

Federal Court of Appeal



Cour d'appel fédérale

Date: 20220929

Docket: A-28-20

Citation: 2022 FCA 164

**CORAM: STRATAS J.A.
RIVOALEN J.A.
LOCKE J.A.**

BETWEEN:

SABRI BINJAMIN

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard by online video conference hosted by the Registry
on September 29, 2022.

Judgment delivered from the Bench at Toronto, Ontario, on September 29, 2022.

REASONS FOR JUDGMENT OF THE COURT BY:

RIVOALEN J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 29, 2022).

RIVOALEN J.A.

[1] The appellant, Sabri Binjamin, appeals the judgment of the Tax Court of Canada (*per* Russell J.) (2019 TCC 287) in which the Tax Court Judge upheld the Minister's assessments under Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15 (the Act) of 12 quarterly reporting periods extending from January 1, 2012 to December 31, 2013, and upheld the imposition of gross negligence penalties pursuant to section 285 of the Act.

[2] During argument before the Tax Court, the appellant, through his representative, conceded the amounts reassessed. The only issues before the Tax Court were: (1) whether the Minister was entitled to reassess the 12 reporting periods at issue beyond the period for assessment; and (2) whether the Minister properly imposed penalties pursuant to section 285 of the Act.

[3] In his reasons, the Tax Court Judge noted that the reassessments were presumptively statute-barred, because the Minister issued the reassessments after the period of assessment set out in paragraph 298(1)(a) of the Act. The Tax Court Judge correctly stated that the respondent had the onus of proof to justify the statute-barred reassessments pursuant to paragraph 298(4)(a) of the Act and to justify the Minister's imposition of gross negligence penalties.

[4] The Tax Court Judge found that the appellant had unreported business sales income of \$30,432 as assessed and that the discrepancy between the amounts reported and the amounts as reassessed was "major" and "vast". The Tax Court Judge found that the appellant provided no credible explanation for the amounts of unreported sales revenue reflected in the reassessments.

[5] The Tax Court Judge considered the concessions made by the appellant's representative, the oral testimony of an auditor and the appellant, as well as documentary evidence. The Tax Court Judge relied on this Court's decision of *Lacroix v. Canada*, 2008 FCA 241, 384 N.R. 171 [*Lacroix*] and concluded that the respondent had presented sufficient evidence to satisfy the onus of proof for both the issue of whether the reassessments were statute-barred and the imposition of gross negligence penalties.

[6] The appellant challenges the Tax Court Judge's reliance on and assessment of the auditor's evidence. He also challenges the Tax Court Judge's reliance on *Lacroix* because the issue there was the assessment of gross negligence penalties under subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), not section 285 of the *Excise Tax Act*.

[7] With respect to the assessment of the evidence, we see no palpable and overriding error in the Tax Court Judge's identification and application of the burden of proof and findings of fact. Further, we are of the view that the Tax Court Judge made no error in his analysis of gross negligence penalties pursuant to section 285 of the Act and his reliance on *Lacroix*. His analysis is also consistent with more recent authority from this Court, *Deyab v Canada*, 2020 FCA 222.

[8] Overall, we agree that the Tax Court Judge, as the trial judge, was best placed to assess the testimony and documentary evidence and that he was entitled to make the findings that he did on the basis of the record and the concessions made by the appellant's representative. The appellant is essentially asking us to reassess the evidence in a new light in order to come to a conclusion that is favourable to him, which is not the role of this Court (*Nova Chemicals Corporation v. Dow Chemical Company*, 2016 FCA 216, 487 N.R. 230 at para. 14). The record, well described in the respondent's memorandum, amply supports the Tax Court Judge's conclusion.

[9] For these reasons, the appeal is dismissed with costs.

"Marianne Rivoalen"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-28-20

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE B. RUSSELL OF THE TAX COURT OF CANADA DATED DECEMBER 20, 2019 IN DOCKET NO. 2019-1028(GST)I.

STYLE OF CAUSE: SABRI BINJAMIN v. HIS MAJESTY THE KING

PLACE OF HEARING: BY ONLINE VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 29, 2022

REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
RIVOALEN J.A.
LOCKE J.A.

DELIVERED FROM THE BENCH BY: RIVOALEN J.A.

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