Docket: 2012-4452(IT)I

BETWEEN:

TRACEY RIDOUT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 17, 2013 at Vancouver, British Columbia

By: The Honourable Justice Judith M. Woods

Appearances:

Agent for the Appellant:	Michael F. Campagne
Counsel for the Respondent:	Kristian DeJong

JUDGMENT

It is ordered that the appeal with respect to an assessment made under the *Income Tax Act* for the 2010 taxation year is dismissed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 20th day of August 2013.

"J. M. Woods"

Woods J.

Citation: 2013 TCC 260
Date: 20130820
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BETWEEN:

TRACEY RIDOUT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] In 2010, Tracey Ridout claimed a disability tax credit and a supplemental personal credit in respect of her son. The claim was made for taxation years from 2000 to 2009 and was approved by the Minister of National Revenue.

[2] Ms. Ridout paid an amount of $7,125.37 to DTS Disability Tax Services Ltd. ("DTS") for consultation and preparation of claims regarding this claim. The issue in this appeal is whether these fees are deductible in computing income pursuant to paragraph 60(o) of the *Income Tax Act*.

[3] Paragraph 60(o) is reproduced below.

> **60. Other deductions** - There may be deducted in computing a taxpayer's income for a taxation year such of the following amounts as are applicable:
>
> […]
>
> (o) **legal [or other] expenses [of objection or appeal]** - amounts paid by the taxpayer in the year in respect of fees or expenses incurred in preparing, instituting or prosecuting an objection to, or an appeal in relation to,

> (i) an assessment of tax, interest or penalties under this Act or an Act of a province that imposes a tax similar to the tax imposed under this Act,
>
> (ii) a decision of the Canada Employment and Immigration Commission, the Canada Employment and Insurance Commission, a board of referees or an umpire under the *Unemployment Insurance Act* or the *Employment Insurance Act*,
>
> (iii) an assessment of any income tax deductible by the taxpayer under section 126 or any interest or penalty with respect thereto, or
>
> (iv) an assessment or a decision made under the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of that Act;

[4] Ms. Ridout was represented at the hearing by Michael Campagne who is the president of DTS. He informed the Court that the issue in this appeal is common to several of DTS' clients and that this is the first appeal to come before the Court.

[5] Mr. Campagne was the only witness on behalf of Ms. Ridout. The Crown called Lisa Lalonde from the Canada Revenue Agency (CRA) who was involved in the decision to disallow the deduction of the fees.

Positions of parties

[6] The position of the Crown is that the fees paid to DTS by Ms. Ridout do not qualify for deduction under paragraph 60(o) because they do not relate to an objection or appeal in relation to an income tax assessment.

[7] Ms. Ridout submits that the unusual circumstances in her case justify the allowance of the deduction. Some of the particular circumstances noted by Mr. Campagne are set out below.

(a) The CRA had previously allowed a similar deduction in respect of fees paid by other clients of DTS.

(b) The disability tax credit regime has a unique pre-assessment system which requires a taxpayer to submit a doctor's certificate before making a claim. It is unusual to require documentation to be submitted before claiming a deduction in an income tax return.

(c) The legislative provisions relating to the disability tax credit are complex,

and therefore relief should be given for the costs of expert advice that is required at a pre-assessment stage.

(d) There is evidence to suggest that the CRA is dealing unfairly with Mr. Campagne.

Discussion

[8] Although Ms. Ridout's circumstances are sympathetic, the appeal must be dismissed because paragraph 60(o) of the *Act* does not permit the deduction that she seeks.

[9] The fact that a legislative provision may produce a harsh result in a particular case is not a sufficient ground to allow an appeal. As often mentioned by judges of this Court in appeals involving sympathetic circumstances, it is the prerogative of Parliament to write the law as it sees fit and it is the duty of the Court to apply it.

[10] Based on the language used in paragraph 60(o), in order for Ms. Ridout to succeed in this appeal, the fees she paid must relate to the preparation, institution or prosecution of an objection or appeal with respect to a federal or provincial income tax assessment.

[11] Central to this determination is the meaning of the terms "objection" and "appeal" in relation to an income tax assessment. I will first consider the federal assessment.

[12] The *Act* has a specific legislative scheme that applies to objections and appeals of assessments. The scheme is governed by sections 165 and 169, which are reproduced in part below.

