

Citation: 2010 TCC 223  
Date: 20100428  
Docket: 2009-3258(IT)I

BETWEEN:

GARRY SANDHU,

Appellant,

and

HER MAJESTY THE QUEEN

Respondent.

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Agent for the Appellant: Gurjant Sandhu  
Counsel for the Respondent: Nalini Persaud

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**ORAL REASONS FOR JUDGMENT**

**(Delivered orally from the bench  
on April 7, 2010 at Winnipeg, Manitoba,  
modified for clarity and accuracy)**

[1] The issue in the current appeal is whether the Appellant was entitled to a credit under section 118.62 of the *Income Tax Act* in the computation of his non-refundable tax credits for the 2007 taxation year.

[2] The Appellant did not appear at the hearing. He was represented by his father, who also provided testimony.

[3] Mr. Sandhu noted that the Appellant was currently in a residency program with respect to his medical education and was not able to attend. However, Mr. Sandhu noted that he was the person who had negotiated the relevant loan with the Royal Bank.

[4] In 2002, while attending university, the Appellant obtained a loan from the Royal Bank. It appears that the loan was for an amount of up to \$45,000, which was increased to \$99,000 in later years.

[5] When filing his income tax return, the Appellant claimed a credit under section 118.62 in respect of the interest paid on the loan from the Royal Bank. When assessing the Appellant's 2007 income tax return, the Minister disallowed the section 118.62 credit.

[6] The Court was not provided with any documents evidencing the Royal Bank loan. Mr. Sandhu noted that when the Appellant required money, the Royal Bank manager would draw funds from the student loan and place the funds in the Appellant's account.

[7] Mr. Sandhu provided the Court with a letter from a Mr. Jack Musgrove, addressed to “whom it may concern”, dated April 1, 2010, that states the following:

Due to my busy schedule, I will not be able to appear personally on April 7, 2010. The student loan to Gurdarshan Sandhu was made under the Canada Student Loan program.

Please contact the writer directly at [a phone number] if you have any further questions.

[8] Unfortunately, for a number of reasons, I can give no weight to this letter.

[9] Mr. Musgrove did not appear at the hearing and thus the letter is hearsay.

[10] Further, the letter is extremely general in that it does not provide any details with respect to the referenced loan. The Court has no way of knowing if the loan referred to in the letter is the same loan as the loan before the Court.

[11] Also, I am concerned that the writer may be confusing a student loan made under the *Canada Student Loans Act* with a student loan made by the Royal Bank under an internal lending program for students enrolled in professional graduate programs such as medical schools.

[12] Section 118.62 allows a taxpayer to claim a tax credit equal to the appropriate statutory percentage for the year times certain qualifying interest. The

interest will only qualify if it is paid in the year on a loan made to, or other amounts owing by, the individual under one of the following, the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or a law of a province governing the granting of financial assistance to students at the post-secondary school level.

[13] As this Court noted in *Wilkins v. Canada*, 2009 TCC 61, at paragraph 6:

It is not, however, simply a purpose test in section 118.62 of the *Act* as this section does not provide for a tax credit based only on the purpose of the loan, regardless of how the loan was obtained. The tax credit is only available if the loan was made to the Appellant under one of the statutes listed or described in that section (or the amount is owing under one of those statutes).

[14] The Minister has assumed, at paragraph 8(c) and (d) of the Reply to the Notice of Appeal, that the loan from the Royal Bank was not made to the Appellant under the *Canada Student Loans Act*, the *Canada Student Financial Assistance Act* or a law of a province governing the granting of financial assistance to students at the post secondary school level.

[15] The Appellant has not provided the Court with any evidence to rebut these assumptions. Perhaps the Appellant would have been able to rebut the assumptions if he had produced loan documentation or if he had chosen to testify. This did not occur.

[16] As a result, I have no choice but to accept the Minister's assumptions that the loan was not made under one of the statutes listed or described in section 118.62.

[17] As a result, the appeal is dismissed without costs.

Signed at Ottawa, Canada, this 28<sup>th</sup> day of April, 2010.

“S. D’Arcy”

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D’Arcy J.