Federal Court of Appeal



Cour d'appel fédérale

Date: 20200127

Dockets: A-81-19 (lead), A-82-19, A-412-19,

A-80-19, A-83-19 A-411-19

Citation: 2020 FCA 27

CORAM: NADON J.A.

WEBB J.A. BOIVIN J.A.

Dockets: A-81-19

A-82-19

A-412-19

BETWEEN:

PIYUSH PATEL

Appellant

and

HER MAJESTY THE QUEEN

Respondent

AND

Dockets: A-80-19

A-83-19

A-411-19

BETWEEN:

PAUL BENNINGER

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Ottawa, Ontario, on January 27, 2020. Judgment delivered from the Bench at Ottawa, Ontario, on January 27, 2020.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Federal Court of Appeal



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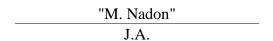
<u>REASONS FOR JUDGMENT OF THE COURT</u> (Delivered from the Bench at Ottawa, Ontario, on January 27, 2020).

NADON J.A.

- [1] We are all agreed that the Tax Court of Canada's judge (the Judge) erred in concluding that subsection 171(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Suppl.) (the Act), "cannot be applied to the appeal of Mr. Patel and Benninger..." (Transcript of oral reasons, February 15, 2019 in files (2016-4750 (IT) G, 2016-4571 (IT) G, AB, Tab 6, p. 27).
- [2] In our view, the provision clearly allowed the judge, if he was so inclined in the exercise of his discretion, to give effect to the parties' request to bifurcate the issues, as per their letter to the Tax Court of November 19, 2018.
- [3] We also wish to say that considering that subsection 171(2) of the Act is applicable and thus not a bar to the parties' request, the fact that the parties are in agreement with respect to the manner in which their tax appeals should proceed, is a highly relevant, although not determinative, consideration in the exercise of the discretion to allow or not the parties' request.

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- [4] The appeals will therefore be allowed, the Tax Court of Canada's decision of February 18, 2019, as amended by his Order of October 24, 2019, will be set aside and the matter will be returned to the Judge for reconsideration of the parties' request in the light of these reasons;
- [5] Copy of these reasons will be filed also in appeals A-82-19, A-412-19, A-80-19, A-83-19 and A-411-19 as reasons therein.



FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-81-19 (lead), A-82-19, A-412-19,

A-80-19, A-83-19, A-411-19

DOCKETS: A-81-19

A-82-19 A-412-19

STYLE OF CAUSE: PIYUSH PATEL v. HER

MAJESTY THE QUEEN

DOCKETS: A-80-19

A-83-19

A-411-19

STYLE OF CAUSE: PAUL BENNINGER v. HER

MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: JANUARY 27, 2020

REASONS FOR JUDGMENT OF THE COURT BY: NADON J.A.

WEBB J.A. BOIVIN J.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

Gordon Bourgard FOR THE APPELLANTS
Kristen Duerhammer PIYUSH PATEL AND

PAUL BENNINGER

Natalie Goulard FOR THE RESPONDENT

Simon Vincent HER MAJESTY THE QUEEN

SOLICITORS OF RECORD:

KPMG Law LLP FOR THE APPELLANTS

Toronto, Ontario

PIYUSH PATEL AND PAUL BENNINGER

Nathalie G. Drouin Deputy Attorney General of Canada Ottawa, Ontario FOR THE RESPONDENT HER MAJESTY THE QUEEN