

Docket: 2006-3654(IT)I

BETWEEN:

DANIEL M. CHAMCZUK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 30, 2007 at Edmonton, Alberta

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Carrie Mymko

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2004 taxation year is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia, this 21st day of August 2007.

“L.M. Little”

Little J.

Citation: 2007TCC446
Date: 20070821
Docket: 2006-3654(IT)I

BETWEEN:

DANIEL M. CHAMCZUK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Little J.

A. FACTS

[1] The Appellant resides in Ardrossan, in the Province of Alberta.

[2] The Appellant established a self-directed Registered Retirement Savings Plan (“RRSP”) with the Canadian Imperial Bank of Commerce (“CIBC”).

[3] In 2004 the Appellant instructed officials of CIBC to have the RRSP purchase shares in Spantel Communications Inc. (“Spantel”) at a cost of \$16,445.07.

[4] It was subsequently determined that the shares of Spantel were a non-qualified investment for the Appellant’s RRSP.

[5] In 2004 CIBC sold the shares of Spantel that were owned by the Appellant’s RRSP at a price of \$10,080.00.

[6] CIBC issued a T4RSP form to the Appellant showing other income totalling \$16,445.07 for the 2004 taxation year.

[7] CIBC issued a T4RSP form to the Appellant showing a deduction of \$10,080.00 for the 2004 taxation year.

[8] When the Appellant filed his income tax return for the 2004 taxation year he reported a contribution of \$3,100.00 to his RRSP.

[9] By Notice of Reassessment dated March 16, 2006, the Minister of National Revenue (the “Minister”) reassessed the Appellant to include income of \$16,445.07 and allowed a deduction of \$10,080.00 based on the T4RSP form issued by the CIBC.

B. ISSUE

[10] The issue to be decided is whether the Appellant has been properly reassessed by the Minister with respect to his self-directed RRSP.

C ANALYSIS AND DECISION

[11] Subsection 146(10) of the *Income Tax Act* (the “Act”) reads as follows:

Where at any time in a taxation year a trust governed by a registered retirement savings plan

...

(b) uses or permits to be used any property of the trust as security for a loan,

[12] Subsection 146(6) of the *Act* reads as follows:

Where in a taxation year a trust governed by a registered retirement savings plan disposes of a property that, when acquired, was a non-qualified investment, there may be deducted, in computing the income for the taxation year of the taxpayer who is the annuitant under the plan, an amount equal to the lesser of

(a) the amount that, by virtue of subsection (10), was included in computing the income of that taxpayer in respect of the acquisition of that property, and

(b) the proceeds of disposition of the property.

[13] It will be noted that subsection 146(10) clearly provides that the fair market value of the non-qualified investment acquired by the Appellant’s RRSP shall be included in the Appellant’s income.

[14] In this situation the Appellant has been allowed a deduction pursuant to subsection 146(6) of the *Act* of the lesser of the amount that was included in his income under subsection 146(10) of the *Act* and the proceeds of the disposition of the Spantel shares which was \$10,080.00. I believe that the Minister was correct when he issued the Reassessment.

[15] The appeal is dismissed without costs.

Signed at Vancouver, British Columbia, this 21st day of August 2007.

“L.M. Little”

Little J.

CITATION: 2007TCC446

COURT FILE NO.: 2006-3654(IT)I

STYLE OF CAUSE: Daniel M. Chamczuk and
Her Majesty the Queen

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: July 30, 2007

REASONS FOR JUDGMENT BY: The Honourable Justice L.M. Little

DATE OF JUDGMENT: August 21, 2007

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Carrie Mymko

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada