

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20250305**

**Docket: A-198-23**

**Citation: 2025 FCA 54**

**CORAM: WOODS J.A.  
ROUSSEL J.A.  
HECKMAN J.A.**

**BETWEEN:**

**OM GUPTA**

**Appellant**

**and**

**HIS MAJESTY THE KING**

**Respondent**

Heard by online video conference hosted by the registry on March 5, 2025.  
Judgment delivered from the Bench by online video conference on March 5, 2025.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**ROUSSEL J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench by online video conference on March 5, 2025).**

**ROUSSEL J.A.**

[1] Mr. Gupta appeals from a judgment of the Tax Court of Canada (2023 TCC 82) dismissing his appeal from an assessment of his 2020 taxation year. The Tax Court found that, in the absence of a notice of determination, the Minister of National Revenue was entitled to reduce Mr. Gupta's net capital loss balance because part of what he had claimed was an amount of net

capital loss incurred prior to his discharge from bankruptcy in 1994. Subparagraph 128(2)(g)(i) of the *Income Tax Act*, R.S.C. 1985, c. 1, (5th Supp.) (ITA) provides that losses incurred prior to an individual's discharge from bankruptcy may not be deducted in computing the individual's taxable income for taxation years after the discharge from bankruptcy.

[2] The underlying facts of this appeal are not in dispute. When Mr. Gupta declared bankruptcy in 1993, he had unused net capital losses. Following his discharge, he continued to accumulate net capital losses that he carried forward and added to those he had incurred prior to his bankruptcy. On July 30, 2020, the Minister issued a notice of assessment in respect of the 2019 taxation year, reducing the balance of Mr. Gupta's net capital losses and advising him that he could not claim pre-bankruptcy net capital losses. Mr. Gupta nonetheless claimed a portion of his pre-bankruptcy net capital losses against his capital gains for the 2020 taxation year. The Minister issued a notice of assessment for the 2020 taxation year, wherein the amount of net capital losses available to Mr. Gupta was lower than the amount claimed, leaving Mr. Gupta with a higher taxable income for the 2020 taxation year.

[3] Mr. Gupta's position before the Tax Court was that the net capital loss balances shown in the notices of assessment prior to July 30, 2020, reflected a determination made many years ago that the net capital loss balance included the pre-bankruptcy losses. He also argued that the Minister could not modify that determination some 25 years after the fact to adjust his net capital loss balance. In support of his position, Mr. Gupta relied on subsections 152(1.3) and 152(4) of the ITA.

[4] The Tax Court held that a statement contained within a notice of assessment regarding the available balance of net capital losses does not constitute a binding determination to which subsection 152(1.3) of the ITA applies. In order to be binding, a notice of determination of net capital losses must be made pursuant to subsection 152(1.1) of the ITA. Furthermore, relying on earlier decisions to a similar effect, the Tax Court held that such a statement does not constitute an assessment that is subject to the time limitations set out in subsection 152(4) of the ITA. The statement is not binding, and if it affects a year that is not statute-barred, the Minister may correct the amount when assessing the later year, even though it involves adjusting carry-forward balances from previous years.

[5] Mr. Gupta submits that the Tax Court erred in finding there was no notice of determination and that the Minister was not statute-barred from considering the consequences of his bankruptcy discharge for the purposes of the 2020 taxation year. He also submits that the Tax Court incorrectly applied the capital loss carry-forward rules.

[6] The applicable standards of review in this appeal are those set out in *Housen v. Nikolaisen*, 2002 SCC 33: correctness for questions of law, and palpable and overriding error for questions of fact and questions of mixed fact and law, unless there is an extricable question of law, which is reviewable on a standard of correctness.

[7] Mr. Gupta has not persuaded us that the Tax Court made any reviewable error that warrants our intervention.

[8] First, subparagraph 128(2)(g)(i) of the ITA is clear. The Tax Court was correct to conclude that Mr. Gupta could not deduct net capital losses incurred prior to his absolute discharge from bankruptcy.

[9] Second, the Tax Court found and Mr. Gupta confirmed, that he never sought nor received a notice of determination of a net capital loss.

[10] Third, the Tax Court made no error in concluding that the Minister was not barred from considering the consequences of Mr. Gupta's bankruptcy in assessing his 2020 taxation year. This finding is consistent with prior decisions of the Tax Court (see *Coastal Construction & Excavating Ltd. v. R.*, 1996 CanLII 21537 (TCC), [1996] 3 C.T.C. 2845 at p. 2856; *Peach v. The Queen*, 2020 TCC 12 at para. 66, upheld on appeal at 2022 FCA 163), the Exchequer Court of Canada (see *New St. James Ltd. v. Minister of National Revenue*, 1966 CanLII 947, [1966] Ex. C.R. 977) and this Court (*Canada v. Papiers Cascades Cabano Inc.*, 2006 FCA 419 at para. 23).

[11] Finally, with respect to the accuracy of the amounts used by the Minister, Mr. Gupta has not demonstrated a reviewable error.

[12] For these reasons, the appeal will be dismissed without costs.

"Sylvie E. Roussel"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-198-23

**STYLE OF CAUSE:** OM GUPTA v. HIS MAJESTY  
THE KING

**PLACE OF HEARING:** HEARD BY ONLINE VIDEO  
CONFERENCE HOSTED BY  
THE REGISTRY

**DATE OF HEARING:** MARCH 5, 2025

**REASONS FOR JUDGMENT OF THE COURT  
BY:** WOODS J.A.  
ROUSSEL J.A.  
HECKMAN J.A.

**DELIVERED FROM THE BENCH BY:** ROUSSEL J.A.

**APPEARANCES:**

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(ON HIS OWN BEHALF)

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