Docket: 2014-3589(IT)I

BETWEEN:

YVES ANDRÉ RIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on July 15, 2015, at Toronto, Ontario.

Before: The Honourable Justice Réal Favreau

Appearances:

For the appellant:	The appellant himself
Counsel for the respondent:	Rita Araujo

JUDGMENT

The appeal from the reassessments dated October 28, 2013, with respect to the 2010 and 2011 taxation years and from the initial assessment dated October 31, 2013, made under the *Income Tax Act* by the Minister of National Revenue is dismissed in accordance with the attached Reasons for Judgment.

Signed at Montréal, Canada, this 19th day of November 2015.

"Réal Favreau"

Favreau J.

Translation certified true
on this 4th day of January 2015
Daniela Guglietta, Translator

Citation: 2015 TCC 286
Date: 20151119
Docket: 2014-3589(IT)I

BETWEEN:

YVES ANDRÉ RIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] The appellant filed an appeal before this Court to challenge the validity of the reassessments dated October 28, 2013, with respect to the 2010 and 2011 taxation years and the initial assessment dated October 31, 2013, with respect to his 2012 taxation year, which were made by the Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) as it read in its application to the taxation years at issue (the Act).

[2] In making the reassessments dated October 28, 2013, the Minister disallowed the appellant's employment expenses of $30,300 for each of the 2010 and 2011 taxation years.

[3] Under the initial assessment dated October 31, 2013, the Minister disallowed the appellant's employment expenses of $30,750 for the 2012 taxation year.

[4] In determining the tax payable by the appellant for the 2010, 2011 and 2012 taxation years, the Minister assumed the following facts:

(a) During the taxation years at issue, the appellant was employed with the Ministère du Revenu du Québec and then the Agence du Revenu du Québec (the employer);

(b) The appellant has been working at its employer's offices in Toronto without interruption since at least 2005;

(c) Since August 9, 2004, the appellant has been renting an apartment located at 1003-62 Wellesley Street West, Toronto;

(d) The appellant lives there with his wife;

(e) The monthly rent paid by the appellant for this dwelling was $2,525 per month for the period from October 1, 2009, to June 30, 2012, and $2,600 per month for the period from July 1, 2012, to September 30, 2014;

(f) In filing his income tax returns for the 2010, 2011 and 2012 taxation years, the appellant reported the following employment income:

(i) 2010: $133,564, including $74,129 in employment income, as well as an amount of $59,435 received from his employer as taxable allowances and benefits;

(ii) 2011: $135,769, including $75,204 in employment income, as well as an amount of $60,528 received from his employer as taxable allowances and benefits;

(iii) 2012: $136,534, including $75,623 in employment income, as well as an amount of $60,900 received from his employer as taxable allowances and benefits;

(g) The respective amounts of $59,432, $60,528 and $60,900 received by the appellant during the 2010, 2011 and 2012 taxation years were reported by the appellant's employer T4 slips (Statement of Remuneration Paid) as taxable allowances and benefits;

(h) The respective amounts of $59,432, $60,528 and $60,900 received by the appellant from his employer during the taxation years at issue, covered expenses incurred for his dwelling in Toronto, as well as a provision for additional taxes related to that allowance;

(i) In filing his income tax returns for the 2010, 2011 and 2012 taxation years, the appellant claimed a deduction for the respective amounts of $30,300, $30,300 and $30,750, as other employment expenses;

(j) The amounts claimed by the appellant as employment expenses reflect the rents he paid for his apartment in Toronto during the taxation years at issue.

[5] At the outset of the hearing, the appellant amended the relief sought. He withdrew his challenge to the deductibility of expenses related to his employment and is now arguing that the allowance in respect of lodging received from his employer should not have been included in computing his income pursuant to subsection 6(6) of the Act.

[6] Subsection 6(6) of the Act provides as follows:

> **Employment at special work site or remote location**. Notwithstanding subsection 6(1), in computing the income of a taxpayer for a taxation year from an office or employment, there shall not be included any amount received or enjoyed by the taxpayer in respect of, in the course or by virtue of the office or employment that is the value of, or an allowance (not in excess of a reasonable amount) in respect of expenses the taxpayer has incurred for,
>
> (*a*) the taxpayer's board and lodging for a period at
>
> (i) a special work site, being a location at which the duties performed by the taxpayer were of a temporary nature, if the taxpayer maintained at another location a self-contained domestic establishment as the taxpayer's principal place of residence
>
> (A) that was, throughout the period, available for the taxpayer's occupancy and not rented by the taxpayer to any other person, and
> (B) to which, by reason of distance, the taxpayer could not reasonably be expected to have returned daily from the special work site, or
>
> (ii) a location at which, by virtue of its remoteness from any established community, the taxpayer could not reasonably be expected to establish and maintain a self-contained domestic establishment,
>
> if the period during which the taxpayer was required by the taxpayer's duties to be away from the taxpayer's principal place of residence, or to be at the special work site or location, was not less than 36 hours; or
>
> (*b*) transportation between
>
> (i) the principal place of residence and the special work site referred to in subparagraph 6(6)(*a*)(i), or

> (ii) the location referred to in subparagraph 6(6)(*a*)(ii) and a location in Canada or a location in the country in which the taxpayer is employed,
>
> in respect of a period described in paragraph 6(6)(*a*) during which the taxpayer received board and lodging, or a reasonable allowance in respect of board and lodging, from the taxpayer's employer.