> **165. (1) Objections to assessment** - A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,
>
> > (a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of
> >
> > > (i) the day that is one year after the taxpayer's filing-due date for the year, and

> (ii) the day that is 90 days after the day of mailing of the notice of assessment; and
>
> (b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.
>
> […]
>
> **(2) Service** - A notice of objection under this section shall be served by being addressed to the Chief of Appeals in a District Office or a Taxation Centre of the Canada Revenue Agency and delivered or mailed to that Office or Centre.
>
> […]
>
> **169. (1) Appeal** - Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either
>
> (a) the Minister has confirmed the assessment or reassessed, or
>
> (b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,
>
> but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[13] The problem that I have with Ms. Ridout's position is that she did not intend to file an objection or appeal pursuant to these provisions. Indeed she likely was precluded from doing so for some of the taxation years at issue because the limitation periods would have expired.

[14] Ms. Ridout's claim for disability tax relief was made by way of an application to adjust her income tax returns. The form that was filed was a T1 Adjustment Request. This is a different procedure from the objections process.

[15] Accordingly, the fees paid by Ms. Ridout did not relate to the preparation, institution or prosecution of an objection or appeal of an assessment under sections 165 or 169. I conclude that the fees do not relate to an objection or appeal in respect of a federal assessment.

[16] As for whether the fees relate to an objection or appeal with respect to a provincial assessment, it is not clear to me whether the fees relate to a provincial

assessment at all and neither party mentioned provincial tax at the hearing. In any event, the relevant provincial legislation generally provides that a provincial reassessment is automatically required to be made if a federal reassessment is made (British Columbia *Income Tax Act*, s. 30(1)). No separate objection and appeal process is provided for in such cases. I would conclude that the fees also do not relate to an objection or appeal in relation to a provincial assessment.

[17] I now turn to the arguments made by Mr. Campagne. All of the arguments have their basis in fairness and policy and it is not possible to allow the appeal on these grounds.

[18] In particular, the Court cannot grant relief simply because a deduction was given to other taxpayers: *Sinclair v The Queen*, 2003 FCA 348.

[19] In addition, the Court cannot grant relief on grounds of fairness alone. The role of this Court is limited to determining the correctness of the assessment based on the relevant provisions of the *Act* and the facts giving rise to the statutory liability: *Ereiser v The Queen*, 2013 FCA 20.

[20] Mr. Campagne submits that there is a different assessing procedure with respect to disability tax credit claims because a doctor's certificate must be filed with the claim.

[21] The problem with this submission is that the deduction provided for in paragraph 60(o) applies only to fees paid in connection with objections and appeals. It is not possible for the Court to extend the deduction to other types of fees, such as fees incurred with respect to a T1 Adjustment Request even if the process is similar to an objection. The restriction in paragraph 60(o) is a matter of policy that is the prerogative of Parliament and not the courts.

[22] Finally, Mr. Campagne submits that the CRA has acted unfairly towards him as a consultant who specializes in disability tax credit claims. Mr. Campagne referred me to two documents.

[23] The first is an internal CRA email communication which states that the CRA decided to disallow fees paid to DTS "in all cases" (Ex. A-1, Tab 6).

[24] The second is a response from the CRA to Mr. Campagne relating to a service-related complaint (Ex. A-1, Tab 8). In the letter, Mr. Campagne is informed that it is the CRA's policy to withhold medical-type information from authorized

representatives on disability tax credit matters. I have reproduced an excerpt from the letter below.

> Beginning in June 2009, the CRA introduced a new policy to limit communication with authorized representatives on DTC-related matters. The CRA now only provides representatives with information about the processing status of the application and/or the eligibility determination. The CRA considers information contained in clarification letters and responses from medical practitioners as medical in nature, not tax information, and therefore, inappropriate for sharing with authorized representatives.

[25] The allegation of unfair treatment by the CRA is not a proper basis to allow the deduction that Ms. Ridout seeks (*Ereiser v The Queen*, 2013 FCA 20, at para 31). Accordingly, although the allegation is a serious one, it would not be proper for me to comment on it.

[26] I would conclude that the deduction of the fees paid by Ms. Ridout is not permitted by paragraph 60(o) of the *Act* and the appeal should be dismissed.

[27] Each party shall bear their own costs.

Signed at Toronto, Ontario this 20th day of August 2013.

"J. M. Woods"

Woods J.

CITATION:	2013 TCC 260
COURT FILE NO.:	2012-4452(IT)I
STYLE OF CAUSE:	TRACEY RIDOUT and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	June 17, 2013
REASONS FOR JUDGMENT BY:	The Honourable Justice J.M. Woods
DATE OF JUDGMENT:	August 20, 2013

APPEARANCES:

Agent for the Appellant:	Michael F. Campagne
Counsel for the Respondent:	Kristian DeJong

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	

For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario