Docket: 2009-930(IT)I

BETWEEN:

KERRY SUFFOLK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 1, 2010, at Vancouver, British Columbia

By: The Honourable Justice Brent Paris

Appearances:

Counsel for the Appellant:	Gavin Laird
Counsel for the Respondent:	Andrew Majawa

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2003 taxation year is dismissed.

Signed at Ottawa, Canada, this 3rd day of June, 2010.

"B.Paris"

Paris J.

Citation: 2010 TCC 295
Date: 20100603
Docket: 2009-930(IT)I

BETWEEN:

KERRY SUFFOLK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] This is an appeal from a reassessment of the Appellant's 2003 taxation year by which the Minister of National Revenue ("Minister") included $6,415 in her income as a benefit from employment. The reassessment relates to an amount the Appellant received from her employer at the time, Placer Dome Inc., to reimburse her for certain household items she purchased when she was transferred by Placer Dome from Sydney, Australia to Vancouver.

[2] The Appellant disputes the reassessment on two grounds. Firstly, she challenges the sufficiency of the notice of reassessment. Secondly, she argues that the reimbursement in issue did not give rise to any taxable benefit to her.

Background

[3] The Appellant is an Australian citizen and a Chartered Accountant. In 2002, the Australian mining company she was working for in Sydney was taken over that same year by Placer Dome. The Appellant accepted a job at Placer Dome's head office and moved with her spouse to Vancouver in April 2003.

[4] In 2006, Placer Dome was taken over by Barrick Gold Corporation ("Barrick"). The Appellant was offered a position with Barrick in Toronto but

chose not to stay on after the takeover. Her employment with Placer Dome therefore ended in the Spring of 2006.

First Issue: Sufficiency of the Notice of Reassessment

[5] The notice of reassessment in issue was dated April 27, 2007. The Appellant received it a few days later. The notice indicated an increase of $6,415 to her income for 2003, and a corresponding increase to federal tax payable. The notice provided the following explanation for the change:

> We have adjusted your return to correspond with the amount reported by Barrick Gold Corporation as per amended T4 information slip.

[6] The Appellant testified that she did not understand the basis of the reassessment from reading the notice, and did not understand that she was being taxed on a benefit from employment. She said she had never worked for Barrick and had not received any amended T4 slip for her 2003 taxation year.

[7] Soon after receiving the notice she contacted the Canada Revenue Agency ("CRA"). On May 14, 2007, the CRA sent her a copy of the amended T4 slip in her name issued by Barrick, which caused her more confusion.

[8] In late May 2007, she phoned the CRA and told the officer she spoke to that she was unaware of why she was issued the amended T4 slip. The officer said that he would look into the matter. The Appellant also told the officer that she "would try to contact Placer to seek additional answers".[1]

[9] In early August, a CRA officer left a message for the Appellant. The Appellant's spouse called the CRA on August 29, 2007 to follow up and was asked to provide an authorization from the Appellant for the CRA to discuss her tax affairs with him, which he did.

[10] On September 6, 2007, the CRA provided details of the reassessment to the Appellant's spouse. The Appellant said that it was only at this point that she understood that she had been reassessed to include the reimbursement from Placer Dome in 2003 in her income as a benefit from employment.

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[1] Exhibit A-1, Tab 4, page 2.

[11] By the time the Appellant received the explanation for the reassessment, the 90-day period for filing a notice of objection had expired, so she applied for and was granted an extension of time by the Minister to file a notice of objection. The Minister confirmed the reassessment in December 2008 and the Appellant appealed to this Court.

[12] The Respondent filed an affidavit sworn by Ken Lum, an auditor with the CRA. In early 2007, after Barrick had taken over Placer Dome, Mr. Lum had conducted an audit of Placer Dome's 2003 taxation year. As a result of the audit, he prepared amended T4 slips for a number of employees (including the Appellant) to include previously unreported taxable benefits in their income. Mr. Lum provided the amended slips to Barrick's director of human resources and gave him written instructions to send them to affected employees with an explanation of the adjustment to income. On the amended T4 slip for the Appellant prepared by the auditor, the employer was listed as "Barrick Gold Corporation, formerly Placer Dome Inc.".

[13] No evidence was provided to show whether Barrick had in fact sent the amended T4 slip to the Appellant.

Appellant's Position

[14] The Appellant's counsel contends that the notice of reassessment did not provide sufficient notice to the Appellant because it gave no indication that employment benefits were at issue. Furthermore, since Barrick Gold Corporation was not the Appellant's employer in 2003, the reference to an amended T4 information slip issued by Barrick was misleading. He says, therefore, that the notice was defective, and that without proper notice of the reassessment, no reassessment can be said to have occurred.

