

Docket: 2013-1893(IT)I

BETWEEN:

ALEXANDER C. DOULIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on January 7, 2014, at Toronto, Ontario.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lindsay Beelen

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2010 taxation year is dismissed.

Signed at Quebec, Quebec, this 23rd day of January 2014.

“Lucie Lamarre”

Lamarre J.

Citation: 2014 TCC 26
Date: 20140123
Docket: 2013-1893(IT)I

BETWEEN:

ALEXANDER C. DOULIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre J.

[1] This is an appeal from a reassessment made by the Minister of National Revenue (**Minister**) for the 2010 taxation year. The Minister disallowed an interest expense in the amount of \$8,953.

[2] This amount corresponds to the amount of interest paid by the appellant to the Canada Revenue Agency (**CRA**) on the outstanding arrears of taxes owed by him under the *Income Tax Act* (**ITA**).

[3] The appellant stated in his notice of appeal that he had opened in the Isle of Man, UK, an investment account from which he received interest and capital gains that he reported to the CRA. He indicated that he financed this investment account with funds that he would have otherwise paid to the CRA for tax owed pursuant to the ITA. He now claims that, as a result of his indebtedness to the CRA, he incurred an interest expense, namely, the interest paid to the CRA on the tax arrears amount used to fund his investment account. In his view, the interest amount paid to the CRA (\$8,953) is an amount paid or payable pursuant to a legal obligation to pay interest on

borrowed money from the CRA used for the purpose of earning income from his investment in the UK, which interest amount, he states, is deductible pursuant to paragraphs 18(1)(a) and 20(1)(c) of the ITA.

[4] The appellant further asserts that the interest was paid to the CRA under a contractual obligation which was created in the context of a borrower-lender relationship between him and the CRA. He contends that the writ of seizure and sale obtained by the CRA against him with regard to his shares and dividends (Exhibit A-1) is evidence of the existence of a legal debt owed by him to the CRA arising from moneys borrowed from the CRA.

[5] Counsel for the respondent argued that the interest amount at issue was paid by virtue of a legal obligation to pay interest with respect to taxes owing for prior years in accordance with subsection 161(1) of the ITA. Hence the interest amount at issue was paid or payable under the ITA and therefore, pursuant to paragraph 18(1)(t) of the ITA, not deductible.

[6] In the alternative, counsel for the respondent argued that, should I accept that the appellant borrowed money from the CRA, the interest was not paid on funds borrowed and used directly for the purpose of earning income from a business or property in accordance with paragraphs 18(1)(a) and 20(1)(c).

Statutory provisions

18. (1) General limitations — In computing the income of a taxpayer from a business or property no deduction shall be made in respect of

(a) **General limitation** — an outlay or expense except to the extent that it was made or incurred by the taxpayer for the purpose of gaining or producing income from the business or property;

(b) **Capital outlay or loss** — an outlay, loss or replacement of capital, a payment on account of capital or an allowance in respect of depreciation, obsolescence or depletion except as expressly permitted by this Part;

...

(h) **Personal and living expenses** — personal or living expenses of the taxpayer, other than travel expenses incurred by the taxpayer while away from home in the course of carrying on the taxpayer's business;

...

(t) **Payments under different acts** — any amount paid or payable

(i) under this Act (other than tax paid or payable under Part XII.2 or Part XII.6),

(ii) as interest under Part IX of the *Excise Tax Act*, or

(iii) as interest under the *Air Travellers Security Charge Act*;

...

20. (1) Deductions permitted in computing income from business or property

— Notwithstanding paragraphs 18(1)(a), (b) and (h), in computing a taxpayer's income for a taxation year from a business or property, there may be deducted such of the following amounts as are wholly applicable to that source or such part of the following amounts as may reasonably be regarded as applicable thereto

...

(c) **Interest** — an amount paid in the year or payable in respect of the year (depending on the method regularly followed by the taxpayer in computing the taxpayer's income), pursuant to a legal obligation to pay interest on

(i) borrowed money used for the purpose of earning income from a business or property (other than borrowed money used to acquire property the income from which would be exempt or to acquire a life insurance policy),

(ii) an amount payable for property acquired for the purpose of gaining or producing income from the property or for the purpose of gaining or producing income from a business (other than property the income from which would be exempt or property that is an interest in a life insurance policy),

...

Interest

161. (1) General — Where at any time after a taxpayer's balance-due day for a taxation year

(a) the total of the taxpayer's taxes payable under this Part and Parts I.3, VI and VI.1 for the year

exceeds

(b) the total of all amounts each of which is an amount paid at or before that time on account of the taxpayer's tax payable and applied as at that time by the Minister against the taxpayer's liability for an amount payable under this Part or Part I.3, VI or VI.1 for the year,

the taxpayer shall pay to the Receiver General interest at the prescribed rate on the excess, computed for the period during which that excess is outstanding.

