

Dockets: 98-3262(IT)I
98-3695(IT)I

BETWEEN:

MARCEL BEAUREGARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on April 7, 2008, at Montréal, Quebec.

Before: The Honourable Justice Louise Lamarre Proulx

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Philippe Dupuis

Simon Petit

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1987 and 1989 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 18th day of April 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Citation: 2008TCC224
Date: 20080418
Dockets: 98-3262(IT)I
98-3695(IT)I

BETWEEN:

MARCEL BEAUREGARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

[1] The taxation years in issue are 1987 and 1989. The partnerships in question are Société de recherche audio-digitale enr. and Société E.C.T. Systems.

[2] At the beginning of his brief testimony, the Appellant stated that he had not received the letter from the Canada Revenue Agency referred to by one of the Respondent's counsel during testimony by another Appellant at the same hearing. The letter dealt with the proposed amendment to limit the time to which the provision giving the Minister of National Revenue ("the Minister") the power to waive interest would apply. The provision in question is subsection 220(3.1) of the *Income Tax Act* ("the Act").

[3] I must note immediately that proceedings relating to the Minister's decision as to whether to waive all or any portion of any penalty or interest are within the jurisdiction of the Federal Court of Canada, and not this Court.

[4] However, for the Appellant's information, I will quote the relevant subsection of the Act and the history of that section:

220(3.1) Waiver of penalty or interest -- The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in

the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest..

History: Subsection 220(3.1) of the Act, as enacted by subsection (1), applies after 2004 except that if a taxpayer or a partnership has, before 2005, applied to the Minister of National Revenue under subsection 220(3.1) of the Act in respect of a taxation year or fiscal period, that subsection is to be read in respect of that taxation year or fiscal period as follows:

(3.1) The Minister may waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership in respect of a taxation year or fiscal period, as the case may be, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

This subsection formerly read as follows:

(3.1) The Minister may at any time waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership and, notwithstanding subsections 152(4) to (5), such assessment of the interest and penalties payable by the taxpayer or partnership shall be made as is necessary to take into account the cancellation of the penalty or interest.

Subsection 220(3.1) was amended by 1994, c. 7, Sched. VIII, subs. 127(2), applicable to the 1985 and subsequent taxation years. Subsection 220(3.1) formerly read:

(3.1) The Minister may, at any time, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by a taxpayer or partnership.

Subsection 220(3.1) was added by 1994, c. 7, Sched. II, subs. 181(1), applicable with respect to penalties and interest in respect of the 1985 and subsequent taxation years.

[5] The Information Circular relating to this section is IC 98-1R2.

[6] Returning to the actual subject of these appeals, the main point for the two years in issue is whether there was a genuine partnership, and if so, whether it

carried on a business. For 1987, there was the additional point of the eligibility of expenses as scientific research and experimental development expenses.

[7] The Appellant informed the Court that he did not intend to adduce evidence to rebut the Minister's assertions.

[8] Counsel for the Respondent then asked that the appeal be dismissed, arguing that the Appellant had not met his burden of proof. They also referred to various decisions of this Court relating to the same or similar research projects. All of those appeals were ultimately dismissed. The decisions in question are: *McKeown v. Canada*, [2001] T.C.J. No. 236 (QL); *Boudreault v. Canada*, [2005] T.C.J. No. 518 (QL); *Brillon v. Canada*, [2006] T.C.J. No. 51 (QL); *Binette v. Canada*, [2006] T.C.J. No. 80 (QL); *Amar v. Canada*, [2006] T.C.J. No. 315 (QL); *Raby v. Canada*, [2006] T.C.J. No. 365 (QL); *Rouleau c. Canada*, [2007] T.C.J. No. 367 (QL); *Lauger v. Canada*, [2007] T.C.J. No. 434 (QL); *Simard v. Canada*, [2007] T.C.J. No. 483 (QL); *Foster v. Canada*, [2007] T.C.J. No. 538 (QL).

[9] On the question of the burden of proof that rests on a taxpayer in an appeal from an assessment, the law has been settled since the decision of the Supreme Court of Canada in *Johnston v. M.N.R.*, [1948] S.C.R. 486: the taxpayer has the burden of establishing that the presumptions of fact on which the Minister relied in making the assessment are incorrect. The courts' conclusion in this regard was affirmed again by the Supreme Court of Canada in 2006 in *Placer Dome Canada Ltd v. Ontario (Minister of Finance)*, [2006] 1 S.C.R. 715.

[10] In the circumstances of these appeals, the issues being whether there was a partnership and whether the research was eligible as meeting the criteria in section 2900 of the *Income Tax Regulations*, the Minister's presumptions of fact are conclusive for the disposition of these appeals. The Appellant therefore had to present evidence to rebut those presumptions of fact, and he failed to do so.

[11] Accordingly, the appeals from the assessments made under the *Income Tax Act* for the 1987 and 1989 taxation years must be dismissed.

Signed at Ottawa, Canada, this 18th day of April 2008.

"Louise Lamarre Proulx"

Lamarre Proulx J.

Translation certified true
on this 17th day of October 2008.

Brian McCordick, Translator

CITATION: 2008TCC224

COURT FILE NOS.: 98-3262(IT)I and 98-3695(IT)I

STYLE OF CAUSE: MARCEL BEAUREGARD v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: April 7, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Louise Lamarre
Proulx

DATE OF JUDGMENT: April 18, 2008

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Philippe Dupuis
Simon Petit

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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