

Docket: 2004-3715(IT)I

BETWEEN:

FRANK A. LARKIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 17, 2005, at Toronto, Ontario

Before: The Honourable T. E. Margeson

Appearances:

Agent for the Appellant: Richard Korzeniewski

Counsel for the Respondent: Stacey Sloan

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2002 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at New Glasgow, Nova Scotia, this 3rd day of February, 2006.

“T.E. Margeson”

Margeson J.

Citation: 2006TCC61
Date: 20060203
Docket: 2004-3715(IT)I

BETWEEN:

FRANK A. LARKIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Margeson J.

[1] This appeal is from an assessment of the Minister from the 2002 taxation year, wherein the Minister included in the income of the appellant, the amount of \$10,382.40, on the basis that the income was not exempt from tax in Canada under the Canada – UK Income Tax Treaty.

[2] The Appellant took the position that the amount was not taxable in Canada because it was pension income that he received from Ireland which was based upon his contributions made in Ireland while he was working there.

[3] The Appellant appeared in Court with an agent who indicated that he was not feeling well and could not conduct the case properly.

[4] After hearing from both parties the Court was of the belief that the Appellant was capable of providing the necessary evidence in support of his position. The nature of the evidence was straight forward and uncomplicated.

[5] In his testimony before the Court the Appellant agreed with the presumptions contained in the Reply to the Notice of Appeal as follows:

- (a) the Appellant was a factual resident of Canada throughout the 2002 taxation year and has been for many previous years;

- (b) the Appellant received Registered Retirement Income Fund amounts totalling \$5,739.42 and Canadian pension or superannuation amounts totalling \$4,421.28, which he correctly included in computing his total, net and taxable income for the 2002 taxation year;
- (c) the Appellant is entitled to and was allowed the maximum allowable gross non-refundable tax credit in the amount of \$1,000.00 for a Pension income amount for the 2002 taxation year;
- (d) the Appellant received Old Age Contributory Pension ("OACP") income from the Republic of Ireland in the amount of \$10,382.40 Cdn during the 2002 taxation year, and he correctly included this amount in his total and net income for the year;
- (e) the Appellant made contributions in respect of the OACP while working in previous taxation years; and
- (f) the Appellant failed to include the OACP income in the amount of \$10,382.40 Cdn in his taxable income for the 2002 taxation year.

[6] He also said that his Irish pension was very important to him and was the largest that he received and he could not afford to give most of it away. He did not feel that he should be paying tax on it. He was told by his agent that it was deductible.

Argument on behalf of the Respondent

[7] Counsel for the Respondent said that the sole issue was whether or not the Irish Pension income was taxable. He referred to subsection 2(1) of the *Income Tax Act* which requires that all income be reported. Further section 3 requires the taxpayer to determine the income from all places and countries. Subsection 56(1) requires the taxpayer to include all pension income.

[8] Section 110 of the *Act* allows the taxpayer to make certain deductions in computing taxable income. The only possible basis for a deduction for this taxpayer is subparagraph 110(1)(f)(i), "an amount exempt from income tax in Canada because of a provision contained in a tax convention or agreement with another country that has the force of law in Canada, ...".

[9] Subsection 248(1) defines "superannuation or pension benefit" and would include the amount in issue.

[10] The appropriate provisions of the Canada-Ireland (former) Tax Treaty – Canada-Ireland (former) Income Tax Agreement provide for the avoidance of double taxation as follows:

Article I

1. The taxes which are the subject of this Agreement are:

(a) in Canada: the income taxes, including the old age security tax on income, which are imposed by the Government of Canada (hereinafter referred to as "Canadian tax").

(b) in Ireland: the income tax, including sur-tax, and the corporation profits tax (hereinafter referred to as "Irish tax").

Article XI

1. Any pension or annuity derived from sources within Canada by an individual who is a resident of Ireland shall be exempt from Canadian tax.

2. Any pension or annuity derived from sources within Ireland by an individual who is a resident of Canada shall be exempt from Irish tax.

[11] Under the provisions of section 110 of the *Income Tax Act* we have an amount that is exempt in Ireland. There is no other provision that would be of assistance to the Appellant.

[12] The appeal should be dismissed.

Argument on behalf of the Appellant

[13] At trial, the Appellant requested that his argument be postponed until his agent was feeling better and able to present it in writing. The Court agreed to allow the Appellant's argument to be given in writing by December 17, 2005 and allowed the Respondent to Reply, if desired within 10 days.

[14] By way of a letter received from the Appellant on December 13, 2005, he indicated that his agent was still ill and that the Appellant could not continue to rely upon his representation and that he would no longer be representing the Appellant.

[15] The Appellant merely indicated to the Court what he had said while testifying and further that he felt that he was entitled to keep his money untaxed due to the fact that it dates back many years to his life in Ireland and that he should be able to use his pension to ease the responsibility of his old age.

[16] The Respondent did not wish to make further arguments.

Analysis and Decision

[17] The Court can understand the Appellant's concern about having this benefit taxed in Canada and he is not alone in that regard. However, it is clear to the Court that the amount in issue is taxable under the *Income Tax Act*, there is no provision that would allow the amount to be exempt from taxation in Canada.

[18] The provisions of the Canada Ireland Agreement do not operate to allow the amount to be exempt from taxation in the hands of the Appellant during the year in issue.

[19] The appeal is dismissed and the Minister's assessment is confirmed.

Signed at New Glasgow, Nova Scotia, this 3rd day of February, 2006.

“T.E. Margeson”

Margeson J.

CITATION: 2006TCC61
COURT FILE NO.: 2004-3715(IT)I
STYLE OF CAUSE: Frank A. Larkin v. H.M.Q.
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: November 17, 2005
REASONS FOR JUDGMENT BY: The Honourable Justice T. E. Margeson
DATE OF JUDGMENT: February 3, 2006

APPEARANCES:

Agent for the Appellant: Richard Korzeniewski

Counsel for the Respondent: Stacey Sloan

COUNSEL OF RECORD:

For the Appellant:

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Firm:

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