

Docket: 2024-418(IT)I

BETWEEN:

ALLAN CLARO DE SOUZA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on September 3, 2024, at Calgary, Alberta

Before: The Honourable Justice Bruce Russell

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Levi Smith

JUDGMENT

This informal procedure appeal with respect to the assessment made under the federal *Income Tax Act* for the Appellant's 2021 taxation year, raised July 18, 2022, will be dismissed, without costs.

Signed at Ottawa, Canada, this 10th day of January 2025.

"B. Russell"

Russell J.

Citation: 2025 TCC 4
Date: 20250110
Docket: 2024-418(IT)I

BETWEEN:

ALLAN CLARO DE SOUZA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Russell J.

[1] The Appellant, Mr. Allan Claro de Souza, appeals the assessment of his 2021 taxation year, raised July 18, 2022 under the federal *Income Tax Act* (ITA). His reason for his appeal is that the assessment requires him to repay the \$15,600 of Canada Recovery Benefits (CRB) that he received in 2021, in which year he had anticipated generating limited income from his new business, in Alberta.

[2] The CRB payments that he had applied for and received are provided for by the *Canada Recovery Benefits Act*, S.C. 2020, c. 12, s. 2 (CRBA). The CRBA, passed in 2020, provides for several types of benefits, particularly including the CRB, to be paid to individuals in support of Canada’s economic recovery in response to Covid-19.

[3] In his Notice of Appeal (5th para.) the Appellant states that, “[h]aving to repay... \$15,600 is outrageous and will deeply impact my financial health and my family in times where every Canadian is struggling to survive.”

[4] Subsection 8(2) of the CRBA, headed “Repayment”, provides in relevant part:

[8(2)] If a person who has received a Canada recovery benefit...has income of more than \$38,000 for 2020 or for 2021, the person must repay an amount equal to 50 cents for every dollar of income earned in that year above \$38,000 of income, up to the total amount of those benefits received by them in the year, which total

amount...constitutes a debt due to Her Majesty, and the debt...may be recovered by the Minister [of National Revenue]...for the year.

[5] The Minister determined that the Appellant's net income for 2021 totalled Cdn \$90,230, which well exceeds the Cdn \$38,000 CRB repayment threshold. The Cdn \$90,230 is made up of (a) Cdn \$58,294 of dividends from the Appellant's Canadian corporation in relation to his new business operation in Alberta; plus "Other Income" of Cdn \$44,652 of which part is (b) the CRB total payment of Cdn \$15,600 and the remaining part is (c) an unexpected payment to the Appellant of an amount approximately equivalent to Cdn \$29,000 from his former law firm in Brazil; plus (d) Cdn \$2,884 of net self-employment income (e.g., Skip the Dishes); (e) and less the CRB total payment of CDN \$15,600 (Respondent's Reply, para. 5(e)).

[6] The Minister's assessment for 2021 was based completely on income that the Appellant had reported.

[7] Due to subsection 8(2) of the CRBA and paragraph 60(v.2) of the ITA, the Minister determined and requested that the Appellant repay the \$15,600 of CRB. Section 60 provides for various types of deductions as applicable from a taxpayer's income for a taxation year. Paragraph 60(v.2) of the ITA provides for one of these deductions, being any CRB repayment payable under section 8 of the CRBA not already repaid prior to the balance-due day for the taxpayer's taxation year.

[8] Therefore, as the Appellant's \$90,230 of net income was well in excess of \$38,000 plus \$15,600/2 plus \$15,600/2 (= \$54,200), he was liable for repayment of the entire \$15,600 of CRB.

[9] At the hearing of this matter, the Appellant expressed concern that he be perceived as a person trying to take advantage of the CRB payment program. He rightly noted that much of his above-stated income in 2021 was unexpected and received late in that year, after the \$15,600 of CRB had been received.

[10] That is so for the Canadian dividends from his new business, being a gymnasium that due to Covid-19 he was not permitted to open until mid-2021. The new business opening in mid-2021 unexpectedly was able to generate the significant dividend amount of \$58,294 by November of that year.

[11] Additionally, the Appellant also received late in 2021 another unexpected payment, approximately equivalent to Cdn \$29,000, from his former law firm in

Brazil, with which he had practised law. The payment to him was due to an unexpected settlement payment that a former client had made to the firm.

[12] As noted, the Appellant expressed the view that he did not consider that the ITA and/or CRBA should be viewed as requiring him to pay back the \$15,600 of CRB.

[13] Respectfully, he is wrong. He had sufficient income for the 2021 year (\$38,000 plus one half of that in accordance with subsection 8(2) of the CRBA, he was obligated to fully repay.

[14] The only jurisprudence cited by either party was *Chaya v. Canada*, 2004 FCA 327, cited by the Respondent. Rothstein J.A. in brief reasons for judgment, agreed to by both of his bench colleagues, wrote (para.4):

The applicant says that the law is unfair, and he asks the Court to make an exception for him. However, the Court does not have that power. The Court must take the statute as it finds it. It is not open to the Court to make exceptions to statutory provisions on the grounds of fairness or equity. If the applicant considers the law unfair, his remedy is with Parliament, not with the Court.

[15] Accordingly, this appeal will be dismissed, with costs, if sought.

Signed at Ottawa, Ontario, this 10th day of January 2025.

“B. Russell”

Russell J.

CITATION: 2025 TCC 4

COURT FILE NO.: 2024-418(IT)I

STYLE OF CAUSE: ALLAN CLARO DE SOUZA AND HIS
MAJESTY THE KING

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 3, 2024

REASONS FOR JUDGMENT BY: The Honourable Justice Bruce Russell

DATE OF JUDGMENT: January 10, 2025

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Levi Smith

COUNSEL OF RECORD:

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