

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241120

Docket: A-83-24

Citation: 2024 FCA 193

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

BETWEEN:

MUHAMMAD EJAZ ASLAM

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Edmonton, Alberta, on November 20, 2024.

Judgment delivered from the Bench at Edmonton, Alberta, on November 20, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

STRATAS J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Edmonton, Alberta, on November 20, 2024).

STRATAS J.A.

[1] Mr. Aslam appeals from the judgment dated February 1, 2024 of the Tax Court of Canada (*per* Boccock J.). The Tax Court dismissed Mr. Aslam's appeal of his tax assessment for the 2006 taxation year. At issue was a tax credit that Mr. Aslam had claimed under section 118.1 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). In this case, Mr. Aslam, like many others,

had entered into an arrangement, one open to question given the significant disparity between donation and credit. This arrangement is known as the “Global Learning Gifting Initiative”.

[2] Key to the Tax Court’s decision to deny the credit was its factually suffused finding, based on the assumptions triggered by the Minister’s pleading and the particular evidence in this case, that Mr. Aslam had participated in a series of transactions with the intention to gain, not to lose. As a result, he lacked the donative intent necessary to qualify for the credit.

[3] In this Court, Mr. Aslam essentially asks us, a Court sitting in appeal of a judgment of the Tax Court, to retry the case and come to a conclusion different from the one the Tax Court reached. Unfortunately, we cannot do that. We cannot reweigh the evidence and come to a different conclusion on the facts. Instead, in usual appeals in this Court, all we can do is examine whether the Tax Court erred in law, committed an obvious error capable of changing the result of the case (*i.e.*, “palpable and overriding error”) (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235), or acted in a procedurally unfair way (*British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473 at para. 76). Even further, given that this is an appeal from a case decided under the informal procedure in the Tax Court, the judgment of the Tax Court on factual issues must have been made “in a perverse or capricious manner or without regard for the material before it”: *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 27(1.3)(d). Here, none of these flaws are present. Therefore, we must leave the judgment of the Tax Court in place.

[4] Even if we could interfere on a lesser standard, we point out that the Tax Court's finding that Mr. Aslam lacked donative intent was amply supported by the Minister's assumptions and the evidentiary record in this case, which did not rebut those assumptions.

[5] Mr. Aslam places before us his lack of knowledge about the transactions he was entering into and the legal documents he was signing, his lack of legal training and his status at the time as a newcomer to Canada. Unfortunately for him, these are not relevant to his eligibility to the tax credit. The Minister of National Revenue has a duty to assess a taxpayer's tax liability on the basis of the provisions of the Act (as judicially interpreted) and the evidence in the case, nothing else.

[6] Mr. Aslam submits that in this tax appeal, the Tax Court did not give him, an unrepresented litigant, a fair hearing. We disagree. At the outset of the hearing, the Tax Court briefly explained the procedure (Transcript, pp. 1, 5 and 8-9). After Mr. Aslam had adduced his evidence, the Tax Court twice confirmed that Mr. Aslam had offered all the evidence he had available to him and had no other testimony to offer (Transcript, pp. 54-55). Near the end of the hearing, during submissions, the Tax Court explained the legal test for donative intent (Transcript, pp. 74-75 and 82-85), acquainting Mr. Aslam with the case to meet. The Tax Court also asked questions to ensure it understood Mr. Aslam's positions and to give him an opportunity to explain them (Transcript, pp. 74-75). At one point in the hearing, the Tax Court allowed Mr. Aslam to provide more testimony after the evidentiary phase of the tax appeal had ended (Transcript, p. 75). In oral argument, Mr. Aslam did confirm that the Tax Court did intervene to try to assist him from time to time. Overall, the Tax Court gave Mr. Aslam a full and

fair opportunity to adduce evidence and make submissions responsive to the relevant factual and legal issues; in fact, in oral argument before us, Mr. Aslam admitted that the Tax Court was being “helpful” with its questions and interventions during the hearing. And, finally, in making its decision, the Tax Court appears to have carefully considered all of Mr. Aslam’s evidence and submissions.

[7] Mr. Aslam also raises with us another procedural concern: the Tax Court did not consolidate his case with his related cases in other taxation years. He says this worked unfairness to him. However, it did not. The presence of other cases would not have changed the procedural, factual or legal matrix of this case. As well, at the time of the hearing of Mr. Aslam’s tax appeal, a motion for consolidation was no longer possible. Before the hearing, Mr. Aslam had requested consolidation, the Tax Court refused it, and Mr. Aslam did not appeal from that ruling. Thus, at the time of the hearing, the issue of consolidation was off the table. In any event, Mr. Aslam did not repeat his request for consolidation at the hearing.

[8] Mr. Aslam referred to an upcoming case in this Court concerning the same scheme. That case will not affect this case. The Tax Court’s decision in this case turns primarily on the assumptions made by the Minister in this case and the insufficiency of the evidentiary record in rebutting those assumptions.

[9] Mr. Aslam asks this Court to recommend to the Minister of National Revenue that the interest on the tax he owes be waived. We cannot do this. In an appeal such as this, we have the power only to allow or dismiss appeals from the Tax Court, not to make recommendations on

discretionary decisions that Parliament has given to others to make, such as the discretionary decision of the Minister to waive interest under s. 220(3.1) of the Act.

[10] Therefore, the appeal will be dismissed with costs.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-83-24
STYLE OF CAUSE: MUHAMMAD EJAZ ASLAM v.
HIS MAJESTY THE KING
PLACE OF HEARING: EDMONTON, ALBERTA
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REASONS FOR JUDGMENT OF THE COURT BY: STRATAS J.A.
MACTAVISH J.A.
BIRINGER J.A.
DELIVERED FROM THE BENCH BY: STRATAS J.A.

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