[7] The appellant testified at the hearing. Mr. Rio is an official of the Ministère du Revenu du Québec (the MRQ) who agreed to accept a deployment to the Toronto office to perform his duties as an auditor of large companies. He moved to Toronto with his wife in May 1992 and he lived there until August 1, 1999, the year in which all auditors working in Toronto were transferred back to Quebec. From 1999 to 2004, the appellant worked at the Montréal office of the same ministry. In 2004, he was once again assigned to the Toronto office by his employer. The appellant and his wife moved to Toronto again.

[8] During the 2004 to 2010 taxation years, the appellant was still working for the MRQ under an initial three-year contract renewable every two years for a period of two years. According to the appellant, the contract could have been cancelled at any time. During that period, the appellant maintained residence status in Quebec so as not to be taxed on the lodging allowance in Toronto to which he was entitled.

[9] On April 1, 2011, the appellant became an employee of the Agence du Revenu du Québec (the ARQ) and his contract was renewed every two years, although it could have been cancelled at any time. In 2011, the appellant and his wife became Ontario residents.

[10] From 2004 to 2012, the appellant obtained an allowance in respect of lodging provided for in the *Directive concernant les indemnités et les allocations versées aux fonctionnaires affectés à l'extérieur du Québec*. Despite the change in employers on April 1, 2011, the directive applicable to the 2004 to 2010 years continued to be applied after April 1, 2011.

[11] In his testimony, Mr. Rio put in evidence the renewal letters for his contract of employment in Toronto for the 2007 to 2012 years and a T4A issued by Revenu Québec for 2008 indicating that the [TRANSLATION] "other income" found in box 28 was taxable at the federal level only.

[12] When the appellant moved to Toronto in 2004, he signed a first lease on August 9, 2004, for an apartment at 62 Wellesley Street West, Toronto, which was renewed a number of times until September 30, 2014. The monthly rent paid was

$2,525 for the period from October 1, 2009, to June 30, 2012, and $2,600 for the period from July 1, 2012, to September 30, 2014.

[13] Although they moved to Toronto in 2004, the appellant and his wife kept their residence in Montréal of which they were co-owners. They did renovations and rented it out. The rental income was duly reported.

[14] On cross-examination, the respondent adduced in evidence the T-4 slips issued by the Canada Revenue Agency for the 2010 and 2012 taxation years showing an amount of $59,435.54 received in 2010 as other taxable allowances and benefits and an amount of $60,826.21 received in 2012 under the same heading. The federal tax returns of the appellant and his wife for the 2011 and 2012 taxation years were also adduced in evidence.

Analysis

[15] The sole issue is whether the amounts received by the appellant from his employer during the 2010, 2011 and 2012 taxation years, in respect of his lodging in Toronto, constitutes a taxable allowance to be included in computing the appellant's income from an office or employment.

[16] Paragraph 6(1)(*a*) of the Act provides that the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer, or a person who does not deal at arm's length with the taxpayer, in respect of, in the course or by virtue of the office or employment, except any benefit listed in subparagraphs (i) to (vi) that do not apply in this case, shall be included in computing the income of a taxpayer for a taxation year from an office or employment.

[17] There is no doubt in this case that the allowance in respect of lodging received by the appellant during each of the 2010, 2011 and 2012 taxation years should have been included in computing the appellant's income for each of the taxation years in question. T-4 slips were issued to him in that regard by his employer and the appellant himself added the allowance in respect of lodging in his income tax returns.

[18] Mr. Rio challenged an assessment with respect to the 1999 taxation year in which the Minister disallowed an expense of $10,500 he claimed in computing his income relating to the rent he paid for an appartment in Toronto. At that time, Judge Archambault of this Court dismissed Mr. Rio's appeal and determined that

the allowance he received from his employer constituted an allowance for personal and living expenses that had be included in his income pursuant to paragraph 6(1)(*a*) of the Act.

[19] The decision of Judge Archambault was affirmed by the Federal Court of Appeal in a decision rendered on October 24, 2003 (2003 FCA 396).

[20] All that remains to be determined is whether the appellant could avail himself of the exception in subsection 6(6) of the Act.

[21] Unfortunately for the appellant, subsection 6(6) of the Act cannot be of any assistance to him. The Toronto office of the Ministère du Revenu du Québec cannot be considered a special work site, being a location at which the duties performed by the appellant were of a temporary nature. Contrary to the appellant's submissions, I do not believe that the appellant's work was of a temporary nature. The duration of the initial contract was three years and the subsequent contracts were renewable every two years for a period of two years. The duration of the appellant's contract of employment with the MRQ and the ARQ was eleven years without interruption, from 2004 to 2015.

[22] Furthermore, it should be noted that Mr. Rio did not maintain at another location a self-contained domestic establishment as his principal place of residence that was, throughout the period, available for his occupancy and not rented by him to any other person, and to which, by reason of distance, he could not reasonably be expected to have returned daily from the special work site. This condition could certainly not be met by the appellant because the appellant's principal place of residence was Toronto, the same city where his employer's office was located. Consequently, he could reasonably be expected to have returned daily to his principal place of residence. In this case, there is no remoteness factor between the appellant's place of work and his principal place of residence.

[23] The fact that the appellant maintained ownership of his residence in Montréal is not relevant for the purposes of this case because he rented it out while he was working in Toronto.

[24] For all these reasons, the appellant's appeal is dismissed.

Signed at Montréal, Canada, this 19th day of November 2015.

"Réal Favreau"

Favreau J.

Translation certified true
on this 4th day of January 2016
Daniela Guglietta, Translator

CITATION:	2015 TCC 286
COURT FILE NO.:	2014-3589(IT)I
STYLE OF CAUSE:	Yves André Rio and Her Majesty the Queen
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 15, 2015
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATE OF JUDGMENT:	November 19, 2015

APPEARANCES:

For the appellant:	The appellant himself
Counsel for the respondent:	Rita Araujo

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

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