

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20130506**

**Docket: A-420-12**

**Citation: 2013 FCA 123**

**CORAM: SHARLOW J.A.  
DAWSON J.A.  
GAUTHIER J.A.**

**BETWEEN:**

**JAMES AVRAMS**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on May 6, 2013.

Judgment delivered from the Bench at Toronto, Ontario, on May 6, 2013.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**SHARLOW J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**

(Delivered from the Bench at Toronto, Ontario, on May 6, 2013)

**SHARLOW J.A.**

[1] This is an appeal from the judgment of the Tax Court of Canada (2012 TCC 247) dismissing Mr. Avrams' appeal from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) for the 2003 to 2006 taxation years. The grounds of appeal challenge the judge's findings of fact. This Court cannot intervene on that basis in the absence of palpable and overriding error.

[2] The key factual dispute in the Tax Court relates to the amount of money given to Mr. Avrams by his sister. Mr. Avrams submitted in the Tax Court, and again in this Court, that the bank

deposits that the Minister assumed to be unreported income of Mr. Avrams were in fact money his sister had given him over the years in question, as substantiated by her statutory declaration.

[3] In this Court, counsel for Mr. Avrams explained how one might infer from the documents, including the statutory declaration, that Mr. Avrams received gifts totalling approximately \$130,000 from his sister over the years in question. However, the judge did not make that inference. On the contrary, the judge found the statutory declaration and Mr. Avrams' oral evidence to be unreliable, and gave them no weight. She gave cogent reasons for that conclusion.

[4] We have carefully reviewed the notice of appeal, the transcript of Mr. Avrams' oral evidence, the statutory declaration and the other documents in the record, and also the reasons given by the judge for finding the statutory declaration and Mr. Avrams' oral evidence to be unreliable. In our view, it was reasonably open to the judge to find as she did. Despite the able submissions of counsel for Mr. Avrams, we cannot conclude, on the record before us, that the judge made a palpable and overriding factual error when she gave no weight to the statutory declaration and Mr. Avrams' oral evidence. Nor have we been able to detect a palpable and overriding error in any of the other factual findings of the judge.

[5] For these reasons, the appeal will be dismissed with costs.

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-420-12

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM JUSTICE VALERIE MILLER OF THE TAX COURT OF CANADA DATED JULY 11, 2012, DOCKET NO. 2010-2144 (IT) G.**

**STYLE OF CAUSE:** JAMES AVRAMS v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 6, 2013

**REASONS FOR JUDGMENT OF THE COURT BY:** (SHARLOW, DAWSON, GAUTHIER J.J.A.)

**DELIVERED FROM THE BENCH BY:** SHARLOW J.A.

**APPEARANCES:**

Leigh Somerville Taylor FOR THE APPELLANT

Craig Maw FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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