed earnings of a person for a year is the aggregate of

(*a*) an amount equal to

(i) his income for the year from all businesses, other than a business more than fifty per cent of the gross revenue of which consisted of rent from land or buildings, carried on by him,

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(ii) all losses sustained by him in the year in carrying on those businesses,

as such income and losses are computed under the Income Tax Act, except any such income or losses from the performance of services described in paragraph 7(1)(d) that has been included in pensionable employment by a regulation made under subsection 7(1) or by a regulation made under a provincial pension plan,

…

(emphasis added)

14 Le montant des gains provenant du travail qu'une personne exécute pour son propre compte, pour une année, est l'ensemble des montants suivants :

a) un montant égal à :

(i) son revenu, pour l'année, provenant de toutes les entreprises, autres qu'une entreprise dont plus de cinquante pour cent du revenu brut se compose de loyers de terrains ou bâtiments, qu'elle exploite,

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(ii) toutes les pertes subies par elle pendant l'année dans l'exploitation de ces entreprises,

ainsi que ce revenu et ces pertes sont calculés en application de la Loi de l'impôt sur le revenu, à l'exception du revenu ou des pertes, provenant de l'exécution de services décrits à l'alinéa 7(1)d), qui ont été inclus dans l'emploi ouvrant droit à pension aux termes d'un règlement pris en vertu du paragraphe 7(1) ou par règlement pris en application d'un régime provincial de pensions;

[…]

(soulignement ajouté)

[26] In order for the income allocated to Mr. Freitas to be considered to be his self-employed earnings it would have to be income from a business that was carried on by him. The Tax Court Judge found in paragraph 12 of her reasons, after referring to the definition of "retiring allowance" in subsection 248(1) of the ITA, that:

> Since this definition specifically references retirement from an office or employment, the Appellant's income cannot be a retiring allowance. He was a partner at Deloitte & Touche LLP earning business or partnership income. He retired in 2007 as a partner of that firm. His income was not from an office or employment as referenced in the definition of retiring allowance. After his retirement, he continued to receive a portion of the partnership income pursuant to his partnership agreement. Since this income falls into the category of business or professional income pursuant to subsection 96(1.1) of the *ITA*, the Minister was correct in including it in the calculation of his self-employed earnings for the purposes of sections 13 and 14 of the *CPP*.

[27] Therefore, the Tax Court Judge found that the amount allocated to Mr. Freitas for 2008 by Deloitte & Touche LLP was included in his income under subsection 96(1.1) of the ITA. This subsection provides that:

(1.1) For the purposes of subsection 96(1) and sections 34.1, 34.2, 101, 103 and 249.1,	**(1.1)** Pour l'application du paragraphe (1), des articles 34.1, 34.2, 101, 103 et 249.1 :
(*a*) where the principal activity of a partnership is carrying on a business in Canada and its members have entered into an agreement to allocate a share of the income or loss of the partnership from any source or from sources in a particular place, as the case may be, to any taxpayer who at any time ceased to be a member of	***a*)** lorsque la principale activité d'une société de personnes consiste à exploiter une entreprise au Canada et que ses associés ont conclu une convention afin d'allouer une part du revenu ou de la perte de la société de personnes provenant d'une ou de plusieurs sources en un endroit donné soit à tout contribuable qui, à un moment donné, a cessé d'être un associé :
(i) the partnership, or	**(i)** de la société de personnes,

(ii) a partnership that at any time has ceased to exist or would, but for subsection 98(1), have ceased to exist, and either

(A) the members of that partnership, or

(B) the members of another partnership in which, immediately after that time, any of the members referred to in clause 96(1.1)(a)(ii)(A) became members

have agreed to make such an allocation

(ii) d'une société de personnes qui, à un moment donné, a cessé d'exister ou qui, sans le paragraphe 98(1), aurait cessé d'exister et dont ont conclu une telle convention d'allocation :

(A) ou bien les associés,

(B) ou bien les associés d'une autre société de personnes dont, immédiatement après ce moment, les associés mentionnés à la division (A) sont devenus associés,

or to the taxpayer's spouse, or common-law partner, estate or heirs or to any person referred to in subsection 96(1.3), the taxpayer, spouse, or common-law partner, estate, heirs or person, as the case may be, shall be deemed to be a member of the partnership; and

soit à son époux ou conjoint de fait, à sa succession ou à ses héritiers, ou à toute personne mentionnée au paragraphe (1.3), ce contribuable, son époux ou conjoint de fait, sa succession ou ses héritiers, ou cette personne, selon le cas, sont réputés être des associés de la société de personnes;

(*b*) all amounts each of which is an amount equal to the share of the income or loss referred to in this subsection allocated to a taxpayer from a partnership in respect of a particular fiscal period of the partnership shall, notwithstanding any other provision of this Act, be included in computing the taxpayer's income for the taxation year in which that fiscal period of the partnership ends.

***b*)** les montants dont chacun est égal à la part du revenu ou de la perte mentionnée au présent paragraphe et qu'alloue une société de personnes à un contribuable pour un exercice donné de la société de personnes doivent, malgré les autres dispositions de la présente loi, être inclus dans le calcul du revenu du contribuable pour son année d'imposition au cours de laquelle se termine cet exercice de la société de personnes.

(emphasis added)

(soulignement ajouté)

[28] It should be noted that this subsection only applies when income is allocated to a person who has ceased to be a member of the partnership. While the Crown argued that there were very few facts that were found by the Tax Court Judge and that there was no evidence of the involvement of Mr. Freitas with Deloitte & Touche LLP in 2008, the Crown did not challenge the finding of the Tax Court Judge that the income allocated to him in 2008 by Deloitte & Touche LLP was to be included in his income under subsection 96(1.1) of the ITA. Therefore, there is no basis to question or challenge the factual basis that would result in this provision applying, i.e. that Mr. Freitas had ceased to be a partner prior to the allocation of income in 2008. Since there was no dispute that Mr. Freitas had retired in 2007, it would also be a logical inference that he ceased to be a member of the partnership when he retired in 2007.

[29] A partnership, in the common law jurisdictions, is the relationship that subsists between persons carrying on a business in common with a view to profit (*Backman v. Her Majesty the Queen*, 2001 SCC 10, [2001] 1 S.C.R. 367 at para. 18; section 2 of the *Partnerships Act*, R.S.O. 1990, c. P.5). Since Mr. Freitas had ceased to be a member of the partnership in 2007, he ceased to carry on business in common with the other members of a partnership at that time. As a result he was not carrying on a business in common with other partners of Deloitte & Touche LLP at any time in 2008 for the purposes of the CPP.

[30] The deeming rule in subsection 96(1.1) of the ITA only provides that Mr. Freitas is deemed to be a member of the partnership for the purposes of subsection 96(1) and sections 34.1, 34.2, 101, 103, and 249.1 of the ITA. Similarly, subsection 96(1.6) of the ITA only deems him to be carrying on business for the purposes of subsection 96(2.3), sections 34.1 and 150 and

(subject to subsection 34.2(18)) section 34.2 of the ITA. Neither of these provisions deems him to be a member of the partnership or to be carrying on business for the purposes of the CPP. Since there is no other provision that would deem him to be a member of the partnership or to be carrying on business for the purposes of the CPP, he would not be a member of the partnership in 2008 for the purposes of the CPP and he would not be carrying on a business in 2008 for the purposes of section 14 of the CPP.

[31] The second part of section 14 of the CPP which requires that income is computed under the ITA, would also only apply to the business as described above, which would only be a business carried on by Mr. Freitas. This part of section 14 of the CPP does not determine what business is to be included under section 14 but only how the income is determined once it has been found that a particular business is one to which section 14 applies.

[32] The income that was allocated to Mr. Freitas by Deloitte & Touche LLP for 2008 was not self-employed earnings of Mr. Freitas for 2008 for the purposes of section 14 of the CPP as this income did not arise from a business that he was carrying on in 2008.

[33] I would allow the appeal on the basis that no CPP contribution was payable by Mr. Freitas in relation to the income that was allocated to him by Deloitte & Touche LLP for 2008 and send the matter back to the Minister for reconsideration and reassessment. However, as noted above, the Minister cannot make a reassessment under subsection 152(4.2) of the ITA that will result in an increase in the liability of Mr. Freitas. It should be noted that the Minister has the discretion to refund excess CPP contributions under paragraph 38(4)(*a*) of the CPP:

(4) If a person has paid, on account of the contributions required to be made by the person for a year in respect of the person's self-employed earnings, an amount in excess of the contributions, the Minister	**(4)** Lorsqu'une personne a payé, à valoir sur les cotisations qu'elle était tenue de verser pour une année à l'égard de ses gains provenant du travail qu'elle a exécuté pour son propre compte, un montant supérieur à ces cotisations, le ministre :
(*a*) may refund that part of the amount so paid in excess of the contributions on sending the notice of assessment of the contributions, without any application having been made for the refund; …	***a*)** peut rembourser la partie du montant ainsi payé en excédent des cotisations lors de l'envoi de l'avis d'évaluation de ces cotisations, sans avoir reçu de demande à cette fin; […]

[34] By letter dated February 22, 2018 the parties agreed that if this matter is decided on its merits and in Mr. Freitas' favour, the Crown would pay costs to Mr. Freitas in the amount of $3,500.

[35] As a result, I would allow the appeal and set aside the judgment of the Tax Court of Canada. I would render the judgment that the Tax Court of Canada should have rendered and allow the appeal of Mr. Freitas in relation to the reassessment dated December 22, 2015 and refer the matter back to the Minister for reconsideration and reassessment on the basis that no CPP contribution was payable by Mr. Freitas in relation to the income allocated to him by Deloitte & Touche LLP in 2008. I would also award Mr. Freitas costs in the amount of $3,500.

"Wyman W. Webb"
J.A.

"I agree
Mary J.L. Gleason J.A."

"I agree
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED MARCH 23, 2017, NO. 2016-905(IT)I

DOCKET:	A-130-17
STYLE OF CAUSE:	TERENCE O. FREITAS v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 1, 2018
REASONS FOR JUDGMENT BY:	WEBB J.A.
CONCURRED IN BY:	GLEASON J.A. LASKIN J.A.
DATED:	JUNE 4, 2018

APPEARANCES:

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