

Docket: 2014-4453(IT)I

BETWEEN:

RUEL ANDALUZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 22, 2015 and decision rendered orally from the
Bench on June 23, 2015, at Calgary, Alberta

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Ian Wiebe

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the Appellant's 2012 taxation year is dismissed.

Signed at Ottawa, Canada, this 26th day of June 2015.

“V.A. Miller”

V.A. Miller J.

Citation: 2015TCC165
Date: 20150626
Docket: 2014-4453(IT)I

BETWEEN:

RUEL ANDALUZ,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] The Appellant has appealed the reassessment of his 2012 taxation year wherein the Minister of National Revenue included the amounts of \$12,192 and \$18,933 in his income. The issues in this appeal are whether the Appellant failed to include in his income for the 2012 year, a non-eligible retiring allowance of \$12,192 and funds from a Registered Retirement Savings Plan (“RRSP”) in the amount of \$18,933.

[2] In 2012 the Appellant was an Information Technology Analyst with Precision Drilling Corporation (“Precision”). It appeared from his testimony that in 2012 there was a disagreement between him and Precision. The result was that the Appellant lost his employment with Precision. They negotiated a settlement whereby the Appellant received the non-eligible retiring allowance in question and the amounts he had contributed to the company pension plan.

[3] It was the Appellant’s position that he did not fail to report the retiring allowance. He stated that it was already included in the amount of employment income he reported in his income tax return. With respect to the \$18,933 which he received from his RRSP, the Appellant asserted that this was not additional income to him. Rather it was a financial loss because he had to withdraw it early and would not have it for future years when he would retire.

Non-Eligible Retiring Allowance

[4] The Appellant stated that he had been employed with Precision from 2007 to September 2012. In 2012, his annual salary was \$85,000 and he received \$7,083.33 each month. He provided calculations which alleged that his non-eligible retiring allowance had already been included in the employment income declared on his T4. His calculations were as follows:

Base Salary (\$7,083.33 x 8.5)	\$60,208.30
STIP (Company Bonus)	9,501.02
Other Taxable Benefits	361.18
Approximate Computed Income in 2012	\$70,070.50
Box 14 of T4 for 2012	\$82,634.23
Employment Income less Computed Income	\$12,563.73

[5] The problem with these calculations is that they are based on the premise that the Appellant received an annual salary of \$85,000 in 2012. Counsel for the Respondent asked the Appellant for something that would support the Appellant's evidence that his salary was \$85,000 in 2012. Counsel requested a copy of his contract with Precision or his bank statements for 2012 or a pay stub for 2012. The Appellant had no documentary evidence to support his premise.

[6] The Appellant submitted a print out from a computer which he stated was from Precision's computer. The print out was titled "Government Reportable Box Totals". It showed the amounts which were on the Appellant's T4 from Precision for 2012. This document (Exhibit A-1, page 2) and the T4 for 2012 (Exhibit A-1, page 3) do not support the Appellant's position.

[7] Exhibit A-1, page 2 clearly showed that the non-eligible retiring allowance was not included in the employment income. The total amount of "income tax deducted" was subdivided into amounts deducted from the regular income, amounts deducted from lump sum payments and amounts deducted from non-per. Whereas, the Appellant's employment income was not subdivided. It and the non-eligible retiring allowance were shown as separate amounts in this exhibit.

[8] The documentary evidence submitted by the Appellant demonstrated that the Minister's assessment was correct and that the Appellant failed to report the non-retiring allowance in his income tax return.

RRSP Amounts

[9] With respect to the amount of \$18,933 which the Appellant received from his RRSP, he stated that he didn't include it in his 2012 income tax return because taxes had been deducted from the amount and he thought that he didn't have to report it. He also said that this amount was not "additional income" to him but was a financial loss and he didn't have to include it in income.

[10] It is clear that whether or not the Appellant will incur a financial loss in the future because of the withdrawal of \$18,933 from his RRSP, the amount was income to him in 2012 and had to be included in his 2012 income. Paragraph 56(1)(h) and subsection 146(8) of the *ITA* are not ambiguous. They provide:

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

Registered retirement savings plan, etc.

(h) amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;

146(8) There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (as defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

[11] In conclusion, the Appellant received the amount of \$12,192 as a non-eligible retiring allowance and the amount of \$18,933 from his RRSP in 2012. He failed to report these amounts as income and he was properly assessed by the Minister. The appeal is dismissed.

Signed at Ottawa, Canada, this 26th day of June 2015.

“V.A. Miller”

V.A. Miller J.

CITATION: 2015TCC165
COURT FILE NO.: 2014-4453(IT)I
STYLE OF CAUSE: RUEL ANDALUZ AND HER MAJESTY
THE QUEEN
PLACE OF HEARING: Calgary, Alberta
DATE OF HEARING: June 22, 2015
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller
DATE OF JUDGMENT: June 26, 2015

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Ian Wiebe

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
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