

Docket: 2014-332(IT)I

BETWEEN:

INFLECTION ANALYTICS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 1, 2015, at Ottawa, Canada.

Before: The Honourable Justice Patrick Boyle

Appearances:

Agents for the Appellant: Kent B. Smith
 David Somppi
 Mel Machado
 (PricewaterhouseCoopers LLP)

Counsel for the Respondent: Shane (Shubir) Aikat

JUDGMENT

In accordance with the reasons delivered orally at the hearing (a copy of which is attached hereto), the appeal from the assessment made under the *Income Tax Act* with respect to the Appellant's 2011 taxation year is dismissed.

Signed at Ottawa, Canada, this 22nd day of May 2015.

“Patrick Boyle”

Boyle J.

BETWEEN:

INFLECTION ANALYTICS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

EDITED VERSION OF TRANSCRIPT
OF ORAL REASONS FOR JUDGMENT

Let the attached edited transcript of the Reasons for Judgment delivered orally from the Bench at Ottawa, Canada on April 1, 2015 be filed. I have edited the transcript (certified by the Court Reporter) for style, clarity and to make minor corrections only. I did not make any substantive changes.

Signed at Ottawa, Canada this 22nd day of May 2015.

“Patrick Boyle”

Boyle J.

Citation: 2015 TCC 129

Date: 20150522

Docket: 2014-332(IT)I

BETWEEN:

INFLECTION ANALYTICS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Appeal heard and decision rendered orally from the Bench
on April 1, 2015 at Ottawa, Canada.)

Boyle J.

[1] In the assumptions set out in the reply, the Appellant is described as a software company dedicated to leveraging research and market microstructure and computing technologies toward the development of end-to-end fund management and trading solutions that allows asset managers to focus on their global portfolio strategies.

[2] In 2007, the Appellant paid fees to purchase or licence historical data, and paid subscription fees for real time data in respect of stocks and other securities trading data which they defined as the electronic data. Six providers/vendors are identified. The electronic data was required by the Appellant to simulate its projects in a real-life setting, and no additional equipment was purchased or leased by the Appellant to receive the electronic data. The electronic data was transmitted to the Appellant via the internet.

[3] The only issue before me this afternoon is whether the amounts paid to these vendors or suppliers constitute amounts that are expenditures of a current nature for the lease of equipment for the prosecution of SR and ED.

[4] There were no witnesses called by either side in this case. By agreement, two representative agreements were put in evidence before me. At the same time,

the Minister's amended reply was consented to be accepted by the Appellant and the parties agreed to two provisos relating to the representative contracts. Firstly, there was no vendor-provided device installed in the Appellant's premises with respect to either of these two vendors, and with respect to one of them, there was no vendor-provided software.

[5] Thomson Reuters' Equis agreement provides to the Appellant access to the vendor's QuoteCenter service via the internet site to obtain information contained in the service. The right to obtain information language is used consistently through the document.

[6] The second representative agreement is the NASDAQ E-signal/e-service agreement. That agreement consistently describes the licensing to the Appellant of the right to receive and use market data information from NASDAQ's vendor's service via its e-signal.com website. The addendum describing the underlying vendor's agreements uses similar language about market data information being made available to be retransmitted to the subscriber/Appellant.

[7] These two representative agreements appear to clearly be subscription service agreements to access websites to obtain information. The e-service agreement defines the term vendor's service relevant to the addendum as including certain equipment, software and communications. However, that is to be related to the transmission of the information to or by the subscriber Appellant.

[8] The parties agreed that no device had been provided by the vendor to the Appellant. Further, to the extent the Appellant argues that that extends to the vendor's own equipment used to get the data posted promptly to the site, I respectfully disagree that any rights are transferred in that from the vendor to the Appellant/subscriber under the terms of these agreements.

[9] The Appellant relied heavily on the decision of Justice Lamarre (as she was then) in *Datakinetics* where the issue was whether an appellant who was acquiring a right to access and use a mainframe computer for what it wished and who acquired a dedicated telecommunications line was leasing those two pieces of equipment. She was satisfied they did.

[10] In this case, however, as I have already concluded, these agreements are to provide information via a website to be used by the Appellant. They do not grant to the Appellant any rights in equipment of the vendor that can be used by the Appellant as it wishes, as was the case in *Datakinetics*.

[11] Similarly, the Appellant referenced the CRA bandwidth policy document, and I would note that that talks specifically about there being dedicated lines relating thereto. In any event, it is a CRA policy and not the law. I am required to decide this appeal in accordance with the law. To the extent I am either not fully understanding CRA's policy or not fully agreeing with it, I have already concluded that, as a matter of law, the two representative agreements in this appeal are providing the Appellant simply with the right to access information via the website for a fee, so the CRA bandwidth policy would not apply in any event.

[12] On that basis, I cannot conclude that, in law, they could be considered payments to the vendors for the lease of equipment. I therefore do not need to decide whether or not it was used for the prosecution of SR and ED in Canada, although I have no information or reason to doubt that it was.

[13] I will be signing a judgment dismissing the appeal for the reasons I have just given.

Signed at Ottawa, Canada, this 22nd day of May 2015.

“Patrick Boyle”

Boyle J.

CITATION: 2015 TCC 129
COURT FILE NO.: 2014-332(IT)I
STYLE OF CAUSE: INFLECTION ANALYTICS LTD. AND
HER MAJESTY THE QUEEN
PLACE OF HEARING: Ottawa, Canada
DATE OF HEARING: April 1, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle
DATE OF JUDGMENT: May 22, 2015

APPEARANCES:

Agents for the Appellant: Kent B. Smith
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