Federal Court of Appeal | Cour d'appel fédérale

Date: 20240318

Docket: A-34-23

Citation: 2024 FCA 50

CORAM: **LASKIN J.A.**
MACTAVISH J.A.
MONAGHAN J.A.

BETWEEN:

2093271 ONTARIO INC.,
2013674 ONTARIO INC.,
COLUMBIA HIGHRISE WINDOWS AND RAILINGS INC. and COLUMBIA HIGHRISE WINDOWS GROUP INC.

Appellants

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on March 18, 2024 with the participation remotely of one member of the panel.

Judgment delivered from the Bench at Toronto, Ontario, on March 18, 2024.

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

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 18, 2024).

LASKIN J.A.

[1] The appellants appeal from a judgment of the Tax Court of Canada (Biringer J., as she then was), in Tax Court Dockets 2018-4898(IT)G, 2018-4899(IT)G, 2019-24(IT)G, and 2019-

25(IT)G. In its judgment, the Tax Court dismissed the appellants' appeals from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] The appellants were incorporated by Ron Bonin to carry on the business of window and railing manufacturing and installation. Mr. Bonin is the CEO and sole manager of each of the appellants.

[3] On the advice of their tax advisor, the appellants claimed deductions for management fee expenses. The Tax Court found that there were no written or oral agreements for the provision of management services. It further found that the tax advisor determined the amounts charged each year. These amounts were not based on any measurable factors, but rather on the amount of the paying company's income. In almost all cases, invoices were issued on the last day of the paying company's taxation year. The invoices contained no detail as to the services provided or who had provided them. In response to Mr. Bonin's inquiry of the appellants' tax advisor concerning the claimed deductions, the tax advisor stated that they were "okay."

[4] The appeals to the Tax Court raised three issues: (1) whether the amounts claimed as management fees were deductible in computing income under paragraph 18(1)(a) of the ITA; (2) whether the appellants were liable for gross negligence penalties under subsection 163(2) on the basis that they were wilfully blind or grossly negligent with respect to the false statements in their claims to deduct management fees; and (3) whether reassessments of certain taxation years of some of the appellants, which would otherwise be statute-barred as falling beyond the normal

reassessment period, were open to the Minister under subparagraph 152(4)(a)(i) because those appellants had made misrepresentations attributable to "neglect, carelessness or wilful default."

[5] The Tax Court determined that (1) the amounts claimed were not deductible; (2) the appellants were liable for gross negligence penalties; and (3) the Minister had validly opened up the taxation years in question. The appellants submit that the Tax Court erred in law in addressing each of the three issues. We can see no reviewable error.

[6] In alleging error on the first issue, the appellants submit that the Tax Court failed to consider all the relevant facts, and confined itself to considering only Mr. Bonin's testimony and certain financial statements. The reasons of the Tax Court do not bear out this submission. The Tax Court also expressly considered, among other things, the absence of contracts for the management services, the invoices on which the appellants relied, and the evidence of a bookkeeper. Moreover, first instance courts are presumed to have considered and assessed all of the evidence before them: *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras. 67-69.

[7] In challenging the decision on the second issue, the appellants acknowledge that the Tax Court recognized the correct test for wilful blindness, but submit that the Court failed to apply it. That test, as the Tax Court stated (at page 13 of its reasons), is subjective in nature, and authorizes the Court to impute knowledge to a taxpayer "in circumstances where the taxpayer becomes aware of the need for inquiry but declines to make the inquiry because the taxpayer does not want to know, or studiously avoids, the truth": *Wynter v. Canada*, 2017 FCA 195 at

paras. 13, 16; *Canada v. Paletta*, 2022 FCA 86 at para. 66. The Tax Court found (at pages 16 and 17 of its reasons) that the appellants made only minimal inquiries, despite the "several red flags that ought to have aroused further suspicion and caused further inquiry."

[8] The appellants submit that the Tax Court should have concluded, applying the correct test, that there was no wilful blindness, "because there is no evidence that Mr. Bonin had any suspicion that the claim for management fees expense [sic] was a false statement" (Appellants' memorandum, p. 11). The appellants further submit that the Tax Court erred by relying on its finding (at page 15 of its reasons) that "[a] businessman like Mr. Bonin ought to have questioned further" without finding actual suspicion on Mr. Bonin's part. However, this phrase, and the statement that the "red flags … ought to have aroused <u>further</u> suspicion" (emphasis added), supply the requisite finding of suspicion. While the appellants also appear to challenge the Tax Court's finding based on the weight it assigned to the evidence, it is not this Court's role on appeal to reweigh it.

[9] Although, as the Tax Court noted, its finding on wilful blindness meant that the appellants also met the threshold for opening up an otherwise statute-barred year, it nonetheless went on to address the third issue, and the question of gross negligence.

[10] The appellants say that, in doing so, the Tax Court failed to apply the proper test for gross negligence. They rely in particular on the statement of the test in *Venne v. The Queen*, 1984 CanLII 5717 (FC), [1984] C.T.C. 223. But the Tax Court specifically referred to *Venne*, and the Tax Court's statement of the test is both not inconsistent with *Venne* and consistent with this

Court's more recent statements; see, for example, *Wynter* at paras. 18-21 and *Paletta* at paras. 65-68. Indeed, in the specific part of the Tax Court's statement of the test with which the appellants take issue, at page 18 of its reasons, the Court recites verbatim this Court's statement of the test in another recent decision, *Deyab v. Canada*, 2020 FCA 222 at para. 62. We see no reviewable error in the Tax Court's statement of the test for gross negligence.

[11] For these reasons, we will dismiss the appeal with costs.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
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DATED:	MARCH 18, 2024

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