

Citation: 2007TCC611
Date: 20071107
Docket: 2006-3176(IT)I

BETWEEN:

ELAINE NEATHLY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on August 13, 2007 at Toronto, Ontario)

V.A. Miller, J.

[1] These appeals are from income tax assessments for the Appellant's 1994, 1998, 1999, 2000, 2001 and 2002 taxation years.

[2] The appeals for the 1994 and 1998 taxation years are not properly before the Court as the Appellant did not file Notices of Objection with the Minister of National Revenue. As well, the evidence of Tracey Cooper, a litigation officer with the Canada Revenue Agency ("CRA"), has established that the last day to file an application for an extension of time to file a Notice of Objection for the 1994 taxation year was February 11, 1998 and for the 1998 taxation year was May 4, 2000. As a result, the appeals for the 1994 and 1998 taxation years are quashed.

[3] The Appellant submitted exhibits to show that she made a fairness request to the Minister of National Revenue on February 22, 2000 and February 27, 2001. Both requests for adjustments or waiver of penalties and interest were refused by CRA. The Appellant has asked this Court to review these decisions of the Minister.

[4] The case law confirms that the Tax Court of Canada does not have jurisdiction to review the Minister's exercise of discretion under subsection 220(3.1) of the *Income Tax Act* (*Adamson v. R.*, [2002] 2 C.T.C. 2469 at paragraph 14.)

[5] The Appellant has been assessed a substantial amount in interest and penalties. She has stated that for the years under appeal the amount of taxes, interest and penalties still outstanding is approximately \$32,000 in spite of the amount of \$17,000 being garnisheed.

[6] The Appellant is the author of her own misfortune. She has not filed a tax return on time in 1994, 1998, 1999, 2000, 2001 and 2002. In fact, for each of these years, the Appellant was arbitrarily assessed pursuant to subsection 152(7) of the *Income Tax Act* ("Act"). It was only after she received the Notices of Assessment dated November 10, 2003 for each of the 1999, 2000, 2001 and 2002 taxation years that the Appellant filed her returns of income for these years on December 14, 2005.

[7] Subsections 161(1) and 162(1) are clear. If a taxpayer fails to file his/her income tax return beyond the due date (for the Appellant that date is April 30 of a year) and there is a balance of taxes owing, then interest shall be imposed on that balance pursuant to subsection 161(1) and late filing penalties shall be imposed on that balance pursuant to subsection 162(1). As well, in the Appellant's situation, the penalties were doubled in accordance with subsection 162(2) as she had repeatedly failed to file her income tax returns in a timely manner.

[8] The Appellant's explanation for the late filing of her returns was that it was "civil disobedience" as she insisted that the CRA lost her 1994 income tax return. I have found the Appellant's papers are in disarray and she is disorganized. The cost of this disorganization was the imposition of interest and penalties.

[9] The Respondent has conceded that the Appellant was entitled to a deduction from income for RRSP contributions in the amount of \$12,050 for her 2000 taxation year. This amount consists of the following contributions:

		Serial #
Canada Life Assurance Company	\$2,625	402261
Canada Life Assurance Company	4,425	402262

Trust (Investment Planner Plus) 5,000 110-241-6-9

[10] The Appellant insisted that in 2000 she received a retiring allowance in the amount of \$14,000 from St. Elizabeth Health Care and that this amount was rolled over into a retirement savings plan. She produced an official tax receipt (#014659308) from Canada Trust. This receipt showed that the amount of \$14,000 was contributed to a TD Canada Trust Retirement Savings Plan for the 2000 year. I have asked the Respondent's counsel for his submissions on this exhibit. He contended that the RRSP contributions of \$12,050 were contained within the RRSP contribution of \$14,000. I disagree. The amounts are separate as shown by the information on the receipts for the contributions. I find that the retiring allowance was rolled over to a retirement savings plan.

[11] At the time of giving oral reasons for judgment, I allowed the Appellant a deduction from income for RRSP contributions in the amount of \$22,537 in respect of her 2000 taxation year. This amount included the rollover of the retiring allowance in the amount of \$14,000 plus the amount of \$12,050 conceded by the Respondent minus the amount of \$3,513 that had already been allowed as a deduction for the 2000 taxation year.

[12] Prior to signing the Judgment in this appeal, it was brought to my attention by counsel for the Respondent that the Appellant had a maximum RRSP deduction limit of \$3,513 in the 2000 taxation year. This RRSP deduction limit was before the Court in paragraph 8(1) of the Reply to Notice of Appeal and also as Exhibit "A", attached to the Reply to the Notice of Appeal. As I did not consider myself to be *functus*, I altered my decision and allowed the Appellant to deduct \$17,513 for RRSP contributions in the 2000 taxation year. This amount consisted of the retiring allowance of \$14,000 plus the amount of \$3,513. In all other respects the appeal was dismissed.

Signed at Ottawa, Canada this 7th day of November, 2007.

"V.A. Miller"

V.A. Miller, J.

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COURT FILE NO.: 2006-3176(IT)I

STYLE OF CAUSE: Elaine Neathly v. The Queen

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: August 13, 2007

ORAL REASONS
FOR JUDGEMENT BY: The Honourable Justice Valerie Miller

DATE OF ORAL REASONS
FOR JUDGMENT: November 7, 2007

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Brandon Siegal

COUNSEL OF RECORD:

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Firm:

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