[15] Counsel maintains that notice was not "perfected" until September 7, 2007 which was outside the normal reassessment period provided for in subsection 152(4) of the *Income Tax Act* (the "*Act*") and the reassessment was, therefore, statute-barred. The Appellant relies on the decision of The Exchequer Court in *Scott v. The Minister of National Revenue*[2] wherein Thorson J. said:

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2 [1961] Ex. C.R. 120.

> I am accordingly of the opinion that the giving of notice of assessment is part of the fixation operation referred to as an assessment in the statute and that an assessment is not made until the Minister has completed his statutory duties as an assessor by giving the prescribed notice. See *Y.M.C.A. v. Halifax*, [1993] 1 D.L.R. 713. (Emphasis added)

[16] In counsel's view, the notion of "prescribed notice" would include a requirement to provide the basis for the reassessment. He says, therefore, that the failure of the notice in this case to refer to the employment benefits was not a minor error or defect, but "goes to the notice itself". He submits that, as a matter of procedural fairness, a taxpayer is entitled to know the reasons for the reassessment from the notice sent out by the Minister.

Analysis

[17] Contrary to the position taken by the Appellant, the Federal Court of Appeal in *Stephens v. The Queen*[3] has held that there is no prescribed form for a notice of assessment issued under the *Act*:

> Subsection 152(2) requires the Minister to "send a notice of assessment" to the taxpayer. Nowhere in the *Act* do we find prescriptions relating to the form of that notice. It follows, in our view, that the form of the notice does not matter and that the subsection merely requires that the notice be expressed in terms that will clearly make the taxpayer aware of the assessment made by the Minister. …

[18] The same conclusion was reached by the Exchequer Court in *Laurin v. The Minister of National Revenue*.[4] In that case, one of the objections raised by the taxpayer was that the notices of assessment did not set out the basic elements of the assessments, therefore, depriving him of information needed to dispute them. The Court referred to subsections 42(1), (2), (3) and (7) of the 1948 and 1952 *Income Tax Acts* which, for the purposes of this appeal, are substantially similar to subsections 152(1), (2), (3) and (8) of the present *Act*. These sections read as follows:

> 42(1) The Minister shall, with all due dispatch, examine each return of income and assess the tax for the taxation year and the interest and penalties, if any, payable.

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3 88 DTC 1170 at 1171.

4 60 DTC 1143.

46(2) After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

46(3) Liability for tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

…

46(7) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a re-assessment, be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this *Act* relating thereto.

152(1) The Minister shall, with all due dispatch, examine a taxpayer's return of income for a taxation year, assess the tax for the year, the interest and penalties, if any, payable and determine

(*a*) the amount of refund, if any, to which the taxpayer may be entitled by virtue of section 129, 131, 132 or 133 for the year; or

(*b*) the amount of tax, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 125.4(3), 125.5(3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year.

. . .

152(2) After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed.

152(3) Liability for the tax under this Part is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

...

152(8) An assessment shall, subject to being varied or vacated on an objection or appeal under this Part and subject to a reassessment, be deemed to be valid and binding notwithstanding any error, defect or omission in the assessment or in any proceeding under this *Act* relating thereto.

In light of the clear language of these sections, the Court in *Laurin* held that there was no provision in the *Act* which would compel the Minister to set out in detail the revision of the tax in the notice itself nor a provision which, should that procedure not be followed, would render the assessment void. At page 1145, the Court also held that “only fundamental and substantial errors in an assessment are sufficient to vitiate an assessment”.

[19] In *Riendeau v. The Queen,*[5] the Federal Court of Appeal confirmed that since "liability for tax is created by the *Income Tax Act,* not by a notice of assessment" and that "a taxpayer's liability to pay tax is just the same whether a notice of assessment is mistaken or is never sent at all".

[20] In assessing the taxpayer in *Riendeau*, the Minister had relied on a section of the *Act* that had been repealed. The Minister corrected the error in the notices of confirmation, relying on other provisions of the *Act* to support the assessments. The taxpayer brought an application in the Federal Court Trial Division for the determination of a question of law, arguing that the Minister could not confirm the assessments because the assessments were invalid and a nullity.

