

## INCOME TAX

### ASSESSMENT AND REASSESSMENT

Appeal from Tax Court of Canada (T.C.C.) decision (2017 TCC 46) dismissing appellant's appeal from reassessment confirming that appellant liable for *Canada Pension Plan*, R.S.C., 1985, c. C-8 (CPP) contribution in relation to income allocated thereto after retiring as partner from accounting firm — Year following appellant's retirement, appellant allocated income from partnership based on partnership agreement — Including income in 2008 tax return but not including any amount for CPP contribution — Assessed in 2009 on basis that income allocated to appellant resulted in CPP contribution payable by him — Almost 4 years later, appellant requesting that Minister of National Revenue (Minister) reassess amount payable for 2008 by reversing amount payable for CPP contribution; by reversing corresponding amounts for deduction, non-refundable tax credit — In 2014, Minister reassessing appellant — While agreeing to reverse amounts for deduction, non-refundable tax credit, Minister not reversing amount payable for CPP contribution since appellant not making request within four year limitation period — Reassessment thus resulting in appellant having balance payable of over \$2,000 — After appellant objecting to reassessment, Minister reassessing appellant in December 2015 — Reassessment reflecting original 2009 assessment — Appellant appealing to T.C. C. concerning December 2015 reassessment — T.C.C. concluding that income appellant allocated could not be considered to be retiring allowance; that since amount included in appellant's income as business income, it should also be treated as self-employed earnings for CPP purposes — Issues: whether reassessment issued under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c.1, s. 152(4.2) (Act); whether valid appeal before Tax Court of Canada existing; if so, whether CPP contribution payable in relation to income allocated to appellant for 2008 — Act, s. 152(4.2) providing that, for purpose of determining amount of any refund to which taxpayer entitled, Minister may reassess that taxpayer following application for such determination made by taxpayer — No right to object reassessment made under s. 152(4.2), thus is no right to appeal — While appellant requesting reassessment, refund, Minister determining no such refund owed — In fact, appellant's tax liability increasing — Reassessment that increases person's tax liability is not one made for purpose of determining refund but for purpose of determining that person's liability under Act or CPP — Since reassessment issued in May 2014 increasing appellant's liability for 2008, not reassessment made under Act, s. 152(4.2) — Regarding validity of appeal, 2014 reassessment issued more than three years after original assessment issued in September 2009 — In accordance with Act, s. 152(8), reassessment made in May 2014 deemed to be valid notwithstanding any error or defect or omission in assessment — Therefore valid appeal to T.C.C. existing in relation to subsequent related reassessment issued in December 2015 — As to CPP contributions following appellant's retirement [heading, p. 10], T.C.C. finding that amount allocated to appellant in 2008 by accounting firm included in his income under Act, s. 96(1.1) — However, since appellant had ceased to be member of partnership in 2007, he ceased to carry on business in common with other members of partnership at that time — As result, appellant not carrying on business in common with other partners of accounting firm at any time in 2008 for purposes of CPP — Deeming provisions in Act (ss. 96(1.1); 96(1.6)) examined — No provisions existing deeming appellant to be member of partnership or to be carrying on business for CPP purposes — Thus, in 2008, appellant would not be member of partnership, would not be carrying on business for CPP purposes (s. 14) — Income allocated to appellant by accounting firm for 2008 not self-employed earnings for purposes of CPP, s. 14 since income not arising from business appellant carrying on in 2008 — Matter remitted for reconsideration, reassessment — Appeal allowed.

FREITAS V. CANADA (A-130-17, 2018 FCA 110, Webb J.A., judgment dated February 1, 2018, 17 pp.)