Docket: 2011-3033(IT)I

BETWEEN:

CHARULATA RUPAREL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 22, 2012, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

Agent for the Appellant:	Neha Tiku
Counsel for the Respondent:	Iris Kingston

JUDGMENT

The Appellant's appeal from the reassessment of her tax liability for the 2008 taxation year is dismissed, without costs.

Signed at Ottawa, Canada, this 24th day of July, 2012.

"Wyman W. Webb"

Webb J.

Citation: 2012TCC268
Date: 20120724
Docket: 2011-3033(IT)I

BETWEEN:

CHARULATA RUPAREL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Webb J.

[1] The issue in this appeal is whether the Appellant is required to include in computing her income (without any deduction) for the purposes of the *Income Tax Act* (the "*Act*") for 2008 the amount that the Appellant received in 2008 as United Kingdom National Insurance pension payments.

[2] The Appellant and her spouse had been residing in the United Kingdom and moved to Canada. The Appellant's spouse determined that in order to qualify for a pension from the United Kingdom he would have to make additional voluntary U.K. Class 3 National Insurance contributions while he was residing in Canada. By letter dated March 29, 2001 from the Appellant's spouse to Inland Revenue, NI Contribution Office, the Appellant's spouse indicated that he would be making additional voluntary payments of £6.55 per week (£340.60 per year).

[3] In 2008 the Appellant received a U.K. State Pension in the weekly amount of £39.68 based on her spouse's U.K. National Insurance contributions. In 2008 the amount that she received was $2,406. She included this amount in computing her income but she also claimed a deduction for the same amount and therefore the net amount that was included in her income was nil. The deduction that was claimed in the amount of $2,406 was denied by the Canada Revenue Agency.

[4] Paragraph 56(1)(*a*) of the *Act*, provides in part as follows:

> 56. (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,
>
> > (a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,
> >
> > > (i) a superannuation or pension benefit…

[5] A superannuation or pension benefit is defined in section 248(1) of the *Act* in part as follows:

> "superannuation or pension benefit" includes any amount received out of or under a superannuation or pension fund or plan …

[6] The Appellant's argument is not entirely clear. It appears that the Appellant's first argument is that no part of the U.K. pension should ever be included in her income. My interpretation of her argument is that she was also arguing that, in the alternative, she should not be required to include in her income the portion of the amount that she had received as the U.K. National Insurance pension that would represent the return of the voluntary contributions made by her spouse. The voluntary contributions that were made to this plan by her spouse were made by him from after tax income as he did not claim any deduction in computing his income in Canada for his U.K. National Insurance contributions.

[7] In *Revenue and Customs Commissioners* v. *Kearney*, [2008] EWHC 842 (Ch), Justice Lewison stated as follows:

> 1. National Insurance is one of the cornerstones of the Welfare State, introduced by the first post-war Labour Government in the wake of the wartime Beveridge Report. As its name suggests it was an insurance scheme under which contributors made regular periodic payments in return for which they would be entitled to a variety of non-means tested benefits. These included free healthcare from the National Health Service, sickness benefit and a retirement pension.

[8] The retirement pension is the benefit that was paid to the Appellant in 2008. There is no basis to support any argument that no part of the U.K. pension should ever be included in the Appellant's income as the provisions of paragraph 56(1)(*a*) of the *Act* are clear that the amount of the pension is to be included in the Appellant's income (which she did). Also Article 17 of the Canada-United Kingdom Tax

Convention does not assist the Appellant as it provides that pension payments arising in the U.K. and which are paid to residents of Canada are taxable in Canada.

[9] As indicated above, my interpretation of the Appellant's argument is that she was also arguing that she should not be taxable in Canada on the portion of the amounts received as U.K. National Insurance pension that would represent a return of the voluntary contributions made by her spouse. The total amount contributed by the Appellant's spouse while he was a resident of Canada is not clear. It appears that the voluntary contributions started in 2001, although there is a reference in the letter dated March 29, 2001 to the tax year starting April 6, 1994. The amount payable was stated to be £6.55 per week (£340.60 per year). In the letter dated September 2, 2005 from HM Revenue & Customs, it is stated that the 2004-05 tax year is the last year for which voluntary contributions were payable by the Appellant's spouse. The amount payable for that year was £371.80 (£7.15 per week).

[10] Assuming that the voluntary contributions were made for the 1994-95 to 2004-05 taxation years inclusive, this would mean that voluntary contributions were made for 11 years. Since the contributions ranged from £340.60 per year to £371.80 per year, assume that the average amount contributed for the 11 years was £356.20 per year. Based on these assumptions, the total amount of the voluntary contributions would be £3,918.20. Since the Appellant received £39.68 per week (£2,063.36 per year), in less than two years she would receive more than the amount of the voluntary contributions made by her spouse while he was a resident of Canada.

[11] The Appellant's argument is essentially that until she receives an amount that exceeds the voluntary contributions made by her spouse, that the amount that she receives for the U.K. pension should not be taxable in Canada. Using the amounts determined above (which are based on assumptions made from very few facts) the Appellant's argument is that the first £3,918.20 (or the actual amount of the Appellant's spouse's contributions) that she receives should not be taxable in Canada. Her argument is that this would be a return of the amounts paid by her spouse from his after tax income in Canada (as he did not claim a deduction for these contributions in determining his income or taxable income under the *Act*). While I understand the logic of the Appellant's argument, there is unfortunately no provision of the *Act* which would exclude such amount from income or which would permit such a deduction. Paragraph 56(1)(*a*) of the *Act* provides that the amount of pension income that she has received is to be included in computing her income. Therefore she is required to include in her income the total amount of the pension that she received from the U.K. (which she did).

[12] In *Yates* v. *The Queen*, [2001] 3 C.T.C. 2565, 2001 DTC 761, Justice Campbell confirmed that the taxpayer's voluntary U.K. Class 3 National Insurance contributions were not deductible in computing his income for the purposes of the *Act*. Since these contributions are not deductible by the person who made the contributions, they would not be deductible by the spouse of the person who made the contributions. Therefore the Appellant is not entitled to any deduction for the U.K. Class 3 National Insurance contributions that her spouse made.

[13] For amounts received as annuity payments, the recipient of the amount is required to include the amount in his or her (or its) income under paragraph 56(1)(*d*) of the *Act* but the person is also entitled to a deduction for the capital element of such annuity payment under paragraph 60(*a*) of the *Act*. There is no similar provision to permit a deduction for the capital element of pension payments.

[14] It is an unfortunate situation that the Appellant is required to include in her income amounts that could be viewed as a return of contributions made by her spouse from after-tax dollars but if this matter is to be addressed it must be addressed by Parliament. The Appellant's appeal must be determined based on the *Act* as it is written.

[15] As a result the Appellant's appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 24th day of July, 2012.

"Wyman W. Webb"

Webb J.

CITATION:	2012TCC268
COURT FILE NO.:	2011-3033(IT)I
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APPEARANCES:

Agent for the Appellant:	Neha Tiku
Counsel for the Respondent:	Iris Kingston

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