...

PART XVII — INTERPRETATION

248. (1) Definitions — In this Act,

...

“amount” means money, rights or things expressed in terms of the amount of money or the value in terms of money of the right or thing, except that . . .

...

“borrowed money” includes the proceeds to a taxpayer from the sale of a post-dated bill drawn by the taxpayer on a bank;

“business” includes a profession, calling, trade, manufacture or undertaking of any kind whatever and, except for the purposes of paragraph 18(2)(c), section 54.2, subsection 95(1) and paragraph 110.6(14)(f), an adventure or concern in the nature of trade but does not include an office or employment.

Analysis

[7] I am of the view that subparagraph 18(1)(t)(i) of the ITA clearly prohibits the deduction of the interest amount at issue here.

[8] That interest amount is an amount paid or payable under “this Act” (the ITA). It was by the application of subsection 161(1) of the ITA that the appellant was obligated to pay the interest on tax owed for prior years. The fact that subparagraph 18(1)(t)(i) does not specify what particular amounts are non-deductible under the ITA does not mean that interest is excluded from the amounts paid or payable under the ITA that may not be deducted pursuant to that provision. On the contrary, it means that no amount paid or payable under the ITA, other than tax paid or payable under Part XII.2 or Part XII.6 (of which there is none involved here), may be deducted in computing income.

[9] This interpretation is consistent with the *Explanatory Notes to Legislation Relating to Income Tax* issued by the Minister of Finance in June 1989, where, in clause 8 dealing with the introduction of paragraph 18(1)(t), it is stated:

Clause 8

General Limitations

ITA
18(1)(t)

Section 18 of the Act prohibits the deduction of certain outlays and expenses in computing a taxpayer's income from a business or property. This amendment, which is applicable to the 1989 and subsequent taxation years, adds new paragraph 18(1)(t) and denies a deduction in respect of any amount – including taxes, interest and penalties – payable under the Act.

[10] This approach was also confirmed in *Godsell v. The Queen*, 96 DTC 1292 at 1294, [1995] T.C.J. No. 1757 (QL) at paragraph 18, aff'd. 2001 FCA 196, 2001 DTC 5384, [2001] F.C.J. No. 947 (QL).

[11] The appellant argued that subparagraph 18(1)(t)(i) should not be read as including interest paid under the ITA because subparagraphs 18(1)(t)(ii) and (iii), which follow that provision, specifically state that interest under Part IX of the *Excise Tax Act* and interest under the *Air Travellers Security Charge Act* is an amount that may not, pursuant to paragraph 18(1)(t), be deducted.

[12] I do not accept that argument. Subparagraphs 18(1)(t)(ii) and (iii) simply state that interest paid under those two specific Acts may not be deducted from income. As I said before, subparagraph 18(1)(t)(i) states that any amount paid under the ITA, with the exception of tax under Part XII.2 and Part XII.6 (of which there is none involved here), is not deductible, which includes interest. It is a case where the words of the provision are precise and unequivocal and do not support the alternative meaning suggested by the appellant.

[13] Furthermore, I also accept the respondent's view that the interest payment is not deductible pursuant to paragraph 20(1)(c) of the ITA either. First, the appellant did not, properly speaking, borrow money from the CRA. There is no evidence of a relationship of lender and borrower between the parties. The CRA did not agree to loan money to the appellant. The appellant owes tax to the CRA by virtue of legislation (the ITA).

[14] There is not in this case a contractual agreement between two parties. We are not in a situation where capital was borrowed such that there existed a relationship of lender and borrower between the parties (*Minister of National Revenue v. T. E. McCool Ltd.*, [1950] S.C.R. 80).

[15] Second, even if there was a borrower-lender relationship, it is clear that the direct use of the "borrowed money" was not the investment of that money outside the country, but rather the payment of interest on the appellant's personal income tax owed to the CRA.

[16] As a result, the interest expense is not deductible (*Singleton v. Canada*, 2001 SCC 61, [2001] 2 S.C.R. 1046; *LeCaine v. The Queen*, 2009 TCC 382, 2009 DTC 1246, [2009] T.C.J. No. 296 (QL)).

[17] The appeal is dismissed.

Signed at Quebec, Quebec, this 23rd day of January 2014.

“Lucie Lamarre”

Lamarre J.

CITATION: 2014 TCC 26

COURT FILE NO.: 2013-1893(IT)I

STYLE OF CAUSE: ALEXANDER C. DOULIS v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: January 7, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Lucie Lamarre

DATE OF JUDGMENT: January 23, 2014

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Lindsay Beelen

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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