Citation: 2015TCC49
Date: 20150227
Docket: 2014-731(IT)I

BETWEEN:

DAVID BUTLER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the bench on January 9, 2015, in Sydney, Nova Scotia.)

V.A. Miller J.

[1] This is an appeal where the Minister of National Revenue (the "Minister") determined that the Appellant is to repay the Old Age Security Pension ("OAS") in the amount of $3,269.00 which he received in the 2012 taxation year.

[2] In 2012, the Appellant received a payment of $53,816.00 from the Workers' Compensation Board of Nova Scotia ("WCB"). The Minister assessed the Appellant for repayment of the OAS on the basis that his income for 2012 included the payment from WCB and his total income was $109,634.00.

[3] The Appellant was injured in 1969 while working for the Sydney Steel Corporation. He was burned by molten steel which struck his left thigh leaving him with a bad burn. Over the years, the Appellant continued to have pain in the affected area which increased with time so that by 2011 he was diagnosed with Complex Regional Pain Syndrome Type 1. The Appellant made a claim to the WCB in 2011. The result of that claim was that the Appellant received an award of $39,123.95 which was retroactive to 1969. He was also entitled to receive a monthly benefit of $114.19 for life but instead he chose to receive a lump sum so that the total amount he received was $53,816.00.

[4] In 2012, the WCB issued a T5007 slip in the amount of $53,816.00 to the Appellant but he did not include the amount in his income when he completed his income tax return. It was his view that a T5007 slip should not have been issued to

him. According to his reading of the Income Tax Guide, a T5007 slip includes benefits for wage-loss replacement or income for future loss. It was the Appellant's view that the lump sum he received was a non-economic loss award for pain and it was not to be included in income. He said it was an award of damages for the pain he suffered.

[5] The issue in this appeal is whether the Appellant had to include the amount of $53,816 in his income in 2012 pursuant to paragraph 56(1)(*v*) of the *Income Tax Act* (the "*Act*").

[6] The lump sum received by the Appellant from the WCB must be included in the Appellant's income for the purposes of Part 1.2 of the *Act*. Paragraph 56(1)(*v*) and subsection 180.2(1) of the *Act* read:

> 56. (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,
>
> Workers' compensation
>
> (*v*) compensation received under an employees' or workers' compensation law of Canada or a province in respect of an injury, a disability or death;
>
> 180.2 (1) The definitions in this subsection apply in this Part.
>
> "adjusted income" of an individual for a taxation year means the amount that would be the individual's income under Part I for the year if in computing that income no amount were
>
> (*a*) included
>
> (i) under paragraph 56(1)(q.1) or subsection 56(6),
>
> (ii) in respect of a gain from a disposition of property to which section 79 applies, or
>
> (iii) in respect of a gain described in subsection 40(3.21), or
>
> (*b*) deductible under paragraph 60(w), (y) or (z);

[7] Paragraph 56(1)(*v*) includes in income all amounts received from WCB "in respect of" an injury. The phrase "in respect of" has the widest of possible

meanings and includes the pain suffered as a result of an injury. See *Nowegijick v The Queen*, (1983), 144 DLR (3d) 193 (SCC) where Justice Dickson stated:

> 30 The words "in respect of" are, in my opinion, words of the widest possible scope. They import such means as "in relation to", "with reference to" or "in connection with". The phrase "in respect of" is probably the widest of any expression intended to convey some connection between two related subject matters.

[8] In referring the Appellant's claim back to another Hearings Officer, the Workmen's Compensation Tribunal directed that the Appellant's "pain resulting from the injury" was to be rated (See exhibit A-1, page 2 paragraph 2). After his pain was rated, the percentage was added to the rate which had been found for the scars he had sustained. This total rate was used to calculate the lump sum amount of $53,816.00 received by the Appellant. It is my view that the lump sum received by the Appellant was in respect of the injury he sustained in 1969; it was for the scars and pain in respect of the injury he sustained in 1969. But for the injury, there would have been no award of money from the WCB to the Appellant.

[9] The decisions from the Hearing Officer and the WCB Tribunal are contained in exhibits A-1, A-2, and A-3. The terms "non-economic loss award" or damages are not used in any of these exhibits.

[10] The lump sum received from the WCB was not taxable because the Appellant could deduct it pursuant to subparagraph 110(1)(*f*)(ii) of the *Act*, However, subsection 180.2 (1) of the *Act* assesses a tax of 15% of an individual's "adjusted income" over a threshold amount of $69,562.00 in 2012. "Adjusted income" is defined as "the amount that would be the individual's income under Part I for the year if no amount were deductible under paragraph 60(*w*). The Appellant's lump sum award had to be included in his adjusted income in order to calculate the tax under Part I.2.

[11] All lump sums, including retroactive amounts, from the WCB must be included in income for the purposes of calculating Part I.2 tax. See *Fenner v The Queen*, 2006 TCC 396 where Paris, J stated:

> 15 As pointed out by counsel for the Respondent, this court has consistently found that lump sum retroactive awards of Workmen's Compensation benefits are required to be included in an individual's income for the purpose of calculating Part I.2 tax. These cases include *Franklin* (*supra*), *Poulin c. R.*, [1998] 3 C.T.C. 2820 (T.C.C.), *Miner Estate v. R.*, 2003 TCC 599 (T.C.C. [Informal Procedure]),

Alibhai v. R., [2005] T.C.J. No. 394 (T.C.C. [Informal Procedure]) and *Bongiovanni v. R.* (2000), [2001] 1 C.T.C. 2186 (T.C.C. [Informal Procedure]).

[12] The Appellant submitted a letter from the Rulings Directorate in which the author of the letter concluded that a "lump sum award for pain and suffering is not a "workers' compensation benefit" and would not be required to be included in income" or reported on a T5007 slip. However, the Appellant did not submit the letter he sent to the Rulings Directorate in order to get this opinion. I have given no weight to this opinion as it is my view that it does not apply to the facts which were before me.

[13] The appeal is dismissed.

Signed at Ottawa, Canada, this 27th day of February 2015.

"V.A. Miller"

V.A. Miller J.

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APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Melanie Petrunia

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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