[21] After a careful review of the applicable case law, Cullen J. held that the Minister was entitled to confirm the assessments, and that the initial reliance on the repealed section was not fatal. In arriving at this conclusion, the Court referred both to the *Stephens* case (*supra*) and to *The Minister of National Revenue v. Minden*[6] where Thorson J. stated at page 1050:

> . . .In considering an appeal from an income tax assessment, the Court is concerned with the validity of the assessment, not the correctness of the reasons assigned by the Minister for making it. An assessment may be valid although the reason assigned by the Minister for mailing it may be erroneous. This has been abundantly established.

[22] The question of the notice required to be given by the Minister in assessing a taxpayer was also raised in *Leung v. Canada*.[7] The taxpayer had been assessed as a director of a corporation for the amounts of source deductions of income tax, employment insurance premiums and *Canada Pension Plan* contributions which the corporation had failed to withhold and remit. The notice of assessment set out an aggregate liability under the relevant statutes but did not identify the amounts owing under each statute, and the taxpayer argued that the assessment was, therefore, incomplete.

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5 91 DTC 5416 at paragraph 2.

6 62 DTC 1044 (Ex. Ct.).

7 [1994] 1 F.C. 482.

[23] This argument was accepted by the Tax Court of Canada, but later rejected on appeal to the Federal Court Trial Division. The Federal Court held that an overly formalistic approach to the notice of assessment should be avoided and that:

> It may be assumed that Parliament had a purpose in enacting subsections 152(3) and 152(8). That purpose, in my view, was to ensure that in the process of issuing millions of assessments yearly, many of these involving complex statutory provisions and equally complex calculations, technical accuracy or a peremptory level of disclosure, reference and source would not be imposed on the assessor. The notice of assessment is an administrative procedure and reliance on technical rules applicable to other processes to defeat it *ab initio* is not necessarily warranted.

[24] In my view, the notice in this case was sufficient to make the Appellant aware of the reassessment that had been made. It set out the amount of the increase to her income and to her tax payable and referred to an amended T4 information slip that the Appellant understood to relate to income from employment. While it was argued that the Appellant was confused by the reference to Barrick Gold Corporation as the issuer of the amended T4 slip, it appears to me that she understood the likely connection to her employment with Placer Dome. According to the evidence, she herself thought of contacting Placer Dome to investigate, although she did not follow through on this plan. To the extent that the notice of reassessment erroneously made reference to Barrick Gold Corporation as the Appellant's employer, I find that this was not a substantial or fundamental error. It was an error that was remedied by the curative provisions set out in subsections 152 (3) and (8) of the *Act*.

[25] In this case, the Appellant here was provided with a complete explanation for the reassessment within a reasonable period. Had she contacted Barrick as she had planned, she may have been able to obtain the reasons underlying the reassessment sooner. In any event, it appears that the CRA took all necessary steps to have Barrick inform the Appellant of the amended T4 slip, and later to provide this information to her after the notice was issued.

[26] Overall, I am satisfied that the notice of reassessment meets the requirements of the *Act*, and that sufficient notice of the reassessment was given to the Appellant prior to her 2003 year becoming statute-barred.

Second Issue: Did the Appellant Receive a Benefit?

[27] When the Appellant was transferred to Vancouver in 2003, Placer Dome paid certain amounts in relation to her move, including $6,415 to reimburse her for the purchase of the following household goods:

4-head Hi-Fi VCR	$264.97	
Hairdryer, shaver, deluxe grill, toaster, storeway grill	636.52	
Panasonic micro system, Sony , micro system	374.88	
Costco membership	53.50	
Power blender, kettle	196.80	
Clock radio	34.29	
Floor lamp, duvet & pillow	690.07	
TV, home theatre, coffee maker, microwave food processor, wok, digital video, Honeywell fan	3,295.53	
D-link router	80.10	
Panasonic 2.4 GHZ phone	236.49	
Iron	183.20	
2 table lamps, 1 floor lamp, light bulbs	395.35	
Total		**6,415.70**

[28] The Appellant testified that these items (except for the duvet, pillows and a wok) replaced items that she and her husband owned in Australia, but which would not work on the voltage supplied by the Canadian electrical system. Australia's household electrical system operates at 240 volts and 50 Hertz whereas Canada uses 110 volts and 60 Hertz.

[29] Prior to the move, the Appellant and her husband had been living in a three bedroom house which they had recently purchased in Sydney. When they moved, they put some of their furniture and household items, including their electrical goods, into storage. The Appellant stated that she had been told by a colleague at work that the electrical goods would not work in Canada. She replaced these items in Vancouver and was reimbursed for them by Placer Dome.

