

Docket: 2011-2992(IT)I

BETWEEN:

GENEVIEVE R. VANGHENT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 4, 2012 at Hamilton, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Rita Araujo

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

Signed at Ottawa, Ontario this 10th day of July 2012.

“J. M. Woods”

Woods J.

Citation: 2012 TCC 245

Date: 20120710

Docket: 2011-2992(IT)I

BETWEEN:

GENEVIEVE R. VANGHENT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Genevieve VanGhent, resides in St. Catherines, Ontario and her spouse resides in Bogata, Columbia. The only reason that they live apart is that the spouse has been denied a visa to enter this country.

[2] Since the spouse's income in Columbia is low, Ms. VanGhent is required to provide support for him and his mother. She regularly sends cheques for this purpose. In 2009, payments in the aggregate amount of \$8,511 were made.

[3] In her 2009 income tax return, Ms. VanGhent claimed a deduction in computing income for the payments sent to her spouse and she also claimed the personal credit allowed for a dependant spouse. The Minister reassessed to disallow the deduction in computing income.

[4] Ms. VanGhent testified that in claiming the deduction she relied on the 2009 General Income Tax and Benefit Guide published by the Canada Revenue Agency (CRA). The passage relied on is found on page 31 of the Guide under the heading "Federal non-refundable tax credits" and under the sub-heading "Amounts for non-resident dependants." It reads:

You may be able to claim an amount for certain dependants who live outside Canada if they depended on you for support.

[5] The deduction from income was claimed in the income tax return under the line which allows a deduction for support payments in the context of marriage breakdown. Ms. VanGhent readily admits that the line item does not fit her circumstances but she stated that she could not find an appropriate line on the return that dealt with the circumstances described in the Guide.

[6] Ms. VanGhent states that the Guide is misleading if the legislation does not permit a deduction from income in these circumstances. She also states that it would be unfair to disallow the deduction because she is not living apart from her spouse voluntarily. She questions the policy of allowing a deduction in the event of marital breakdown but not in her circumstances.

[7] Ms. VanGhent's circumstances are sympathetic but no relief can be provided in this appeal. It is the role of this Court to apply the provisions of the *Income Tax Act* as they are written by Parliament. In the circumstances of this case, no deduction from income is provided. It is not the Court's mandate to inquire as to the wisdom of the policy behind the legislation.

[8] Counsel for the respondent submits that Ms. VanGhent chose to ignore other provisions in the Guide which make it clear that a deduction can be claimed only in the event of a marriage breakdown.

[9] I do not intend to comment on this as it is not relevant to the question to be decided. Even assuming that the Guide is misleading, this does not assist Ms. VanGhent in this appeal. The judicial authorities are clear that this Court cannot provide relief for mistaken information provided by the CRA.

[10] Finally, I would make a brief comment about the respondent's Reply, which was prepared by the CRA and not counsel. At the hearing, I expressed dismay that the Reply did not address Ms. VanGhent's fairness arguments that were set out in her Notice of Appeal. Ms. VanGhent echoed my concern and appeared to be relieved that this issue had been raised.

[11] The fair administration of justice in informal procedure cases is compromised when arguments that are clearly expressed in a notice of appeal are ignored by the Crown in its reply. Unfortunately, this situation is not at all unusual.

[12] In the result, however, the provisions of the *Act* must be applied and accordingly the appeal will be dismissed.

Signed at Ottawa, Ontario this 10th day of July 2012.

“J. M. Woods”

Woods J.

CITATION: 2012 TCC 245

COURT FILE NO.: 2011-2992(IT)I

STYLE OF CAUSE: GENEVIEVE R. VANGHENT v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: July 4, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: July 10, 2012

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Rita Araujo

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: Myles J. Kirvan
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