

Docket: 2011-2975(IT)I

BETWEEN:

HELLMUT SCHMIDT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 19, 2012, at Calgary, Alberta

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Robert A. Neilson

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2009 year is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that:

- a) The Appellant's investment income is reduced by \$2,765.81; and,
- b) The capital gain reported by the Appellant is reduced by \$469.84.

In all other respects the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 30th day of April 2012.

“V.A. Miller”

V.A. Miller J.

Citation: 2012TCC140
Date: 20120430
Docket: 2011-2975(IT)I

BETWEEN:

HELLMUT SCHMIDT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller J.

[1] Hellmut Schmidt appeals the reassessment of his 2009 taxation year. The issue concerns the tax treatment of certain investment income received by the Appellant from RBC Dominion Securities Inc. (“RBC Dominion”).

[2] It is the Appellant’s position that the investment income consists of income, taxable capital gains and a return of capital.

[3] It is the Respondent’s position that the entire investment income received by the Appellant from RBC Dominion is income.

[4] The Appellant and his spouse were joint owners in various sources of investment income. Sixty-four percent of the joint income was reported by the Appellant and 36% was reported by his spouse.

[5] When he filed his income tax return for 2009, the Appellant included a T5 from RBC Dominion which indicated that he and his spouse had received foreign income of US\$17,984 and foreign tax of US\$2,697 was paid. The foreign income converted to \$20,537.73 in Canadian dollars and hereafter, all amounts that I refer to will be in Canadian dollars.

[6] According to the Summary of Investment Income and Expenses for 2009 issued to the Appellant by RBC Dominion, the Appellant held 23,000 units of DNP Select Income Fund Inc. (“DNP”) and 100 common shares of Visa Inc. This summary indicated that the investment income paid to the Appellant consisted of dividends from DNP of \$20,487.48 and from Visa of \$50.25.

[7] The Appellant searched the internet and found that DNP had not only distributed investment income in 2009 but had also distributed Long-Term Capital Gains in January 2009 and a Return of Capital in February to December 2009. Prior to filing his income tax return, the Appellant wrote to RBC Dominion to request a corrected T5 or a Form 1099-Div which included the capital gains and return of capital. He did not receive a response.

[8] Using the distributions per share which were reported by DNP on the internet, the Appellant and his spouse reported only \$12,854.93 of the investment income with the Appellant reporting \$8,226.94 (64%) of the income and his spouse reporting \$4,627.99 (36%).

[9] The Appellant calculated that \$6,948.67 of the investment income was a return of capital and neither he nor his spouse reported it. He also calculated that \$734.13 of the investment income was a capital gain and this amount was reported by him and his spouse in the ratio 64/36.

[10] I cannot agree with the Appellant’s position. He has not presented any evidence that would allow me to conclude that the type of distributions made by DNP flowed through to him. None of the amounts received by the Appellant resulted from the sale of any of his units in DNP.

[11] On reassessment, the Minister included the entire amount of \$7682.80 (\$6,948.67 + \$734.13) in the Appellant’s income. In the Reply to Notice of Appeal, the Minister conceded that the investment income was owned jointly by the Appellant and his spouse in the ratio 64/36 and that he failed to delete the capital gain which the Appellant had reported. Therefore the appeal is allowed and the matter is referred back to the Minister for reconsideration and reassessment on the basis that:

- a) The Appellant’s investment income is reduced by \$2,765.81; and,
- b) The capital gain reported by the Appellant is reduced by \$469.84

[12] In all other respects the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 30th day of April 2012.

“V.A. Miller”

V.A. Miller J.

CITATION: 2012TCC140

COURT FILE NO.: 2011-2975(IT)I

STYLE OF CAUSE: HELLMUT SCHMIDT AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: April 19, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: April 30, 2012

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Robert A. Neilson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada