Docket: 2006-2565(IT)I

BETWEEN:

GUY BISSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on March 7, 2007, at Sherbrooke, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Agent for the Appellant: Fernand R. Plante

Counsel for the Respondent: Stéphanie Côté

JUDGMENT

The appeal from the assessment under the *Income Tax Act* for the 2002 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 20th day of June 2007.

"Alain Tardif"

Tardif J.

Translation certified true
on this 9th day of July 2007
Gibson Boyd, Translator

Citation: 2007TCC178
Date: 20070620
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Appellant,

and

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REASONS FOR JUDGMENT

Tardif J.

[1] This is an appeal under the *Income Tax Act* (the "Act") pertaining to the 2002 taxation year.

[2] The issue is whether, for the year at issue, the Minister of National Revenue (the "Minister") was justified in taking into account downward adjustments on debt forgiveness in the amounts of $14,898 (1995), and $12,000 (1996), in determining the capital cost of the building when the property was sold in 2002.

[3] The Appellant, represented at the hearing by his accountant, essentially argued that he should not be penalized given that the T2154 form was not available for the 1995 taxation year and might not have been available for 1996.

[4] Mr. Wash explained and described the approach that must be followed by any taxpayer when he or she profits or benefits from a debt settlement. The exact process is set out at subsection 80(2) of the Act, which reads as follows:

(2) Application of debt forgiveness rules.

For the purposes of this section:

(a) an obligation issued by a debtor is settled at any time where the obligation is settled or extinguished at that time (otherwise than by way of a bequest or inheritance or as consideration for the issue of a share described in paragraph (b) of the definition "excluded security" in subsection 80(1));

(b) an amount of interest payable by a debtor in respect of an obligation is issued by the debtor shall be deemed to be an obligation issued by the debtor that

(*i*) has a principal amount, and

(*ii*) was issued by the debtor for an amount,

equal to the portion of the amount of such interest that was deductible or would, but for subsection 18(2) or 18(3.1) or section 21, have been deductible in computing the debtor's income for a taxation year;

(c) subsections 80(3) to 80(5) and 80(7) to 80(13) apply in numerical order to the forgiven amount in respect of a commercial obligation;

. . .

[5] The evidence clearly demonstrated, despite the absence of the form, that the Appellant had evidently made the choice set out in subsection 80(5) of the Act, which reads as follows:

(5) Reductions with respect to depreciable property

Where a commercial obligation issued by a debtor is settled at any time, the remaining unapplied portion of the forgiven amount at that time in respect of the obligation shall be applied, in such manner as is designated by the debtor in a prescribed form filed with the debtor's return of income under this Part for the taxation year that includes that time, to reduce immediately after that time the following amounts:

(*a*) the capital cost to the debtor of a depreciable property that is owned by the debtor immediately after that time; and;

(*b*) the undepreciated capital cost to the debtor of depreciable property of a prescribed class immediately after that time.

[6] Mr. Wash explained that there was no possible doubt that the Appellant had not been penalized due to the unavailability of the form T2154.

[7] Indeed, the Appellant was not able to establish that he had been penalized for the 1995 and 1996 taxation years, his claims indicating that he was penalized for the 2002 taxation year.

[8] The agent for the Appellant presented three arguments:

- first, that the absence of the form had penalized the Appellant;
- second, that the auditor or the person in charge of the file should have contacted the Appellant to explain to him the provisions of the Act;
- finally, he argued half-heartedly that the person in charge of the Appellant's file in 1995 and 1996 had perhaps not acted correctly in handling the Appellant's file.

[9] Yet, the Appellant wrote the following in paragraph 5 of his appeal:

[TRANSLATION]

> 4.1. On October 28, 1995, I finalized an agreement with Groupe Immobilier Grilli Inc., creditor for this property, this agreement resulted in a gain from debt forgiveness of $14,898;
>
> 4.2. On April 17, 1996, I finalized an agreement with Les Services Financiers Holdico Inc., creditor for this property, this agreement resulted in a gain from debt forgiveness of $12,000;
>
> 4.3. On September 29, 1999, the Honourable Justice P.R. Dussault of the Tax Court of Canada dismissed my appeals of income tax assessments from 1993, 1994 and 1995 (Docket 98-1830(IT)I);
>
> This judgment confirmed the Minster of Revenue's refusal to grant me the deduction of rental losses and carrying charges totalling $53,444 for these 3 years;
>
> Since then, the Supreme Court of Canada has overruled the case law applicable to business losses, but unfortunately it was too late for me;

5. In preparing my tax returns for 1995 and 1996, my accountant of the time deducted the amounts of $14,898 $ and $12,000 in the capital cost allowance tables as set out in the rules applicable to debt forgiveness; however I never made the choice to that effect, as set out at subsection 80(5) ITA;

[10] He continued in paragraphs 6, 7, 8 and 9:

[TRANSLATION]

6. My income tax returns for 1995 and 1996 were examined by the auditors of Revenue Canada, who did not ask me to make the choice set out at subsection 80(5) of the ITA;

7. In 1999, during the proceedings before the Tax Court of Canada, the absence of these choices was not mentioned;

8. On January 29, 2002, I sold this property for $115,000 and the sales fees came to $2,646;

9. When preparing my 2002 income tax return, I claimed a loss on the sale of this property;

[11] He concluded his Notice of Appeal as follows:

[TRANSLATION]

The rules applicable to debt forgiveness are very precise and subsection 80(5) sets out that a prescribed form, namely the T2154, must be completed if one wishes that a gain from debt forgiveness be deducted from the capital cost (and from the UCC) of a good rather than included in the income from the year of the gain.

Given the absence of such a choice, the amounts of $14,898 and $12,000 were taxable in 1995 and 1996 respectively.

The reductions of capital cost (and of the UCC) of $14,898 and $12,000 were not valid and should not be included in the calculation of the final loss resulting from the sale of the property, which should be $36,110 rather than $9,212 as assessed.

[12] The situation is quite simple. In 2002, the Appellant realized that he should have made another choice as to the treatment of the gains from debt forgiveness of $14,898 for 1995 and $12,000 for 1996.

[13] In 1995 and 1996, a true choice was made, although it was not accompanied by the appropriate form – unavailable at the time – while the Appellant had the advice and support of an accountant. Can this choice be brushed aside under the pretext that it was perhaps not the best choice and, in any case, the appropriate form was not available to express such a choice?

[13] The answer is no. The assessment was based on the facts submitted. In 1995 and 1996, even if the form T2154 was not available, it was possible to communicate one's decision in respect of one's intention concerning gains from debt forgiveness. This choice was clearly expressed and cannot be called back into question in 2002, under the pretext that the appropriate forms did not exist. The debate over the date when said forms became available is of no interest. The real issue is essentially the clarity of the intention or the coherence of the intention, which, in this case, is neither confusing nor ambiguous. The Appellant would basically like to take advantage of the confusion as to the existence and the availability of form T2154.

[14] I have read the letter from the agent for the Appellant of March 2, 2007, and the reply of March 9, 2007. The content of these two letters has no bearing on by decision.

[15] Accordingly, the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 20th day of June 2007.

"Alain Tardif"

Tardif J.

Translation certified true
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STYLE OF CAUSE:	GUY BISSON AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Sherbrooke, Quebec
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REASONS FOR JUDGMENT BY:	The Honourable Justice Alain Tardif
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APPEARANCES:

Agent for the Appellant:	Fernand R. Plante
Counsel for the Respondent:	Stéphanie Côté

COUNSEL OF RECORD:

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