

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150916

Docket: A-316-13

Citation: 2015 FCA 196

**CORAM: DAWSON J.A.
RYER J.A.
NEAR J.A.**

BETWEEN:

JONATHAN HAYFRON-BENJAMIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Halifax, Nova Scotia, on September 16, 2015.

Judgment delivered from the Bench at Halifax, Nova Scotia, on September 16, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Halifax, Nova Scotia, on September 16, 2015).

Ryer J.A.

[1] This appeal by Mr. Jonathan Hayfron-Benjamin (the “Taxpayer”) relates to three judgments of Justice Patrick Boyle (the “Tax Court Judge”) of the Tax Court of Canada in Dockets 2011-3625 (IT)I, 2011-3626 (IT)I and 2011-4868 (IT)I, reported as 2013 TCC 222.

[2] The appeal relates to the Taxpayer's 2008, 2009 and 2010 taxation years in respect of which he was reassessed under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "Act") on the basis that he failed to report amounts required to be included into his income in each of those years. The reassessments for 2009 and 2010 also included penalties imposed under subsection 163(1) of the Act in respect of repeated underreporting of income.

[3] The Tax Court Judge determined that the reassessed amounts of unreported income had all been subject to income tax withholdings and T4 or T5 information return reporting (the "T4s"). Accordingly, he concluded that, as a practical matter, the issue before him was the validity of the 10% penalties that were assessed against the Taxpayer under subsection 163(1) of the Act for 2009 and 2010.

[4] In the Tax Court of Canada, the Taxpayer asserted that he had never worked for, or been paid by, the three companies that issued the T4s to him in respect of the unreported amounts of income, and that he must have been a victim of Social Insurance Number fraud.

[5] The Tax Court Judge considered evidence of connections between the Taxpayer and the three companies that issued the T4s to him. This evidence indicated:

- The Taxpayer worked in information technology and in call centres.
- The three companies that issued T-4s to the Taxpayer were engaged in those business areas.
- The T-4s issued by those companies contained the Taxpayer's correct name and Social Insurance Number.
- Two of the companies provided written confirmation that they made payments to the Taxpayer.

- The Taxpayer did not attempt to contact the companies that issued the T-4s to ask why they had issued those T-4s to him.
- The Taxpayer's complaint of identity theft was rejected by Human Resources and Skills Development Canada.

[6] In dismissing the Taxpayer's appeals and upholding the reassessments for 2008, 2009 and 2010, the Tax Court Judge found that the evidence before him established that the Taxpayer had worked for, and received payments from, the three companies that had issued the T-4s to him. In addition, the Tax Court Judge concluded that he was unable to accept, as credible, the Taxpayer's testimony that he had never worked for, or received payments from, the three companies that issued the T4s to him and that he had been the subject of identity theft.

[7] In this appeal, the Taxpayer disputes these factual findings made by the Tax Court Judge. To succeed, the Taxpayer must demonstrate that the Tax Court Judge made a palpable and overriding error in making such findings (see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paragraph 25).

[8] In our view, the evidence before the Tax Court Judge was sufficient to enable him to make the factual findings that are challenged by the Taxpayer. Accordingly, we are of the view that the Tax Court Judge made no palpable and overriding error in making those findings.

[9] For these reasons, the Taxpayer's appeal will be dismissed with costs.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-316-13

(APPEAL FROM JUDGMENTS OF THE HONOURABLE JUSTICE BOYLE OF THE TAX COURT OF CANADA DATED JULY 9, 2013, DOCKET NOS. 2011-3625(IT)I, 2011-3626(IT)I AND 2011-4868(IT)I)

STYLE OF CAUSE: Jonathan Hayfron-Benjamin v. Her Majesty the Queen

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: SEPTEMBER 16, 2015

REASONS FOR JUDGMENT OF THE COURT BY: DAWSON J.A.
RYER J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

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