

Docket: 2007-2510(IT)I

BETWEEN:

HORTENSE GRAVEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard October 3, 2007, at Québec, Quebec
Before: The Honourable Justice Alain Tardif

Appearances

Agent for the Appellant: Jean-Marc Samson

Counsel for the Respondent: Christina Ham

JUDGMENT

The appeal from the assessments established under the *Income Tax Act* for the 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 taxation years is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 9th day of November 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 21st day of November 2007

Elizabeth Tan, Translator

Citation: 2007TCC646
Date: 20071109
Docket: 2007-2510(IT)I

BETWEEN:

HORTENSE GRAVEL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal for the 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005 taxation years.

[2] The issues set out in the Reply to the Notice of Appeal are:

[TRANSLATION]

Did the Appellant have the right to appeal from the assessments or re-assessments for the 1995 to 2004 taxation years?

Was the Minister justified in adding to the Appellant's pension amounts, for the 2005 taxation year, \$7,072 received (during the taxation year 2005) as US social security benefits?

Was the Minister justified in deducting from the Appellant's taxable income, for the 2005 taxation year, \$1,061 as an amount exempt from income tax because of a provision in a tax treaty?

[3] The assumptions of fact justifying the assessments are simple and were not challenged. They can be summarized as follows:

[TRANSLATION]

- (a) The Appellant was a resident of Canada throughout the 2005 taxation year;
- (b) In 2005, the Appellant received US social security benefits of US\$5,845 as indicated on *Form SSA-1099 – Social Security Benefit Statement* submitted by the Appellant with her income tax return for the taxation year 2005;
- (c) The US\$5,845 converted into Canadian dollars at the average annual rate of 1.211 (according to the Bank of Canada data) was \$7,072;
- (d) The US social security benefits were taxable in Canada as if they had been benefits received under the Canada Pension Plan;
- (e) Moreover, a 15% deduction in the US social security benefits included as income could have been granted in the calculation of taxable income;
- (f) The Appellant did not include the \$7,072 in US social security benefits in her income for the 2005 taxation year and did not ask for a deduction for it;
- (g) As a result, the \$7,072 the Appellant received in US social security benefits during the 2005 taxation year was added to her pension income for that year;
- (h) In addition, \$1,061 representing 15% of the US social security benefits the Appellant received during the 2005 taxation year was granted as a deduction in the calculation of her taxable income for that year.

[4] The Appellant was represented by her spouse, who read a well-prepared text he had written; he attached many exhibits and documents to his text.

[5] On a number of occasions, the Appellant stated that there was discrimination and her case had not been handled fairly.

[6] A Canadian citizen, the Appellant lived and worked in the US for a long time. She owns a residence there and goes there six months a year.

[7] Having worked in the US for many years, she contributed to a pension plan and acquired rights. She always added the equivalent of the amount received from the US pension plan in Canadian dollars to her annual income tax return, filed in Canada.

[8] After reading the tax treaty between the US and Canada, she decided that the amounts received under the US pension plan were not taxable in Canada.

[9] In support of her claims, she refers to Article XVIII, Pensions and Annuities, of the 1980 tax treaty between Canada and the United States of America ("Treaty"), particularly paragraphs 1, 3 and 5, which state:

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, but the amount of any such pension that would be excluded from taxable income in the first-mentioned State if the recipient were a resident thereof shall be exempt from taxation in that other State

...

3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or other retirement arrangement, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or, except for the purposes of Article XIX (Government Service), any benefit referred to in paragraph 5.

...

5. Benefits under the social security legislation in a Contracting State (including tier 1 railroad retirement benefits but not including unemployment benefits) paid to a resident of the other Contracting State shall be taxable only in that other State, subject to the following conditions:
 - (a) a benefit under the social security legislation in the United States paid to a resident of Canada shall be taxable in Canada as though it were a benefit under the Canada Pension Plan, except that 15 per cent of the amount of the benefit shall be exempt from Canadian tax; and
 - (b) a benefit under the social security legislation in Canada paid to a resident of the United States shall be taxable in the United States as though it were a benefit under the Social Security Act, except that a type of benefit that is

not subject to Canadian tax when paid to residents of Canada shall be exempt from United States tax.

[10] Claiming to have unjustly paid significant amounts in taxes, the Appellant is claiming a reimbursement for the 1995 to 2004 taxation years, inclusively, plus interest and certain fees involved in preparing her case.

[11] She also asks the court to issue an order directing the Customs and Revenue Agency to consider the amounts of her US pension as tax-free in future years.

[12] The Respondent, on the other hand, claims that the case should focus only on the 2005 taxation year.

[13] First, the application regarding the 1995 to 2004 taxation years, inclusively, must be addressed. The Tax Court of Canada's jurisdiction is limited to assessments that have been subject to a notice of objection after being established.

[14] The facts are not being questioned in any way. The basis for the Appellant's appeal is her interpretation of the tax treaty between Canada and the US.

[15] I do not have jurisdiction for these years, under sections 165 and 169 of the *Income Tax Act* ("Act").

[16] At any rate, the judgment by this Court only refers to the assessment under appeal. The question of interest is also a subject over which this Court does not have jurisdiction. Interest is dependent on the assessment and its date; the assessment therefore has a direct effect on interest. However, this Court does not have the power to vacate interest on an assessment that is affirmed in whole or in part.

[17] The Appellant's interpretation does not correspond to the wording that is actually very clear.

[18] It is possible that for some reason income from US pensions is not taxed in the US. In that case, and only in that case, it would also be tax exempt in Canada.

[19] What is exempt in the US is also exempt in Canada; what is not exempt in the US is not exempt in Canada. In this case, the amount in question (the US pension) is not exempt in the US.

[20] Under paragraph 3 of Article XVIII of the 1980 tax treaty between Canada and the United States of America, the term "pension" includes any payment under an agreement regarding retirement pensions or other pensions, but does not include the benefits set out at paragraph 5.

[21] The benefits paid under US social security legislation are taxable in Canada as if they were benefits received under the Canada Pension Plan, except that 15% of the amount of the benefits is also exempt from Canadian tax.

[22] The Court's jurisdiction is limited to analyzing the case according to the evidence available and deciding whether the assessment was established in accordance with the provisions of the Act, in which case the assessment is merely confirmed; if not, the assessment is vacated or amended. It is clear that the Tax Court of Canada does not have the jurisdiction to order the Canada Customs and Revenue Agency to handle income in a particular way for any year other than the one it is given.

[23] In this case, the assessment was completely valid and in accordance with the provisions of the Act. I must therefore dismiss the Appellant's appeal for 2005. As for the other years, the Court does not have jurisdiction to handle them.

[24] From this text, it is easy to understand that the Appellant's applications are inadmissible. Moreover, the Court's only jurisdiction is to decide whether the assessment at the base of this appeal is valid under the provisions of the Act.

Signed at Ottawa, Canada, this 9th day of November 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 21st day of November 2007

Elizabeth Tan, Translator

CITATION: 2007TCC646

COURT FILE NO.: 2007-2510(IT)I

STYLE OF CAUSE: HORTENSE GRAVEL AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Québec, Quebec

DATE OF HEARING: October 3, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: November 9, 2007

APPEARANCES:

Agent for the Appellant: Jean-Marc Samson

Counsel for the Respondent: Christina Ham

COUNSEL OF RECORD:

For the Appellant:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada