

Docket: 2003-1906(IT)I

BETWEEN:

LOUIS MUIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

---

Appeal heard on August 16, 2007 at Sault Ste. Marie, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Marie-Eve Aubry

---

**JUDGMENT**

The appeals from the reassessments made under the *Income Tax Act* for the 1997, 1998 and 1999 taxation years and from the assessment for the 2000 taxation year are dismissed in accordance with the attached Reasons for Judgment.

Signed at Vancouver, British Columbia this 6<sup>th</sup> day of September, 2007.

“V.A. Miller”

---

V.A. Miller, J.

Citation: 2007TCC536  
Date: 20070906  
Docket: 2003-1906(IT)I

BETWEEN:

LOUIS MUIO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Miller, J.

[1] This is an appeal from Notices of Reassessment dated February 28, 2002 for the 1997, 1998 and 1999 taxation years and a Notice of Assessment dated March 7, 2002 for the 2000 taxation year. In making the assessments, the Minister of National Revenue (“Minister”) attributed to the Appellant amounts of interest income, dividend income and capital gains which had been reported by the Appellant’s spouse. The Minister also included in the Appellant’s income amounts of capital gains which he had failed to report as shown in the attached schedules.

[2] At the hearing of the appeal the Appellant stated that the shares for St. Mary’s Paper and the shares for 716202 Ontario were received by him as a result of his employment with St. Mary’s Paper. As a result, he conceded that the entire amount of dividend income, capital gains and capital loss that resulted from these shares should be included in his income.

[3] The issue in this appeal is whether the Minister properly attributed interest income, dividend income and capital gains to the Appellant pursuant to sections 74.1 and 74.2 of the *Income Tax Act* (“Act”).

[4] In making the assessments the Minister relied on the assumptions of fact set out in paragraph 6 of the Reply to the Notice of Appeal which reads as follows:

6. In so assessing the Appellant, the Minister made the following assumptions of fact:
  - (a) the Appellant and his Spouse were married in 1971;
  - (b) the Appellant received interest income, dividend income and capital gains from various investment accounts;
  - (c) the investment accounts were in the Appellant's name only;
  - (d) prior to the taxation years in issue, the Spouse had minimal income or no income;
  - (e) the capital for the investment accounts was provided by the Appellant;
  - (f) the Spouse did not invest any of her money in the investment accounts; and
  - (g) the Appellant transferred part of the investment accounts for the benefit of his Spouse for no consideration.

[5] The Appellant disagreed with the assumptions plead at paragraphs 6(c), (d), (e), (f) and (g). However, the evidence supported all of the assumptions made by the Minister.

[6] At the outset it must be noted that there were investment accounts held jointly by the Appellant and his spouse; investment accounts held solely by the Appellant and investment accounts held solely by his spouse. The only amounts reassessed by the Minister were those amounts where the investment account was in the Appellant's name only and the Appellant, on his income tax return, had allocated the interest income, dividend income or capital gains 50/50 between himself and his spouse. The documentation and the Appellant's evidence supported the conclusion that these investment accounts were owned solely by the Appellant. The Appellant stated that there were problems in his marriage and after 1990 he made sure that 80% of all investment accounts were in his name only as he did not want to "wake up one morning and find it all gone". The Appellant wanted the best

of two worlds. He wanted the majority of the investment accounts in his name only and yet he wanted his spouse to share the burden of the taxes on these investment amounts.

[7] Mr. Eric Durand, a team leader with Canada Revenue Agency (“CRA”) testified that he had completed a search on the computer at CRA. It showed that the Appellant’s spouse had reported no employment income for the years 1987 to 1993 and for the years 1994 to 2000 her average employment income was \$10,000, whereas the Appellant’s employment income was \$75,187, \$106,640, \$163,183 and \$102,176, respectively, in the 1997, 1998, 1999 and 2000 taxation years. I find that the capital for the investment accounts was provided by the Appellant. There was no evidence to show that the Appellant’s spouse contributed any monies for the purchase of the investment accounts in issue. The Appellant’s spouse did not give evidence at the hearing.

[8] The purpose of sections 74.1 and 74.2 is to prevent income splitting. The investment accounts at issue in this appeal were purchased by the Appellant and always owned by him. The interest income, dividend income and capital gains in issue were correctly included in his income.

[9] The appeal is dismissed.

Signed at Vancouver, British Columbia this 6<sup>th</sup> day of September, 2007.

“V.A. Miller”

---

V.A. Miller, J.

Schedule A1997 Taxation Year

<u>Interest</u>	<u>Reported</u>	<u>Reassessed</u>
Merrill Lynch 483208	\$14,049	\$28,099

Dividends

Atlas	Nil	\$57
-------	-----	------

Capital Gains

Hydro Quebec	\$1,573	\$3,146
Province of Ontario Bonds	\$3,921	\$7,841
Atlas	Nil	\$10,667
BNS Mtg	Nil	\$228
716202 Ontario	Nil	(\$10,000)

1998 Taxation Year

<u>Interest</u>	<u>Reported</u>	<u>Reassessed</u>
Merrill Lynch 483208	\$19,625	\$39,249

Dividends

St. Mary's Paper	\$46,725	\$93,449
------------------	----------	----------

1999 Taxation Year

<u>Interest</u>	<u>Reported</u>	<u>Reassessed</u>
Merrill Lynch 483208	\$22,960	\$45,920
Merrill Lynch 48AASS	\$2,779	\$5,557

Dividends

St. Mary's Paper	\$14,000	\$28,000
------------------	----------	----------

Capital Gain

Hudson Bay Co.	\$800	\$1,450
Telesystem International	\$2,905	\$5,570
Canada	\$777	\$3,555
Russels	(250)	(500)

2000 Taxation Year

<u>Interest</u>	<u>Reported</u>	<u>Assessed</u>
Merrill Lynch 483208	\$19,959	\$39,918
Merrill Lynch 48AASS	\$5,644	\$11,288

Capital Gain

St. Mary's Paper	\$11,246	\$22,492
BCE SR14	Nil	\$1,280
BCE SR14	Nil	\$1,198

CITATION: 2007TCC536  
COURT FILE NO.: 2003-1906(IT)I  
STYLE OF CAUSE: Louis Muio v. The Queen  
PLACE OF HEARING: Sault Ste. Marie, Ontario  
DATE OF HEARING: August 16, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller  
DATE OF JUDGMENT: September 6, 2007

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Marie-Eve Aubry

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada