

Docket: 2012-2932(IT)I

BETWEEN:

TREVOR W. JACKSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 22, 2013, at Nanaimo, British Columbia

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Shankar Kamath

JUDGMENT

The appeal from the reassessment dated December 21, 2011 made by the Minister of National Revenue by virtue of the *Income Tax Act* concerning the 2007 taxation year is dismissed, without costs, in accordance with the attached Reasons for judgment.

Signed at Ottawa, Canada, this 19th day of June 2013.

"Réal Favreau"

Favreau J.

Citation: 2013 TCC 195
Date: 20130619
Docket: 2012-2932(IT)I

BETWEEN:

TREVOR W. JACKSON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal under the informal procedure against a reassessment dated December 21, 2011 made by the Minister of National Revenue (the “Minister”) for the appellant’s 2007 taxation year.

[2] The appeal concerns the application of subparagraph 56(1)(a)(i) and subsections 110.2(1), 110.2(2) and 120.31(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended (the “*Act*”) which provisions provide a special tax calculation that may benefit a taxpayer who is in receipt of a retroactive lump-sum payment for Canada Pension Plan disability benefits (the “C.P.P. Lump-Sum”). The appellant received a C.P.P. Lump-sum of \$61,744 in his 2007 taxation year and made a request in his 2007 tax return for the special tax calculation for the C.P.P. Lump-Sum.

[3] The appellant’s 2007 taxation year was initially assessed on May 23, 2008. The appellant was advised on his notice of assessment that his request for the special tax calculation with respect to the C.P.P. Lump-Sum could not be carried out for all of the years requested, as he had not filed his tax returns for certain years to which he was requesting to have the C.P.P. Lump-Sum applied.

[4] The appellant late filed his 1997, 1998, 1999 and 2000 income tax returns on June 30, 2008 which were initially assessed on September 3, 2008 in the case of the 1997 taxation year and on September 25, 2008 in the case of the 1998, 1999 and 2000 taxation years.

[5] On December 21, 2011, the Minister reassessed the appellant's 2009 taxation year:

- a) to reduce the C.P.P. Lump-Sum for the 2007 taxation year to \$10,515; and
- b) to allow the remaining C.P.P. Lump-Sum of \$51,229 to be allocated to prior years (1997 to 2006) in the computation of his taxable income.

[6] In reassessing the appellant for the 2007 taxation year, the Minister relied on the following facts, set out in paragraph 20 of the Reply to the Notice of Appeal:

- a) the Government of Canada issued the Appellant a T4A information slip stating that they paid the Appellant the C.P.P. Lump Sum of \$61,744 for the 2007 taxation year; (admitted)
- b) the C.P.P. Lump Sum totalling \$61,744, included retroactive payments attributable to the following years: (admitted)

1997	\$8,561
1998	\$8,724
1999	\$8,802
2000	\$8,943
2001	\$9,167
2002	\$3,065
2003	\$955
2004	\$985
2005	\$1,002
2006	\$1,025

- c) the C.P.P. Lump Sum applicable for the 2007 taxation year was \$10,515; (admitted)
- d) the C.P.P. Lump Sum amounts totalling \$61,744 were allocated to the Appellant's current and previous tax years to which they related to; (admitted)
- e) the Appellant's 2007 taxes payable included taxes payable on the C.P.P. Lump Sum amounts as if they were received in the previous tax years; and (admitted)

- f) the cumulative total tax payable from applying the retroactive C.P.P. Lump Sum to previous tax years was \$2,664.72 as set out in the attached Schedule "A". (denied because Schedule "A" does not show the total amount of the tax)

Schedule "A"

	Assessed Taxable Income	CPP Lump-Sum	Non- Refundable Tax Credits	Tax Rate
1997	\$0.00	\$8,561.00	\$6,456.00	17%
1998	\$0.00	\$8,724.00	\$6,456.00	17%
1999	\$0.00	\$8,802.00	\$6,794.00	17%
2000	\$0.00	\$8,943.00	\$7,231.00	17%
2001	\$2,475.00	\$9,167.00	\$7,412.00	16%
2002	\$6,376.00	\$3,065.00	\$7,634.00	16%
2003	\$9,048.00	\$955.00	\$8,047.00	16%
2004	\$8,914.00	\$985.00	\$9,233.00	16%
2005	\$9,066.00	\$1,002.00	\$8,648.00	15%
2006	\$9,274.00	\$1,025.00	\$8,839.00	15.25%

[7] The appellant argued that the calculation of the notional tax on the C.P.P. Lump-Sum was not done correctly by the Minister as the amount of tax owing for 2007 has been over-estimated. The reassessment for the 2007 taxation year showed a revised taxable income of \$10,595 and an amount of the tax payable of \$3,347.39. The appellant was told by Canada Revenue Agency ("CRA") officers that the larger amount of tax represented tax from the previous years in which the allocation of the C.P.P. Lump-Sum has been made. The appellant has apparently never received from the CRA the details for the calculation of the tax payable in each of the years in which a portion of the C.P.P. Lump-Sum has been allocated. The appellant considers that he has been unfairly treated and that he has been penalized because he is a disabled pensioner. The appellant also referred to the fact that the CRA's officers should have explained to him how the tax has been computed without using a tone that has often been disrespectful, accusatory and derisive.

[8] The appellant considered that the Minister should have allowed a deduction of \$4,000 per year for medical expenses and that the Minister should have accepted a settlement by virtue of which the amount of tax payable in respect of the 2007 taxation year should have been reduced by one-half and no interest should have been charged.

Analysis

[9] The mechanism found in sections 110.2 and 120.31 of the *Act* is intended to provide relief to individuals for the computation of income tax on certain retroactive lump-sum payments. Under this regime, taxpayers have the choice of paying tax on “qualifying retroactive lump-sum payments” not at the rate otherwise applicable in the year of actual receipt, but rather at the lower rate that would have been applicable if the amounts had been received in the earlier years to which they relate. The intent is to compensate individuals for the penalizing effects of the graduated rates of taxation used in the *Act*.

[10] The 1999 Budget Plan, which introduced sections 110.2 and 120.31, states at page 202:

In recomputing the notional tax liability for prior years, no adjustments will be made to the income tax returns for those years. That is, individuals will not be able to modify items such as RRSP contributions and tax credits. Similarly, the government will not recapture income-tested benefits paid in prior years. Any reduction in federal tax through this measure will also have the effect of reducing provincial tax liability in those provinces that are part of the tax collection agreements...

[11] The notional tax liability for prior years is computed without making any adjustments to the income tax returns filed for those years. In this case, the Minister allowed only the non-refundable tax credits to which the appellant was entitled to in determining the tax liability of the appellant. Contrarily to the appellant’s opinion, the Minister did not have discretion to take into account other factors in the determination of the appellant’s tax liability. The computation of the notional tax liability does not trigger the reopening of the prior years. Clearly the special tax calculation per section 120.3 of the *Act* was the most beneficial calculation for the appellant.

[12] I did not review in detail the calculations made by the CRA officers because the appellant admitted that the differences in numbers that he pointed out were always resolved in his favour as the lowest numbers were used for reassessment purposes. I also noted that in this case interests were never calculated while they should have been charged to the appellant.

[13] For the above reasons, I consider that the Minister properly included the C.P.P. Lump-Sum in computing the appellant’s income for the 2007 taxation year pursuant to subparagraph 56(1)(a)(i) of the *Act* and that the Minister properly allocated the retroactive portion of the C.P.P. Lump-Sum to the prior years to which they relate in computing the appellant’s taxable income pursuant to subsections 110.2(1), 110.2(2) and 120.31(3) of the *Act*.

[14] This Court has no jurisdiction to provide relief in respect of interest or in the implementation of a payment plan with CRA. This Court may not force CRA to issue a letter of apology for their delays and errors, for the inconvenience and stress they caused and their refusal to provide the information requested.

[15] The appeal is dismissed without costs.

Signed at Ottawa, Canada, this 19th day of June 2013.

"Réal Favreau"

Favreau J.

CITATION: 2013 TCC 195

COURT FILE NO.: 2012-2932(IT)I

STYLE OF CAUSE: TREVOR W. JACKSON AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Nanaimo, British Columbia

DATE OF HEARING: March 22, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau

DATE OF JUDGMENT: June 19, 2013

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Shankar Kamath

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
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