

Date: 20080403

Docket: A-258-06

Citation: 2008 FCA 122

**CORAM: SEXTON J.A.
 SHARLOW J.A.
 PELLETIER J.A.**

BETWEEN:

RUDOLF DESOUZA

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on April 3, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on April 3, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on April 3, 2008)

SHARLOW J.A.

[1] Mr. Rudolf DeSouza is appealing a judgment of Justice Sarchuk of the Tax Court of Canada dismissing Mr. DeSouza's income tax appeals for 2000 and 2001 (2005 TCC 746).

[2] The only issue before Justice Sarchuk was whether Mr. DeSouza was entitled to a deduction under paragraph 8(1)(f) or subparagraph 8(1)(i)(ii) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), for amounts that he claimed to have paid to an assistant in connection with his employment with Vaughan Engineering.

[3] By virtue of subsection 8(10) of *the Income Tax Act*, Mr. DeSouza was not entitled to a deduction for that expense unless he submitted a prescribed form signed by his employer certifying that the statutory conditions for the deduction were met. There were two subsection 8(10) certificates before Justice Sarchuk. One, signed by the chief financial officer of Vaughan Engineering, indicates that the statutory conditions for the deductions claimed by Mr. DeSouza were not met. The other, signed by the senior vice-president of Vaughan Engineering, indicates that the statutory conditions were met.

[4] Justice Sarchuk did not accept the certificate signed by the senior vice-president, and on that basis concluded that Mr. DeSouza had failed to provide the certificate required by subsection 8(10). That was a sufficient ground for finding that Mr. DeSouza was not entitled to the deduction claimed. However, Justice Sarchuk also concluded that even if Mr. DeSouza had provided the required certificate, his claim would have failed for lack of substantiating evidence. Justice Sarchuk explained both conclusions in paragraphs 11 and 12 of his reasons.

[5] The written submissions of Mr. DeSouza in support of his appeal do not allege or establish any error in Justice Sarchuk's analysis or conclusions.

[6] In oral argument Mr. DeSouza attempted to raise an entirely new argument, which is that during the years in question he was self-employed as a consulting engineer and that the amounts allegedly paid to an assistant should have been allowed as a deduction in computing the income from his consulting engineering business. We are all of the view that it is too late at this stage to

raise that argument. We note that Mr. DeSouza claims that he intended to raise this point in the Tax Court but did not do so because he was side-tracked at the outset and became confused. We are not persuaded that this is a sufficient reason for permitting an entirely new argument to be raised for the first time on an appeal to this Court.

[7] After reviewing the record in this case and considering Mr. DeSouza's written and oral submissions, we are unable to detect any error of law on the part of Justice Sarchuk or any other error that warrants the intervention of this Court.

[8] The appeal will be dismissed with costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-258-06

STYLE OF CAUSE: RUDOLF DESOUZA v.
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 3, 2008

REASONS FOR JUDGMENT OF THE COURT BY: SEXTON, SHARLOW, PELLETIER
J.J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

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