Federal Court of Appeal | Cour d'appel fédérale

Date: 20230119

Docket: A-309-19

Citation: 2023 FCA 13

CORAM: **BOIVIN J.A.**
RENNIE J.A.
ROUSSEL J.A.

BETWEEN:

WASSEEM DIRANI

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Ottawa, Ontario, on January 19, 2023.
Judgment delivered from the Bench at Ottawa, Ontario, on January 19, 2023.

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

Federal Court of Appeal | Cour d'appel fédérale

Date: 20230119

Docket: A-309-19

Citation: 2023 FCA 13

CORAM: **BOIVIN J.A.**
RENNIE J.A.
ROUSSEL J.A.

BETWEEN:

WASSEEM DIRANI

Appellant

and

HIS MAJESTY THE KING

Respondent

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on January 19, 2023).

RENNIE J.A.

[1] The appellant appeals from a judgment of the Tax Court of Canada rendered orally on April 9, 2019 (2012-4153(IT)G *per* Bocock J.), dismissing the appellant's appeals of the Minister of National Revenue's assessments for the 2006 and 2007 tax years.

[2] The issue on appeal is whether the Tax Court erred in its conclusion that the appellant failed to prove that he had incurred bad debt expenses or allowable business investment losses. This issue raises a question of fact, and therefore the Court cannot interfere with the Tax Court's findings absent palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235).

[3] By way of background, the appellant was the sole shareholder and director of a company that rented VHS tapes of movies between 1997 and 2001. The company was dissolved in late 2001.

[4] In each of the 2006 and 2007 tax years, the appellant claimed a bad debt expense under subparagraph 20(1)(*p*)(i) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act), on the basis of alleged debts owed to him by his dissolved company. The Minister denied these claims. The appellant objected to the Minister's assessments, and in his Notice of Objection also requested that the Minister allow deductions for allowable business investment losses under paragraph 38(*c*) and paragraph 39(1)(*c*) of the Act. On May 18, 2012, the Minister confirmed her initial assessment.

[5] In denying the appellant's claims, the Minister relied on the following assumptions: the company's assets exceeded its liabilities upon its dissolution, the appellant did not make an investment in the company, and the company did not owe any uncollectible debt to the appellant.

[6] The Tax Court determined that the appellant had failed to demolish these assumptions. The Tax Court judge carefully reviewed the evidence before it (Oral Reasons at pages 3-5), and found that the appellant had not submitted any evidence upon which it could conclude that he had either advanced money to the company or incurred any bad debt (Oral Reasons at pages 10-11).

[7] The focus of the appellant's written submissions is the statutory requirements for the retention of books and records. The appellant argues, specifically, that he was entitled to dispose of the company's books and records once two years had passed since its dissolution in 2001, as permitted by section 5800 of the *Income Tax Regulations,* C.R.C., c. 945 (the Regulations), and that the Tax Court could not therefore require evidentiary support for his claims of bad debt expenses and allowable business investment losses.

[8] The appellant in his oral submissions has not shown any error in the Tax Court's decision. The appellant's arguments fail for any one of several reasons.

[9] Subsection 230(1) of the Act requires taxpayers to maintain books and records containing the information necessary to determine the amount of their taxes payable for six years, subject to certain exceptions. Here, the appellant was assessed in 2010 in respect of the 2006 and 2007 years and was obligated to maintain all records necessary to support his claims.

[10] Secondly, subsection 230(6) of the Act provides that where the taxpayer serves a notice of objection, as did the appellant, or is a party to an appeal to the Tax Court, the taxpayer must

retain “every record, book of account, account and voucher necessary for dealing with the objection or appeal” until the objection or appeal has been disposed of and any route for further appeal has been exhausted.

[11] Third, section 5800 of the Regulations governs the record-keeping requirements of dissolved corporations, not individual taxpayers such as the appellant.

[12] The expiry of the time periods prescribed in subsection 230(4) of the Act and section 5800 of the Regulations do not shield or immunize taxpayers from the evidentiary burdens they face in Tax Court proceedings. To hold otherwise would undermine the integrity of our self-assessing tax system. Maintaining books and records is an ongoing obligation in a self-assessing system and the appellant’s failure to do so also made it impossible for him to meet the evidentiary burden on him to demolish the Minister’s assumptions. There is no palpable and overriding error in the Tax Court’s conclusion.

[13] The appeal will be dismissed with costs.

“Donald J. Rennie”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-309-19
STYLE OF CAUSE:	WASSEEM DIRANI v. HIS MAJESTY THE KING
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 19, 2023
REASONS FOR JUDGMENT OF THE COURT BY:	BOIVIN J.A. RENNIE J.A. ROUSSEL J.A.
DELIVERED FROM THE BENCH BY:	RENNIE J.A.

APPEARANCES:

Wasseem Dirani	APPELLANT ON HIS OWN BEHALF
Devon E. Peavoy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

A. François Daigle Deputy Attorney General of Canada	FOR THE RESPONDENT