

Docket: 2006-3172(IT)I

BETWEEN:

JAMES DONNELLY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 6, 2007, at Ottawa, Canada.

Before: The Honourable Justice T. O'Connor

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: April Tate

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2004 taxation year is dismissed as set forth in the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of June 2007.

"T. O'Connor"

O'Connor J.

Citation: 2007TCC363
Date: 20070618
Docket: 2006-3172(IT)I

BETWEEN:

JAMES DONNELLY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

O'Connor J.

[1] The issue in this appeal is revealed in the following extracts from the Reply to the Notice of Appeal:

4. In computing income for the 2004 taxation year, the Appellant:
 - a) reported foreign pension income of \$29,682.49 (\$22,806.36 U.S. x conversion rate of \$1.3015);
 - b) claimed 'additional' deductions of 15% of the U.S. source income (the U.S. amount of \$22,806.36) of \$3,420.95.

...

6. By Notice of Reassessment dated October 18, 2005, the Minister reassessed the Appellant's income tax liability for the 2004 taxation year and disallowed the 'additional' deductions of \$3,420.95 for the 2004 taxation year.

...

9. In so assessing and confirming the Appellant's income tax liability for the 2004 taxation year the Minister relied on the following assumptions of fact:
- a) at all relevant times during the 2004 taxation year, the Appellant was a Canadian resident for income tax purposes;
 - b) the 'other pension' of \$29,682.49 was made up entirely of United States source income (United States Pension Benefits) converted to Canadian funds;
 - c) tax was not withheld from the 'other pension' income referred to in 9(b);
 - d) the amount of \$3,420.95 referred to in paragraph 6 herein represents 15% of the total of the U.S. source pension (\$22,806.36) income prior to conversion to Canadian funds;

[2] The principal applicable provisions are subparagraph 56(1)(a)(i) of the *Income Tax Act* ("Act") and paragraph 5 of Article XVIII of the Canada-US Income Tax Convention (1980) ("Convention"). They read in part as follows:

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

(a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit ...

...

5. Benefits under the social security legislation in a Contracting State ... 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

[3] The Appellant feels that he is entitled to the 15% deduction provided in said paragraph 5 of Article XVIII of the Convention. He submitted a letter from Canada Revenue Agency dated January 21, 2005 to a co-worker of his which indicated that she was entitled to deduct the 15% of “your social security benefits” as exempt income. The Appellant also stated that other co-workers had similarly been given a 15% deduction. The Appellant also referred to lines 115 and 256 of the 2004 Income Tax Guide ("Guide") which indicate that the 15% deduction can be taken in certain situations. Because of these submissions of the Appellant I have conducted a considerable amount of research to ensure the correct treatment of this appeal.

[4] Regrettably for the Appellant that research indicates that the 15% deduction provided for by paragraph 5 of Article XVIII of the Convention applies only to benefits under social security legislation in the United States paid to a resident of Canada. The 15% deduction is not applicable to private pensions paid to a resident of Canada by the United States source. Lines 115 and 256 of the Guide might lead one to believe that the deduction could apply to all foreign pensions, but those lines are general in nature and are not conclusive. In any event, the Guide is not the law.

[5] This issue has already been specifically dealt with in two decisions of this Court. In *Tingley v. R.*, [1999]1 C.T.C. 2177, Hamlyn T.C.J. said:

9 In reviewing the appellant's tax liability, the Minister concluded that there was no deduction available under Subsection 110(1) of the Act in relation to her foreign pension income and that the complete pension income was to be included in calculating the appellant's taxable income in Section 3 of the Act, pursuant to Clause 56(1)(a)(i)(C.1) of the Act.

...

11 In terms of analysis of the deduction claim and the conclusion, the benefit received by the appellant from the U.S. source was not a benefit under Social Security legislation.

12 The benefit received, that is, the pension benefit, was fully taxable pursuant to Article 18 of the Canada/U.S. Tax Convention, and that's specifically Article 5 therein.

13 The pension income, I've concluded, is a pension benefit within the meaning of Subsection 56(1)(a)(i) of the Income Tax Act, and the appellant is not entitled to a deduction of income pursuant to Paragraph 110(1)(f)(i) of the Act. That is, it was not an amount exempt from taxable income in Canada because of a tax convention.

...

[6] In *Bedard v. R.*, [1999] 2 C.T.C. 2671 this Court came to the same conclusion as the *Tingley* case, namely that paragraph 5 of Article XVIII of the Convention applies only to benefits paid under social security legislation of the United States and not to private pensions. The fact that other employees may have been treated differently is not a ground for saying that the law should not be applied to the Appellant in this case. Moreover, although the amount of the deduction/exemption was 50% in the cases cited, that is not material because the law applicable in those cases stipulated a rate of 50%. That rate was later changed to 15% which was the percentage applicable in the 2004 taxation year.

[7] The conclusion in the *Bedard* and *Tingley* cases represent the current state of the law and as applicable to the 2004 taxation year. Other cases involving Article XVIII of the Convention have followed the logic that pensions fall under the rules established at paragraphs 1 through 3 of said Article XVIII. The deduction for 15% is not applicable to pensions and is only applicable to social security benefits.

[8] For all these reasons, the appeal is dismissed.

Signed at Ottawa, Canada this 18th day of June 2007.

"T. O'Connor"

O'Connor J.

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APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: April Tate

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Name:

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