

Docket: 2024-107(OAS)

BETWEEN:

BINOD AGRAWAL,

Appellant,

and

THE MINISTER OF EMPLOYMENT, WORKFORCE
DEVELOPMENT AND OFFICIAL LANGUAGES,

Respondent.

Appeal heard on September 3, 2024 at Vancouver, British Columbia

Before: The Honourable Justice Jean Marc Gagnon

Participants:

For the Appellant: The Appellant himself
Counsel for the Respondent: Yetunde Elisabeth Akinyinka

JUDGMENT

The appeal made under the *Old Age Security Act* is dismissed in accordance with the attached Reasons for Judgment, without costs.

Signed at Montréal, Québec, this 8th day of October 2024.

“J.M. Gagnon”

Gagnon J.

Citation: 2024 TCC 128

Date: 20241008

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BINOD AGRAWAL,

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REASONS FOR JUDGMENT

Gagnon J.

I. Context

[1] The Appellant, Mr. Agrawal, appeals to the Social Security Tribunal (Tribunal) pursuant to subsection 28(1) of the *Old Age Security Act*¹ from a reconsideration decision of the Minister of Employment, Workforce Development and Disability Inclusion (predecessor to the Respondent) (Minister) dated July 11, 2023 (Reconsideration). The Reconsideration decision responds to the Appellant's request under section 27.1 OASA for the Minister to reconsider the determination confirmed by letter to the Appellant dated June 7, 2022 (Determination).

[2] The Determination addresses the Appellant's entitlement to monthly guaranteed income supplement (GIS) benefits for the period from April 2022 to June 2022 (Appeal Period), and more specifically following benefits now granted to the Appellant's spouse. The Minister's Reconsideration decision confirmed the decision stated in the Determination.

¹ *Old Age Security Act*, RSC 1985, c O-9 [OASA].

[3] Considering the ground of the Appellant's appeal to the Tribunal is the correctness of the Determination of the Appellant's income or the Appellant's sources of income for the 2020 base calendar year, the Tribunal was required by virtue of subsection 28(2) OASA to initiate a reference to this Court for a decision.

[4] The Respondent did not notify the Tribunal in accordance with section 38.1 of the Regulation² that a person other than the Appellant may be directly affected by the decision of this Court. In addition, the Court confirmed with the Appellant at the hearing that the only dispute under appeal is to confirm his own income or source of income for purposes of the Appeal Period, and not his spouse's income or sources of income. Accordingly, this appeal strictly deals with the Appellant's 2020 base calendar year as defined in section 10 OASA. This refers to the Appellant's income, as defined in the OASA, for his 2020 taxation year. For purposes herein, such income is computed in accordance with the provisions of the *Income Tax Act*³.

II. Relevant Facts

[5] In this matter, the relevant facts are summarized as follows:

- a) In April 2022, the Appellant reaches 10 years of residency in Canada.
- b) On July 2, 2021, the Appellant submits an old age security application. This application precedes a subsequent application to complete his preceding request in order to apply for GIS benefits. The subsequent application completed by the Appellant is signed March 25, 2022 and is received by the Minister on April 12, 2022.
- c) On June 2, 2022, the Minister grants the Appellant a partial old age security pension and GIS benefits beginning in April 2022. The decision informs that this is based at a rate of a pensioner who has a spouse who is not a pensioner.
- d) At the time of applying for GIS benefits, the Appellant provides his income situation in order for the Minister to make an income determination for purposes of the OASA rules. Among other information provided by the Appellant during the process, he informs the Minister of his entitlement to a foreign pension income from India (Foreign Pension Income). The Appellant's notices of assessment received from the Canada Revenue Agency for his 2018, 2019 and 2020 taxation

² *Old Age Security Regulations*, CRC, c 1246 [Regulation].

³ *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA]. The computation under the ITA is subject to certain provisions of the OASA and applicable regulations. However, such provisions have no effect in the present case.

years include the Foreign Pension Income as disclosed by the Appellant. Moreover, the Appellant provides the Minister a Statement of Income and Expenses prescribed form dated April 20, 2023 confirming the income and expense determined in 2022 but based on figures available for the 2021 calendar year. The prescribed statement shows the Foreign Pension Income as income. However, a note on the form mentions “foreign pension (not receiving until visit India)”.

