

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110524

Docket: A-128-09

Citation: 2011 FCA 174

**CORAM: NOËL J.A.
NADON J.A.
EVANS J.A.**

BETWEEN:

JOHN F. GROSCKI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on May 19, 2011.

Judgment delivered at Ottawa, Ontario, on May 24, 2011.

REASONS FOR JUDGMENT BY:

NOËL J.A.

CONCURRED IN BY:

NADON J.A.
EVANS J.A.

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REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal by Mr. John F. Groscki (the appellant) from a judgment of Miller J. of the Tax Court of Canada (the Tax Court Judge) confirming the assessment issued by the Minister of National Revenue (the Minister) disallowing the appellant's deduction for bad debts under paragraph 20(1)(p) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) for his 2002 taxation year.

[2] In computing his income for the 2002 taxation year, the appellant deducted an amount of \$12,000 on line 8590 (Bad debts) of his statement of professional activities that was filed with his T1 income tax return. He explained before the Tax Court that the figure of \$12,000, although claimed as a bad debt, represents the increase in his reserve for doubtful debts for his 2002 taxation year over that applicable to his 2001 taxation year. As such, he took the position that he was entitled to the deduction as a reserve for doubtful debts.

[3] The combined effect of paragraphs 20(1)(l) and 12(1)(d) of the Act allows a taxpayer to deduct a reserve for doubtful debts for a given taxation year subject to this reserve being included in income in the following year and a new reserve being claimed as a deduction in that year, if justified. The result is that the payment of taxes on receivables, the collection of which can be shown to be doubtful, is deferred until such time as they cease to be doubtful. In contrast, when a debt can be shown to be unrecoverable, paragraph 20(1)(p) allows for a final one-time deduction with no corresponding inclusion.

[4] It is useful for present purposes to reproduce paragraph 12(1)(d) of the Act which requires a taxpayer to include in income a reserve for doubtful debts claimed in the prior year:

12. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from a business or property such of the following amounts as are applicable

...

12. (1) Sont à inclure dans le calcul du revenu tiré par un contribuable d'une entreprise ou d'un bien, au cours d'une année d'imposition, celles des sommes suivantes qui sont applicables :

[...]

(d) any amount deducted under paragraph 20(1)(l) as a reserve in computing the taxpayer's income for the immediately preceding taxation year;

d) les sommes déduites à titre de provision en application de l'alinéa 20(1)l) dans le calcul du revenu du contribuable pour l'année d'imposition précédente;

...

[...]

[5] In his reasons for judgment, the Tax Court Judge stated the following with respect to the appellant's deduction of \$12,000 for bad debt (reasons for judgment at para. 9):

The issue before me, however, is not whether [the appellant] has properly calculated his allowance for doubtful accounts, but whether he has proven he had \$12,000 of bad debts in 2002. He has not provided me any evidence with respect to bad debts for 2002. ...

[6] The Tax Court Judge also made the following statement (reasons for judgement at para. 4):

... [The appellant] calculated [the \$12,000] expense by determining an allowance for doubtful accounts in year one and in year two, and determining the difference. When the appeals officer attempted to explain to [the appellant] that such a determination was not a bad debt for income tax purposes, but an increase in an allowance for doubtful accounts, [the appellant] accused the appeals officer of not knowing what he was talking about. With respect, that was unfair, and was inaccurate.

[7] As the appellant was unable to demonstrate that debts totaling \$12,000 became unrecoverable during his 2002 taxation year, the Tax Court Judge held that the deduction was properly disallowed.

[8] In support of his appeal, the appellant argues that the Tax Court Judge erred in characterizing the issue before him as whether he had a bad debt of \$12,000. According to the appellant the issue throughout was whether he was entitled to a reserve for doubtful debts in the amount of \$12,000. The appellant submits that the reserve was allowable as such and the Tax Court Judge erred in requiring him to follow a particular methodology in claiming it.

[9] The difficulty with the arguments raised on appeal is one of evidence, or more precisely the lack thereof. I agree that if the reserve which the appellant purports to have claimed for doubtful debts for his 2002 taxation year was treated as such and included in his income for the subsequent taxation year, as was required by paragraph 12(1)(d), he was entitled to a \$12,000 deduction in 2002 regardless of the label placed on the deduction which he claimed. On the other hand, if the deduction was a one-time deduction with no corresponding inclusion the next year, it was properly characterized by the Tax Court Judge as a deduction for bad debts.

[10] It would have been a simple matter for the appellant to produce his 2003 tax return and show that the reserve which he claimed was treated as such and included in his income for that subsequent year. Absent any such evidence, it was open to the Tax Court Judge to treat the claimed deduction as a one-time deduction for bad debts. As otherwise there is no evidence that the amount claimed became a bad debt during 2002, the Tax Court Judge properly upheld the disallowance.

[11] I would dismiss the appeal with costs.

“Marc Noël”

J.A.

“I agree
M. Nadon J.A.”

“I agree
John M. Evans J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-128-09

APPEAL FROM AN AMENDED JUDGMENT DELIVERED ORALLY FROM THE BENCH OF THE HONOURABLE JUSTICE MILLER OF THE TAX COURT OF CANADA DATED APRIL 24, 2009, DOCKET NUMBER 2008-1645(IT)I.

STYLE OF CAUSE: JOHN F. GROSCKI and HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: May 19, 2011

REASONS FOR JUDGMENT BY: Noël J.A.

CONCURRED IN BY: Nadon J.A.
Evans J.A.

DATED: May 24, 2011

APPEARANCES:

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Donna Dorosh

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