Federal Court of Appeal

CANADA

Cour d'appel fédérale

Date: 20100602

Docket: A-448-09

Citation: 2010 FCA 145

CORAM: **LÉTOURNEAU J.A.**
PELLETIER J.A.
STRATAS J.A.

BETWEEN:

FRANK J. BURCHILL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on May 31, 2010.

Judgment delivered at Vancouver, British Columbia, on June 2, 2010.

REASONS FOR JUDGMENT BY: STRATAS J.A.

CONCURRED IN BY: LÉTOURNEAU J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

STRATAS J.A.

[1] This is an appeal from the judgment of Justice Little of the Tax Court of Canada: 2009 TCC 492.

[2] The issue before the Tax Court of Canada and this Court concerns the tax treatment of certain pension income received by the appellant.

[3] The appellant was entitled to receive pension income from Public Works and Government Services Canada ("Public Works") starting in 1992. He asked Public Works not to pay him any pension income until he directed it to do so. Public Works complied. Only in 2005 did the appellant

opt to receive pension income. In that year, the appellant received a lump sum payment consisting of current pension amounts and pension amounts that accrued in 1992-2004.

[4] Under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "Act"), a lump sum pension payment that consists of current and prior years' accrued pension amounts – such as the payment made to the appellant in 2005 – can be allocated notionally to earlier tax years. In such a situation, various provisions of the Act apply.

[5] These provisions operate by adding into the taxpayer's income the entire payment when it is received by the taxpayer, but then adjust that figure to reflect a notional allocation of the amounts in earlier tax years. Specifically, these provisions do two things:

(1) *Inclusion of the whole amount in income under subparagraph 56(1)(a)(i).* All of the pension payment is added into the taxpayer's income in the year it is received. This is seen by the words of subparagraph 56(1)(a)(i): "any amount received by the taxpayer in the year as…a…pension benefit" is to be "included in computing the income of a taxpayer for a taxation year."

(2) *Provision for deductions and adjustments.* Parliament recognized that amounts included in income under subparagraph 56(1)(a)(i) may have accrued during prior years. Therefore, it enacted other provisions to reduce the resulting tax in the year of inclusion:

(i) Section 110.2 allows a deduction for the prior years' accruals.

(ii) Subsection 120.31(2) imposes a "notional tax payable," based on notional receipt in those prior years. There are two elements to that "notional tax." First, paragraph 120.31(3)(a) calculates tax on those prior years' notional amounts at the prior years' rates of tax. Second, paragraph 120.31(3)(b) adds a tax to compensate the government for the delay in paying the prior years' notional tax.

[6] In the Tax Court of Canada, the appellant argued that the payment attributable to the period 1992-2004 should be included in those prior years' incomes, rather than all being included in his 2005 income, and that the additional amount imposed by paragraph 120.31(3)(b) of the Act should not apply to him. In his view, because he was entitled to the pension amounts in earlier years, the amounts should be included in his income for those earlier years, even though he actually received the amounts in 2005.

[7] The Tax Court of Canada dismissed Mr. Burchill's appeal, relying upon the ordinary meaning of the Act. In particular, that court held that subparagraph 56(1)(a)(i) explicitly requires that the pension amounts received be included in the taxpayer's income in the year that they were received.

[8] In this Court, the appellant made submissions similar to those that he made in the Tax Court of Canada. In particular, he submitted that while pension amounts "received" are to be included in

his income in the year of receipt, “received” in subparagraph 56(1)(a)(i) can include “constructive receipt.” The appellant submitted that he “constructively received” pension amounts in earlier years, in the sense that he was legally entitled to them in those years. From this, the appellant says that those amounts that he “constructively received” in earlier years should be added into his income for those earlier years.

[9] We do not accept the appellant’s submissions. In our view, the Tax Court of Canada did not err. We agree with its conclusion that the relevant provisions of the Act do not support the appellant’s submissions.

[10] Our starting point in interpreting the relevant provisions of the Act is the Supreme Court of Canada’s decision in *Canada Trustco Mortgage Co. v. Canada*, [2005] 2 S.C.R. 601, 2005 SCC 54, especially at paragraphs 10 and 13. The provisions of the Act are to be interpreted in a “textual, contextual and purposive” way. The ordinary meaning of words that are “precise and unequivocal” plays a “dominant role in their interpretive process.” In all cases, “the court must seek to read the provisions of an Act as a harmonious whole.” The Act “remains an instrument dominated by explicit provisions dictating specific consequences, inviting a largely textual interpretation.”

[11] The ordinary meaning of subsection 56(1)(a)(i) is that all of the pension payments are added into income in the year it is “received.” This ordinary meaning is well supported by the existence of other provisions in the Act. Subsection 56(1)(a)(i) does not stand in splendid isolation in the Act; rather, it is part of an interconnected, harmonious web of provisions.

[12] As described in paragraph 5, above, subsections 56(1)(a)(i), section 110.2 and section 120.31 together create a coherent, harmonious scheme. If the appellant were correct and subsection 56(1)(a)(i) permits the inclusion into the income of earlier years amounts that were "constructively received" in those earlier years, then there would have been no need for Parliament to enact sections 110.2 and 120.31, discussed above. In my view, the appellant's position runs contrary to the evident and coherent scheme in the Act.

[13] Therefore, I would dismiss the appeal. I would make no order as to costs.

"David Stratas"

J.A.

"I agree
Gilles Létourneau J.A."

"I agree
J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-448-09
APPEAL FROM THE JUDGMENT RENDERED BY THE HONOURABLE MR. JUSTICE LITTLE OF THE TAX COURT OF CANADA, DATED SEPTEMBER 30, 2009, DOCKET NO. 2008-3786(IT)I	
STYLE OF CAUSE:	Frank J. Burchill v. The Queen
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	May 31, 2010
REASONS FOR JUDGMENT BY:	STRATAS J.A.
CONCURRED IN BY:	LÉTOURNEAU J.A. PELLETIER J.A.
DATED:	June 2, 2010

APPEARANCES:

The Appellant	ON HIS OWN BEHALF
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