- e) On June 7, 2022, the Appellant’s spouse is granted with a partial old security pension and GIS benefits retroactively from April 2022. On the same date, the Minister informs the Appellant that as a consequence of his spouse being entitled to benefits under the OASA, the Appellant’s GIS are redetermined retroactively for the period of April 2022 to June 2022 on the basis of a pensioner who has a spouse who is a pensioner. This is the Determination.
- f) On June 24, 2022, the Appellant submits a request to reconsider the Determination to recalculate his GIS entitlement from April 2022 to June 2022.
- g) By letter dated July 11, 2023, the Minister sends the Appellant a reconsideration decision letter maintaining the Determination. This is the Reconsideration.
- h) On September 8, 2023, the Appellant files an appeal of the Reconsideration to the Tribunal.
- i) On December 7, 2023, the Tribunal refers the present appeal to the Tax Court of Canada for decision in accordance with subsection 28(2) OASA.

III. Positions of the Parties

[6] The Appellant’s argument is that he does not receive directly the Foreign Pension Income so declared on his annual Canadian income tax return. He needs to visit India to access the income. In other words, according to him, this is income on paper only. In the meantime, the pension is paid to him but remains in a bank account in India under his personal name, as the sole signatory and beneficiary of the account. The situation is such that by the time the Appellant can visit India and organize for a transfer of the bank account funds from India into Canada and pay all the fees and expenses relating to the exercise, the Foreign Pension Income is reduced considerably and is then just a minor amount of financial assistance. He also claims unfairness, delay, and absence of equity from the Minister’s conduct in having brutally slashed his GIS benefits. The Appellant solicits the Court that the Foreign Pension Income be calculated on the basis of actual receipt in Canada.

[7] The Appellant also adds that, based on fundamental financial rules, the GIS adjustment made by the Minister is not recoverable from him after having been paid and used by him to cover his living expenses. His health conditions have increased considerably his cost of living. Any attempt to recover any adjustment becomes difficult for him. He did not hide any information and he should not be penalized for a situation the Minister is the sole responsible.

[8] The Respondent's position is that the only identifiable issue is the inclusion of the Appellant's Foreign Pension Income in his income for calculation of his GIS benefits accordance with the provisions of the OASA. The Respondent is of the view that this exercise was properly done by the Minister.

IV. Issue in Dispute

[9] The sole issue before the Court is whether the Appellant's Foreign Pension Income shall be included in the calculation of his income for GIS computation purposes relating to the Appeal Period.

V. Analysis

[10] I heard the testimony of the Appellant. I reviewed the documents received from the Tribunal. I reviewed the reply from the Respondent, and I have considered all documents submitted by the parties at the hearing.

(1) Jurisdiction of the Tax Court of Canada

[11] The Tax Court of Canada's jurisdiction is found in subsection 28(2) OASA and section 12 of the *Tax Court of Canada Act*.

[12] The appeals relating to benefits under the OASA are appealable to the Tribunal and judicial review of a decision of the Tribunal relating to benefits is available under the *Federal Courts Act*.

[13] In the Taylor⁴ decision, this Court noted that the Court's jurisdiction in the case of the OASA is defined by Parliament as restrained to income determination. Matters under the OASA such as the Minister's redetermination of an entitlement and seeking to recover overpayments after the payments were made is not within the jurisdiction of the Court. Therefore, this Court has no authority or power to address

⁴ *Taylor v Canada*, 2005 TCC 496 [Taylor].

any other concerns or rights the Appellant raised other than the Appellant's income determination for purposes of his GIS benefits under the OASA. In other words, the determination of the Appellant's income is the only single element to be reviewed by this Court, and must be carried out in the present case in compliance with the applicable provisions of the ITA.

[14] On that basis, the Court needs to determine whether the decision of the Minister as to the income or income from a particular source or sources of the Appellant was incorrectly made. The Court will specifically address the sole question of whether (i) the Foreign Pension Income is included in computing the Appellant's income for ITA purposes and therefore is to be included in the income for old age security purposes, or (ii) the provisions of the ITA allow an adjustment to the income computation as exposed in the Appellant's position so to exclude or reduce the Foreign Pension Income inclusion.

(2) Income for GIS Purposes

[15] Income for a given calendar year is calculated for old age security purposes in accordance with the ITA with some specific rules provided in the OASA. In the present case, the OASA rules are not relevant to the Court's decision and therefore only the ITA rules are considered.

[16] A factor is also relevant in view to select the correct calendar year under which the income determination must be done. This factor is described as the base calendar year for the payment period of the pensioner under review. A payment period under the OASA begins a July 1 of one given year and ends on June 30 of the next year. And the amounts paid to the pensioner during that payment period are based on the pensioner's income for the base calendar year, as defined in section 10 OASA, applicable to this very specific payment period, which is the income for the last calendar year ending before the reviewed payment period begins. This means that the payment period under review in the present case is July 2021 to June 2022, and the base calendar year is the 2020 calendar year.

[17] The provisions of the ITA are the last say on what is the income of a pensioner. The Court has no discretion on what provision of the ITA applies or not, subject for the Court to interpret unclear piece of the legislation. In which case, jurisprudence could become key to the answer.

[18] In order to determine the income of a taxpayer under the ITA, the general rules under sections 2 and 3 ITA apply and confirm that taxpayers resident in Canada

are taxed on their worldwide income from sources inside and outside of Canada. At that point, many provisions of the ITA must be considered in order to assess the total income under the ITA. It must also be understood that the determination of the income is only the first step of a series that the ITA provides for in order to ultimately determine the tax payable by a Canadian resident taxpayer under the ITA. The computation of income of a taxpayer is done under Division B Part I ITA. Subsequently, Division C Part I ITA includes the provisions to compute the taxable income of the taxpayer, and Division D Part I ITA does the same but for the taxable income earned in Canada of non-residents. Division E Part I ITA determines the computation of tax. Each step has its sole purpose, and leads to a distinct result.

[19] In the present case, section 2 OASA defines income as the income for the year computed in accordance with the ITA. The specific reference to the sole word income makes clear that Division B Part I ITA (sections 3 to 108 ITA) is the sole division that must be considered in order to determine the income of the Appellant for his 2020 taxation year⁵. Provisions of the ITA for taxable income and computation of tax do not apply.

[20] Depending on the taxpayer's activities and situations, more or less rules under the ITA will have to be considered in computing the taxpayer's income. For purposes herein, the following extract of paragraph 56(1)(a) ITA is particularly relevant and states that:

Amounts to be included in income for year

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 including, without limiting the generality of the foregoing,

(A) [...],

(B) [...],

(C) [...], and

⁵ The Court refers the reader to the decisions in, *inter alia*, *Bakht v Canada*, 2002 FCA 252 [Bakht], *Gaisford v Her Majesty the Queen*, 2011 FCA 28, *Dupuis v Minister of Human Resources and Skills Development*, 2011 TCC 485 and the *John Rysdyk v Minister of Human Resources Development Canada*, 2003 TCC 123.

(C.1) the amount of any payment out of or under a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,

[...]

[21] Moreover, “superannuation or pension benefit” is defined in subsection 248(1) ITA:

superannuation or pension benefit includes any amount received out of or under a superannuation or pension fund or plan (including, except for the purposes of subparagraph 56(1)(a)(i), a pooled registered pension plan) and, without restricting the generality of the foregoing, includes any payment made to a beneficiary under the fund or plan or to an employer or former employer of the beneficiary under the fund or plan

(a) in accordance with the terms of the fund or plan,

[...]

[22] This definition has been generally interpreted very broadly, and the Court is of the view that is clearly sufficient to include the Foreign Pension Income as described by the Appellant at the hearing.

[23] In the Bakht decision, the Federal Court of Appeal upheld the decision of Associate Chief Justice Bowman, as he was then, that a foreign pension income must be included when calculating income for the purposes of the GIS. Furthermore, the Court upheld Associate Chief Justice Bowman’s position that the taxpayer could not deduct any amount allowed by subsection 118(3) ITA in computing his income as subsection 118(3) does not provide a deduction for the computation of income; it provides a deduction for taxes payable. Neither the Federal Court of Appeal nor the Tax Court of Canada decisions confirmed whether the pension was a private or public pension. The Federal Court of Appeal is however clear that the ITA contains separate steps as exposed above to ultimately determine tax payable, and provisions in each step do not directly interfere with the provisions of another step. So provisions of the ITA dealing with the taxable income (Division C Part I ITA) or the computation of tax (Division E Part I ITA) do not apply to determine the computation of income (Division B Part I ITA).

[24] Based on the principle stated in paragraph 56(1)(a) ITA and the Federal Court of Appeal’s position above, it becomes clear that pension income, including foreign pension income, must be included in the income of a taxpayer. This result also applies to the Appellant.

