

Citation: 2005TCC673
Date: 20051028
Docket: 2005-125(IT)I

BETWEEN:

SALVATORE CARINI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench at Toronto, Ontario, on August 8, 2005.)
(Edited as to style and syntax.)

Bowman, C.J.

[1] This is an appeal from an assessment from the 2003 taxation year. It is a rather sad case, I may say, and I have a great deal of sympathy for the Appellant, who was very ably represented by his daughter.

[2] The Appellant was injured in an automobile accident in 1994. He applied for a disability pension from the Canada Pension Plan in the year 1997. Canada Pension Plan was very slow in paying him or even agreeing that he was entitled to be paid. He sustained lawyer's fees of roughly \$11,000.

[3] Finally, in the year 2003, they agreed to pay him. They paid him an amount that was calculated on what he should have received in each year. For 1997 he received roughly \$8,000. For 1998 through to 2002, he received either \$10,000 or \$11,000 and in 2003 he received two months' payment of \$972.

[4] The result was that in the year 2003 he received \$65,448.44. The unfortunate thing about the case was that while he was waiting during these seven years to get paid the Canada Pension Plan, he had to withdraw money from his Registered Retirement Savings Plan, and of course, he was taxable on that amount.

[5] The Minister of National Revenue, I think, tried to alleviate to some degree the harshness of this result of taxing him all in 2003, the year in which he received it. I will read from Exhibit R-2, which says:

As stated on your Notice of Assessment, it was determined that this special tax calculation was to your benefit as follows:

- your 2003 income was reduced by the amount of the payment that applies to previous years (\$63,502).
- the tax was calculated on this amount as if you had received the payments in the years to which they apply - 1997, 1998, 1999, 2000, 2001, and 2002. (See special tax calculation sheet attached for your reference, as requested).
- the additional tax calculated of \$10,426.22 (\$7,473.54 Federal \$2,952.68 Provincial) was then added to your 2003 total payable.

[7] Now, the amount that was taxable for each year, that was attributed to each year, included, of course, the amount that was taken out of his RRSP, with the result that his total tax payable for the year 2003 was really the tax that would have been payable for the years 1997 to 2002. This came to a total of federal and provincial tax of \$10,426.22.

[8] As I stated in the beginning of this case, this court is aware of the seeming unfairness, but I have no power to do anything other than confirm the assessment, because it is legally correct.

[9] What I do recommend is that the Minister of National Revenue consider two things. One, giving some relief to the taxpayer under the fairness package, and two, working out with the taxpayer a reasonable period of time in which to pay the amount owing, which comes to about \$10,000 right now.

[10] I have no power to direct him to do this but I would think that the Minister could also consider a waiver of the interest that would be applicable over whatever reasonable period of time is given to pay the tax.

[11] These are things that are within the discretion of the Minister. They are not within this court's power. All that I can do is dismiss the appeal with recommendations that the Minister consider giving the taxpayer the relief that I suggest.

Signed at Ottawa, Canada, this 28th day of October 2005.

"D.G.H. Bowman"

Bowman, C.J.

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COURT FILE NO.: 2005-125(IT)I

STYLE OF CAUSE: Salvatore Carini and
Her Majesty The Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 8, 2005

REASONS FOR JUDGMENT BY: The Honourable D.G.H. Bowman
Chief Justice

DATE OF ORAL REASONS
FOR JUDGMENT: October 28, 2005

APPEARANCES:

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