

Federal Court of Appeal



Cour d'appel fédérale

Date: 20251208

Docket: A-83-25

Citation: 2025 FCA 221

**CORAM: WEBB J.A.
WOODS J.A.
LEBLANC J.A.**

BETWEEN:

KAMAL AZMAYESH-FARD

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Calgary, Alberta, on December 8, 2025.
Judgment delivered from the Bench at Calgary, Alberta, on December 8, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on December 8, 2025).

WOODS J.A.

[1] In 1997, the appellant opened an investment account in Switzerland with Swiss Bank Corporation, which subsequently became UBS AG (herein UBS). The appellant did not disclose on his Canadian income tax returns either the property held in the UBS account or the income it produced.

[2] Following an audit, the appellant was reassessed for his 1998 to 2015 taxation years in connection with this account. The reassessments, which were made after the normal reassessment period, included in the appellant's income the earnings from the UBS investments and also imposed gross negligence penalties. The reassessments also imposed penalties for failure to disclose foreign property on Form T1135 (Foreign Income Verification Statement).

[3] The appellant appealed from the reassessments to the Tax Court. The respondent had the burden of proof in the appeals but no witnesses were called. Instead, the Tax Court's findings were based on agreed facts and discovery read-ins.

[4] For reasons cited as 2025 TCC 20, the Tax Court judge, Justice Cook, dismissed the appeals for the 1998 to 2013 taxation years. However, he allowed the appeals for 2014 and 2015 on the ground that the income for these years did not pertain to the UBS account. The appellant has further appealed to this Court with respect to the taxation years that were dismissed, 1998 to 2013.

I. Factual background

[5] The appellant emigrated to Canada from Iran in 1967. He obtained a degree in mining engineering from the University of Saskatchewan in 1973 and acquired a designation as an engineer around 1978. He worked in the engineering field in Canada from 1973 to 1982.

[6] From 1982 to 1994, the appellant worked in Libya as an engineering supervisor with Veba Oil Operations, a German company. During this time, the appellant directed Veba to deposit his remuneration into accounts in Jersey, the Channel Islands, and Holland.

[7] In 1997, in anticipation of moving back to Canada, the appellant opened the UBS account and deposited the earnings he had accumulated from his employment with Veba. At the time, the appellant was having marital difficulties and was hiding these assets from his spouse.

[8] The UBS account was a “safekeeping account” in which all documentation was kept at source for a fee. Further, all communications regarding the investments were conducted by telephone.

[9] The appellant did not tell anyone about the UBS account, including the accountant who prepared his personal tax returns. After the audit, the appellant destroyed all his personal financial records.

[10] Once back in Canada, the appellant was involved with several business ventures. At least two of the ventures had an international aspect. In one, the appellant recruited people for short-term work placements with Veba in Libya. The appellant placed ads for these jobs in Alberta, and if the candidates were suitable he would recommend them to Veba. In the other, the appellant was the chief executive officer of a public company engaged in oil and gas exploration. His role with this company involved negotiating oil and gas concessions with several foreign governments.

II. Tax Court decision

[11] There were three issues before the Tax Court. The first was whether the reassessments were statute barred. The appellant submitted that the reassessments were statute barred because his misrepresentations were not due to carelessness or neglect but were simply innocent mistakes.

[12] The appellant justified this submission by stating that his accountant never asked about foreign property and he thought the funds were not taxable because he had earned the money in Libya. The judge was not convinced by these explanations and found that the misrepresentations were due to neglect or carelessness, at a minimum.

[13] The second issue before the Tax Court was whether gross negligence penalties were properly levied on the failure to report these earnings. The appellant justified his actions by submitting that the safekeeping account was to hide funds from his spouse and that he had an honest belief that the UBS earnings were not subject to Canadian tax.

[14] The Tax Court judge was not convinced by the appellant's explanation. He found that the penalties were applicable because he was either wilfully blind or grossly negligent. In reaching this conclusion, the judge noted that the appellant had a standard of care with respect to his tax returns and he failed in that regard. The judge was also influenced by the appellant's background which suggested that he should have had some familiarity with international tax issues.

[15] The third issue before the Tax Court was whether penalties were properly imposed for the appellant's failure to disclose the foreign property in the UBS account on the T1135. These penalties are set out in the Tax Court's reasons at paragraph 42. One was subject to a due diligence defence and the other two were subject to the gross negligence test.

[16] These penalties were upheld. As for the due diligence defence, the judge noted that the appellant did not take all reasonable precautions to comply with the obligation to file a T1135 form and he did not make a reasonable error of fact. The judge also found that the appellant was liable for gross negligence penalties for the reasons previously given with respect to the failure to report income.

III. Disposition

[17] At the hearing in this Court, counsel for the appellant conceded that the relevant years were not statute barred and that the Tax Court had made no legal errors.

[18] As for the other issues, we see no reversible error with any of the Tax Court judge's conclusions. In particular, the judge did not make any palpable and overriding errors, that is, errors that were obvious and concerning the outcome.

[19] In some cases, it could be risky for the Crown to fail to call the taxpayer as a witness where credibility could be an issue. However, this was not the case here. We will dismiss the appeal with costs to the respondent fixed in the all-inclusive amount of \$3,300.

"Judith Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-83-25

STYLE OF CAUSE: KAMAL AZMAYESH-FARD v.
HIS MAJESTY THE KING

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: DECEMBER 8, 2025

REASONS FOR JUDGMENT OF THE COURT BY: WEBB J.A.
WOODS J.A.
LEBLANC J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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