[25] In the present case, the Court notes the exception in sub-clause 56(1)(a)(i)(C.1) ITA. However, this exception impacts the scope of sub-clause (C.1), and may only impact if (i) the pension income comes out of a foreign retirement arrangement that was itself established under the laws of a country and (ii) a taxpayer resident in that country is not taxed on such income in that country.

[26] The evidence at the hearing did not allow the Court to hear or consider any evidence that could suggest that the exception above has any role to play in the present case. The Court has no indication or reliable information to support that the conditions of the exception above are satisfied. The Court ignores the foreign law, the scope of such legislation, the applicable conditions, the applicable tax regime, or the genesis, source or origin of the pension plan under which the Appellant receives the income. In other words, the Court is without basis to even be in a position to consider that exception in the present case.

[27] One more point the Court would like to add before addressing the present situation is the potential scope of the Canada-India Tax Convention ⁶ in a case like the present appeal, and determine whether it could be of any assistance to the Appellant. More specifically, Article 18 of the Canada-India Tax Convention states that pensions arising in a Contracting State shall be taxable only in that State, and for that purpose a pension arises in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State.

[28] Unfortunately, the interest in such provision in the present case does not last long. The reason is that the ITA is structured such as to reflect a tax relief such as under Article 18 of the Canada-India Tax Convention only in computing the taxable income of a taxpayer, not in computing the income. Subparagraph 110(1)(f)(i) ITA provides that:

Deductions permitted

110(1) For the purpose of computing the taxable income of a taxpayer for a taxation year, there may be deducted such of the following amounts as are applicable

[...]

Deductions for payments

⁶ The *Canada-India Income Tax Agreement Act*, 1996, SC 1997, c 27, Part IV promulgates in Canada the *Agreement Between the Government of Canada and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* [Canada-India Tax Convention].

(f) any social assistance payment made on the basis of a means, needs or income test and included because of clause 56(1)(a)(i)(A) or paragraph 56(1)(u) in computing the taxpayer's income for the year or any amount that is

(i) an amount exempt from income tax in Canada because of a provision contained in a tax convention or agreement with another country that has the force of law in Canada,

[...]

to the extent that it is included in computing the taxpayer's income for the year;

[29] The computation of income under the ITA is not impacted by subparagraph 110(1)(f)(i) ITA. This subparagraph is not in Division B Part I ITA (Determination of Income) but in Division C Part I ITA (Determination of Taxable Income). Therefore, it does not interfere in computing the income under the ITA and consequently nor under the income for OASA purposes. The Court can only believe that this is done on purpose by Parliament, and the Court has no right or power to change that.

[30] In addition to the foregoing, the Appellant at more than one occasion during the hearing, has confirmed that the inclusion of the Foreign Pension Income in computing his income for Canadian income tax purposes was not at issue and such income was to be included.

[31] The Court has also considered all other arguments of the Appellant, absence of equity and fairness, collection procedure by the Minister, alleged error by the Minister, considerable expenses to transfer funds into Canada, serious health and financial issues. The Court is not in authority to consider these factors in determining the Appellant's income. This is not that these factors have no basis or merit whatsoever in the present case, but because the Court's jurisdiction does not allow it to consider these factors, nor the ITA provides any relief for financial hardships as exposed by the Appellant. As for the actual receipt approach suggested by the Appellant for the income inclusion of Foreign Pension Income, this argument does not make the applicable treatment under the ITA any different. The funds are received by the Appellant the moment they are paid abroad, are under his sole control (like receiving salary to quote the Appellant) and free to dispose of the funds as he please. The fact that the funds are abroad due to personal and financial choices, as genuine that may be, does not in and of itself justify a different tax treatment under Division B Part I ITA, and the Court is not authorized unfortunately to change that result.

[32] Based on the foregoing analysis, the Court has no other choice than to confirm that, for purposes of the ITA, the ITA includes the Foreign Pension Income deposited in the Appellant's bank account in 2020 in the computation of the Appellant's income for his 2020 taxation year. Therefore, the Minister was correct in including, for purposes of the OASA, the Foreign Pension Income received in 2020 by the Appellant in his income for his 2020 base calendar year.

[33] Considering the foregoing, the appeal must be dismissed, without costs.

Signed at Montréal, Québec, this 8th day of October 2024.

“J.M. Gagnon”

Gagnon J.

CITATION: 2024 TCC 128
COURT FILE NO.: 2024-107(OAS)
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APPEARANCES:

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