Federal Court of Appeal | Cour d'appel fédérale

Date: 20250529

Docket: A-136-24

Citation: 2025 FCA 103

CORAM: **WOODS J.A.**
MONAGHAN J.A.
WALKER J.A.

BETWEEN:

VOLODYMYR BYKOV

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on May 27, 2025.

Judgment delivered at Ottawa, Ontario, on May 29, 2025.

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: MONAGHAN J.A.
WALKER J.A.

Federal Court of Appeal | Cour d'appel fédérale

Date: 20250529

Docket: A-136-24

Citation: 2025 FCA 103

CORAM: **WOODS J.A.**
MONAGHAN J.A.
WALKER J.A.

BETWEEN:

VOLODYMYR BYKOV

Appellant

and

HIS MAJESTY THE KING

Respondent

REASONS FOR JUDGMENT

WOODS J.A.

[1] For reasons reported as 2024 TCC 36, the Tax Court of Canada dismissed appeals by Volodymyr Bykov made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for taxation years from 2015 to 2018 inclusive. Mr. Bykov appeals from these judgments.

[2] The main issue in this appeal is whether the Tax Court erred in disallowing additional deductions for motor vehicle expenses incurred by the appellant in connection with employment. It was clear that the appellant travelled for work and qualified for deductions permitted under the *Income Tax Act* for motor vehicle expenses incurred in relation to employment. However, the Tax Court concluded that additional deductions should not be allowed because the appellant did not provide sufficient evidence to demonstrate the quantum that is deductible.

[3] The appellant was represented by counsel at the Tax Court hearing. He is self-represented in this Court and makes several submissions in support of his appeal. He was assisted in this Court by his own interpreter.

[4] The appellant's submissions can be grouped into two general classes:

(i) Sufficient evidence was provided by the appellant in the Tax Court to establish the quantum of motor vehicle expenses that are deductible.

(ii) The procedure was unfair.

[5] The standard of review to be applied by this Court concerning the sufficiency of evidence is the palpable and overriding error standard of review (*Housen v. Nikolaisen*, 2002 SCC 33). This is a high bar. The error must be obvious and affect the outcome.

[6] As for issues concerning procedure, a correctness standard will be applied.

[7] I will first consider whether the appellant provided sufficient evidence as to quantum. According to the Tax Court's reasons, the appellant's evidence on this point consisted of his own testimony to the effect that he had kept records and logbooks that were provided to the Canada Revenue Agency and that he had incurred the automobile expenses indicated on the T777 comparative summary. No other evidence supporting the quantum was introduced before the Tax Court.

[8] The Tax Court determined that this evidence was insufficient because it does not challenge the assumptions made by the Minister. It is well established that the judge must presume the assumptions are true unless they are demolished by the appellant. The Tax Court concluded that the evidence "fail[s] to satisfy the burden of proof placed on the Appellant to establish to a balance of probabilities the facts that show the Reassessments to be wrong" (Tax Court reasons at para. 74).

[9] The appellant submits that this conclusion is inconsistent with the Tax Court judge's finding at the beginning of the reasons that the appellant was a credible witness. I do not agree with this submission. It appears from the Tax Court's reasons that the judge had some sympathy for the appellant. However, it was not a matter of disbelieving him; it was a matter of the appellant failing to present sufficient evidence to demonstrate that the amounts claimed were in fact deductible.

[10] The appellant also claims that the judge erred in concluding that supporting documentation, such as logbooks, did not exist. This misunderstands the Tax Court's reasons.

The Court only concluded, at paragraph 72 of the reasons, that this type of documentation was not entered into evidence on the record.

[11] The appellant also asserts that the Tax Court should have accepted evidence of the respondent as to mileage driven by the appellant. He submits that the quantum could be calculated based on that information. The evidence that the appellant refers to is his income tax returns. It makes no difference that the respondent rather than the appellant introduced the tax returns. The tax returns are simply not sufficient evidence to support the deductions. Accordingly, this argument does not assist the appellant.

[12] The appellant also suggests that the Tax Court should have considered the T2200 forms he introduced as evidence and should have found them to be determinative of the quantum. I disagree. In his reasons, the judge described clearly and in great detail why these forms do not assist the appellant. I have not been persuaded that the Tax Court erred in this regard.

[13] Finally, with respect to the sufficiency of the evidence, the appellant suggests that an error was made with respect to automobile insurance. The appellant has not persuaded me that any error was made.

[14] I now turn to issues concerning procedure.

[15] The appellant submits that the procedure was unfair because the respondent did not provide him with the Minister’s assumptions until part way through the Tax Court hearing. I

reject this submission because the appellant did not provide a cogent explanation as to why he did not receive the respondent's replies which contain the Minister's assumptions. In addition, I note that the transcript of the Tax Court hearing indicates that counsel for the appellant stated that the reply for the 2016 taxation year was in the appellant's book of documents.

[16] Further, the Tax Court was not made aware of any such issue. At the beginning of the hearing, the judge discussed the assumptions with counsel for the appellant. Counsel not only recognized that the assumptions may be relevant to the appeals, but also confirmed that he was ready to proceed. Generally, matters of procedural unfairness must first be raised before the Tax Court. I am not satisfied that there was unfairness related to the assumptions.

[17] The appellant also submits that he was not given a clear explanation of the respondent's position in a timely manner. I disagree because there is a clear explanation in the replies. The replies indicate the respondent's position that the appellant did not maintain proper books and records, such as logbooks or receipts, of a sufficient nature to allow the Minister to determine any eligible employment expenses.

[18] The appellant further asserts that the Tax Court judge was obligated to request additional documentation to ensure that a well-informed decision is made. The appellant relies on section 138 of the *Tax Court of Canada Rules (General Procedure)*. That reliance is misplaced. This provision only applies to appeals heard under the Tax Court's general procedure. However, these Tax Court appeals were heard under the informal procedure. In addition, section 138 does not obligate a judge to request additional documentation. It merely permits a judge to do so.

[19] Lastly, the appellant suggests that there was unfairness during the audit and objection stages as he did not receive an explanation from the Canada Revenue Agency as to why the expenditures were disallowed.

[20] Unfairness during an audit or objection stage is not something that taints a Tax Court appeal. The Tax Court can only provide relief for unfairness arising during the Tax Court process (*Main Rehabilitation Co. v. Canada*, 2004 FCA 403).

[21] This is sufficient to dispose of procedure issues. However, I would comment that the hearing before the Tax Court judge appears to have been conducted in a very fair way. In particular, the judge engaged with the appellant's counsel in considerable detail concerning the difficulty with the sufficiency of the evidence.

[22] In conclusion, I would dismiss this appeal, with costs payable by the appellant to the respondent.

"Judith Woods"
J.A.

"I agree.
Siobhan Monaghan J.A."

"I agree.
Elizabeth Walker J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-136-24
STYLE OF CAUSE:	VOLODYMYR BYKOV v. HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	MAY 27, 2025
REASONS FOR JUDGMENT BY:	WOODS J.A.
CONCURRED IN BY:	MONAGHAN J.A. WALKER J.A.
DATED:	MAY 29, 2025

APPEARANCES:

VOLODYMYR BYKOV	ON THEIR OWN BEHALF FOR THE APPELLANT
SAMANTHA JENNINGS CARRIE CALABRESE	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT