

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20210126**

**Docket: A-182-19**

**Citation: 2021 FCA 12**

**CORAM: STRATAS J.A.  
WOODS J.A.  
MACTAVISH J.A.**

**BETWEEN:**

**SHAMSHER SINGH BHACHU**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard by online video conference hosted by the registry on January 26, 2021.

Judgment delivered from the Bench at Ottawa, Ontario, on January 26, 2021.

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

**WOODS J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT**

**(Delivered from the Bench at Ottawa, Ontario, on January 26, 2021).**

**WOODS J.A.**

[1] Mr. Bhachu appeals from a judgment of the Tax Court of Canada (*per* Owen J.) which dismissed his appeal from an assessment made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for the 2016 taxation year. Mr. Bhachu was assessed interest in the amount of \$599.24 for the failure to make tax instalment payments for the year.

[2] For the reasons that follow, we are of the view that the appeal should be dismissed.

[3] Our understanding of the relevant facts and circumstances in this appeal is based on the record before this Court. We note that Mr. Bhachu failed to prepare the appeal book in accordance with the agreement of the parties as to its contents. In particular, the appeal book does not contain the pleadings filed in the Tax Court. We have not taken these pleadings into account.

[4] The record reveals that Mr. Bhachu was a resident of Canada in the 2016 taxation year and worked in Egypt for a non-Canadian petroleum company. He did not make any Canadian tax instalment payments for this period.

[5] Mr. Bhachu submits that he should not be required to make Canadian instalment payments because source deductions were taken by his employer on account of tax in Egypt. Mr. Bhachu seeks reimbursement of the interest assessed, and also of a penalty. There is no basis to provide relief for a penalty as there is no evidence in the record that a penalty was imposed.

[6] Mr. Bhachu submits that the Tax Court erred because it lacked jurisdiction to dismiss the appeal since it had no authority to cancel the interest. We disagree that the Tax Court made an error in this regard.

[7] The Tax Court has the jurisdiction to determine whether an interest obligation is imposed under the Act, but it does not have the authority to cancel interest that otherwise arises under the Act. The Tax Court judge correctly stated and applied this principle in his oral reasons.

[8] Mr. Bhachu also seeks relief pursuant to article 23(1) of the income tax convention between Canada and the Arab Republic of Egypt (the “Treaty”). Article 23(1), which deals with non-discrimination, provides:

The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

[9] My understanding of Mr. Bhachu’s argument is that the Minister of National Revenue is required to take into account source deductions taken with respect to tax in Egypt in calculating the instalment payments that were required. Relevant parts of Mr. Bhachu’s argument before the Tax Court are set out below from a transcript of the Tax Court hearing (Appeal Book, Tab 11, p. 37):

[...] As for the dual taxation treaty, it would be honoured in total, yeah? It is the tax credit as well as any other form of, you know, deduction of tax at source. Yeah.

So for me, as far as I’m concerned, [...] when it goes to a dual taxation treaty they’ve not take [sic] that into consideration which states that either taxation or any other form of deductions, yeah. So we have not honoured that part of it here in this case.

[10] We are of the view that there is no basis for this Court to provide the relief that Mr. Bhachu seeks concerning the Treaty. In particular, there is an insufficient evidentiary foundation to support the application of article 23(1).

[11] Finally, Mr. Bhachu relies on decisions of the Tax Court in *Wieckowski v. The Queen* (1998), [1999] 1 C.T.C. 2260 and *Ross v. The Queen*, 2005 TCC 643. These decisions

acknowledge that source deductions reduce the amount of instalments that are required.

However, these cases did not concern foreign source deductions. In the case at bar, the Tax Court judge provided detailed reasons for his conclusion that any source deductions taken for tax in Egypt do not affect the instalments that are required under the Act. We are of the view that the Tax Court did not err in this respect.

[12] We conclude that the Tax Court did not make any errors that warrant this Court's intervention. The appeal will be dismissed with costs.

"Judith Woods"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-182-19

**STYLE OF CAUSE:** SHAMSHER SINGH BHACHU v.  
HER MAJESTY THE QUEEN

**PLACE OF HEARING:** BY ONLINE VIDEO  
CONFERENCE

**DATE OF HEARING:** JANUARY 26, 2021

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
WOODS J.A.  
MACTAVISH J.A.

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

**APPEARANCES:**

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