

Federal Court of Appeal



Cour d'appel fédérale

Date: 20241112

Docket: A-107-23

Citation: 2024 FCA 188

**CORAM: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.**

BETWEEN:

HARRY LAWRENCE NUTTER

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Halifax, Nova Scotia, on November 12, 2024.
Judgment delivered from the Bench at Halifax, Nova Scotia, on November 12, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

BOIVIN J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Halifax, Nova Scotia, on November 12, 2024).

BOIVIN J.A.

[1] This is an appeal from an order dated April 3, 2023 rendered by Justice Susan Wong of the Tax Court of Canada (the TCC) in file number 2022-2166(IT)G. In the order, the TCC quashed the appellant's appeal with respect to the taxation years 2016 to 2021.

[2] Specifically, the TCC found that the notices of objections filed by the appellant for the 2016, 2017, and 2020 taxation years were invalid as they challenged collection notices rather than a notice of assessment and did not identify the assessments in dispute (at pages 2-3). The TCC further found that there was no notice of objection received by the Minister in respect of the 2019 taxation years (at page 3).

[3] With respect to the 2018 and 2021 taxation years, the TCC determined that the Minister had incorrectly decided that they were invalid. The TCC nonetheless quashed the appeals of the 2018 and 2021 taxation years, determining that they fell beyond the scope of the TCC jurisdiction. The TCC stated that its “jurisdiction covers assessment based litigation and not collections or administrative actions of the Minister” (Order at page 3).

[4] The applicable standard of review is that outlined in *Housen v. Nikolaisen*, 2002 SCC 33 (*Housen*). Questions of law are thus subject to the correctness standard whereas questions of fact or mixed law and fact are subject to the palpable and overriding error standard.

[5] The appellant raises many issues and allegations of misconduct on the part of the Minister but the crux of this appeal concerns the validity of the notices of objection and their ability to found an appeal before the TCC. Specifically, with respect to the appellant’s allegations of improper conduct by the CRA officers, we agree with the TCC that it was not within its jurisdiction to decide.

[6] Upon review of the record, we are all of the view that the TCC did not make a palpable and overriding error in quashing the appeal of the taxation years 2016, 2017, and 2020. Indeed, the appellant's Notices of Objection either failed to identify a notice sent by the Minister (Exhibits C, D, P, R in the affidavit of Ernest Foisy), identified a notice sent pertaining to the 2018 taxation year (Exhibit G in the affidavit of Ernest Foisy), or they resulted in a reassessment notice whose limitation period for initiating an appeal had already expired (Exhibit I in the affidavit Ernest Foisy). With regard to the taxation year 2019, the evidence (affidavit of Ernest Foisy) demonstrates that the Minister did not receive any Notices of Objection by the appellant pertaining to that year. Hence, the TCC did not err in quashing the appeal of the 2016, 2017, 2019 and 2020 taxation years and determining that the appellant failed to satisfy the requirements of section 165(1) of the *Income Tax Act*.

[7] However, we agree with the respondent that the TCC erred in law when it quashed the appeal of the 2018 and 2021 taxation years on the basis that the appellant served valid notices of objection with respect to those years. Indeed, pursuant to paragraph 169(1)(b) of the *Income Tax Act*, valid notices of objections entitled the appellant to appeal to the TCC.

[8] Despite the TCC's error, the respondent argues that this Court should nonetheless quash the appeals of the 2018 and 2021 taxation years for reasons other than those stated in the Order.

[9] More particularly, the respondent contends that, of the issues outlined by the appellant, the vast majority fall outside the jurisdiction of the Tax Court (at paras. 27-32) with the exception of two issues identified at paragraph 24 of the appellant's amended notice of appeal

which fall within the TCC's jurisdiction that is, issue (d) with respect to the appellant's taxable income and issue (e) with respect to the imposition of interest liabilities (at para. 33). Although two issues do fall within the jurisdiction of the Tax Court, says the respondent, the appellant failed to meet the requirements of the notice of appeal form by failing to provide any material facts in support of these issues in accordance with the requirements applicable to the Notice of Appeal Form 21(1)(a) of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a (at paras. 33-36).

[10] However, we remain unconvinced that this is fatal to the appellant's appeal as case law suggests otherwise and, as conceded by counsel for the respondent: *Oddi v. R.*, 2016 TCC 102; *Metrobec Inc. v. R.*, 2018 TCC 115.

[11] In these circumstances, we decline to quash the appellant's TCC appeal in relation to the 2018 and 2021 taxation years. We will thus allow the appeal in part and remit the matter back to the TCC as it pertains solely to the 2018 and 2021 taxation years in accordance with these reasons. As success is divided in this appeal, each party shall bear its own costs.

[12] The style of cause will be amended in order to reflect the proper respondent to this appeal: His Majesty the King.

"Richard Boivin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-107-23

STYLE OF CAUSE: HARRY LAWRENCE NUTTER v.
MINISTER OF NATIONAL
REVENUE

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: NOVEMBER 12, 2024

REASONS FOR JUDGMENT OF THE COURT BY: BOIVIN J.A.
LOCKE J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: BOIVIN J.A.

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ON HIS OWN BEHALF

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