[30] The Appellant said she preferred to store rather than sell her Australian electrical goods because she had recently purchased them and she did not want to part with them. The evidence also showed that the goods were stored rather than sold because the Appellant and her spouse anticipated returning to Australia at some point. At the time of the hearing, these items were still in storage.

[31] The Appellant was also reimbursed for the purchase of a duvet, which the Appellant bought because she found it cold in Canada, and for a Costco membership similar to one she had in Australia, and for two pillows. The electric wok she cooked with in Australia was replaced with a non-electric one in Vancouver.

Appellant's Position

[32] The Appellant's counsel submitted that the reimbursement from Placer Dome did not constitute a benefit to the Appellant because it did not result in an improvement to her economic position. Counsel said that even though the Appellant did not dispose of the goods she owned in Australia, they were lost to her in a practical sense because she could not use them in Canada. The reimbursement she received from Placer Dome merely offset her loss of the use of the Australian goods, and was not a benefit that should be added to her income.

[33] The Appellant conceded at the hearing that the reimbursement for the cost of two pillows was a benefit that should be included in her income.

Analysis

[34] The amount in issue has been included in the Appellant's income under paragraph 6(1)(*a*) of the *Act* which reads as follows:

> 6(1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:
>
> (*a*) the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment, …

[35] In *The Queen v. Savage*,[8] the Supreme Court of Canada adopted the following comments made by Evans J. in *R. v. Poynton*,[9] in relation to benefits received or enjoyed in respect of, in the course of, or by virtue of an office or employment:

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[8] [1983] 2 S.C.R. 428.

[9] [1972] 3 O.R. 727 page 738.

> I do not believe the language to be restricted to benefits that are related to the office or employment in the sense that they represent a form of remuneration for services rendered. If it is a material acquisition which confers an economic benefit on the taxpayer and does not constitute an exemption, eg, loan or gift, then it is within the all-embracing definition of s 3.

[36] In this case there is no dispute that the Appellant received the payment of $6,415 by virtue of her employment. The only question is whether the payment resulted in an economic benefit to her. In my view, it did.

[37] The Appellant was better off economically and enjoyed an increase to her net worth because she obtained goods valued at $6,415 at no cost to her. I infer from the evidence that the Appellant's ownership of those goods was unconditional and that she was not under any obligation to transfer the goods to her employer if her employment ended. I also find that the Appellant has not shown that she suffered an economic loss with respect to the electrical goods she left in storage in Australia. She has retained ownership of the goods throughout the time she has lived in Canada, and by not selling them, has not chosen to incur a loss on them. As such the Appellant's net worth has been enhanced by her acquiring goods in addition to what she owned prior to her move.

[38] I agree with counsel for the Respondent that the situation here is analogous to the situation in *M.N.R. v. Phillips*[10] which dealt with the taxability of payment received from his employer with respect to a work-related move. In that case, the taxpayer was relocated by his employer from Moncton to Winnipeg. He sold his house in Moncton without incurring a loss on it, and he purchased a more expensive house in Winnipeg. His employer paid him $10,000 to offset the higher cost of housing in Winnipeg. The Federal Court of Appeal held that the $10,000 payment was a benefit to the taxpayer because it increased his net worth by $10,000.

[39] In *Phillips* the Court drew a distinction between payments made by an employer to an employee in relation to expenditures in the new location and payments made to reimburse losses incurred by the employee as a result of the move. Only in the latter case are the payments non-taxable.[11] Like the payment in *Phillips*, the reimbursement received by the Appellant was to offset the cost of

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[10] [1994] 2 F.C. 680.

[11] See also *Ransom v. M.N.R.*, 67 DTC 5235.

acquiring property in the new work location to replace what she owned in the old work location.

[40] At the point when the Appellant moved to Canada, the goods left in Australia still had significant economic value. The Appellant's spouse testified that this was the case, and this conclusion is also supported by the fact that the goods were stored rather than thrown out. Therefore, the reimbursement from Placer Dome for the purchase of similar items in Canada cannot be said to have been compensation for a loss incurred by the Appellant as a result of her move.

[41] To reiterate, in the absence of a disposition of the Australian goods, the Appellant did not suffer an economic loss and the payment of $6,415 was not a reimbursement of a loss. The Appellant's argument on this point therefore cannot succeed.

[42] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 3rd day of June, 2010.

"B. Paris"

Paris J.

CITATION:	2010 TCC 295
COURT FILE NO.:	2009-930(IT)I
STYLE OF CAUSE:	KERRY SUFFOLK and HER MAJESTY THE QUEEN
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