

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150302

Docket: A-6-14

Citation: 2015 FCA 60

**CORAM: DAWSON J.A.
STRATAS J.A.
SCOTT J.A.**

BETWEEN:

CARROL STRACHAN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on March 2, 2015.
Judgment delivered from the Bench at Toronto, Ontario, on March 2, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

DAWSON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 2, 2015).

DAWSON J.A.

[1] Subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) renders a taxpayer liable to payment of a penalty when the taxpayer knowingly, or under circumstances amounting to gross negligence, makes a false statement in a return.

[2] For reasons cited as 2013 TCC 380, a judge of the Tax Court of Canada dismissed an appeal brought by the appellant from the assessment of a gross negligence penalty in respect of

the 2007 taxation year. The facts giving rise to the imposition of the penalty were that the appellant, at the behest of an unscrupulous tax preparer, claimed a fictitious business loss in an amount sufficient to generate a complete refund of all taxes paid by the appellant in respect of her employment income.

[3] While counsel for the appellant asserts various errors on the part of the Judge, the appellant has failed to establish any basis for interfering with the judgment of the Tax Court. We reach this conclusion on the following basis.

[4] First, as conceded in oral argument by counsel for the appellant, the Judge made no error in articulating the applicable legal test. Gross negligence may be established where a taxpayer is willfully blind to the relevant facts in circumstances where the taxpayer becomes aware of the need for some inquiry but declines to make the inquiry because the taxpayer does not want to know the truth (*Canada (Attorney General) v. Villeneuve*, 2004 FCA 20, 327 N.R. 186, at paragraph 6; *Panini v. Canada*, 2006 FCA 224, [2006] F.C.J. No. 955, at paragraphs 41-43).

[5] Contrary to counsel for the appellant's submissions, the Judge's reasons demonstrate that he properly considered the appellant's background and circumstances.

[6] Second, the appellant has failed to establish that the Judge misapplied the correct legal test. No palpable and overriding error has been shown in the Judge's finding of mixed fact and law that given the numerous "warning" signs, the appellant was required to make further inquiries of her tax preparer, an independent advisor or the Canada Revenue Agency itself before

signing her tax return. Nor has any palpable and overriding error been shown in the Judge's conclusion that the circumstances precluded a defence that, based upon the wrongful representations of her tax preparer, the appellant believed that what she was doing was permissible.

[7] In the result, the appeal will be dismissed with costs.

"Eleanor R. Dawson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-6-14

(APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE CAMPBELL J. MILLER OF THE TAX COURT OF CANADA DATED DECEMBER 2, 2013, DOCKET NO. 2010-3044(IT)G)

STYLE OF CAUSE: CARROL STRACHAN v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: MARCH 2, 2015

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
STRATAS J.A.
SCOTT J.A.

DELIVERED FROM THE BENCH BY: DAWSON J.A.

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