

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150928

**Dockets: A-312-14
A-313-14**

Citation: 2015 FCA 208

**CORAM: GAUTHIER J.A.
WEBB J.A.
NEAR J.A.**

Docket: A-312-14

BETWEEN:

JOHN DI MAURO

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Docket: A-313-14

AND BETWEEN:

DEBORA DO COUTO

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on September 28, 2015.
Judgment delivered from the Bench at Toronto, Ontario, on September 28, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on September 28, 2015).

GAUTHIER J.A.

[1] John Di Mauro and Debora Do Couto appeal the Order of Justice Diane Campbell of the Tax Court of Canada striking out their Fresh Amended Notices of Appeal dated April 11, 2014 together with all prior Notices of Appeal.

[2] The appellants confirm that their Fresh Amended Notices of Appeal dated April 11, 2014 had not been filed in accordance with Rule 54 of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a. This would in itself be a sufficient basis to strike them.

[3] As to the striking of the prior Notices of Appeal, particularly the Amended Notices of Appeal dated June 25, 2013, we are of the view and the Crown agrees that there was no basis to strike them (*Brown v. Her Majesty the Queen*, 2014 FCA 301). The June 25, 2013 Amended Notices of Appeal only raise two issues, namely, the assessment of penalties under subsection 163(2) of the *Income Tax Act*, R.S.C. 1985 c. 1 (5th Supp.) as amended and whether the 2006 and 2007 reassessments are statute barred.

[4] Accordingly, the appeal will be allowed in part as follows:

- a) The Order of the Tax Court of Canada will be amended to read: The Fresh Amended Notices of Appeal are struck.
- b) The rest of the Order including the portion dealing with costs is rescinded.

- c) The appeals before the Tax Court of Canada will be reinstated based on the June 25, 2013 Amended Notices of Appeal and the replies dated September 30, 2013.
- d) The appellants shall each be entitled to one half of the one set of costs granted for these two appeals.

[5] Although these two appeals have not been consolidated, they raise the same issue and were dealt with together in the Tax Court of Canada. Thus, these Reasons will apply to both appeals and a copy thereof will be placed on each file (the original being placed in A-312-14).

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-312-14 AND A-313-14

APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE DIANE CAMPBELL OF THE TAX COURT OF CANADA, DATED JUNE 9, 2014, DOCKET NUMBERS 2012-4740(IT)G AND 2012-4742(IT)G

DOCKET: A-312-14

STYLE OF CAUSE: JOHN DI MAURO v. HER MAJESTY THE QUEEN

AND DOCKET: A-313-14

STYLE OF CAUSE: DEBORA DO COUTO v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: SEPTEMBER 28, 2015

REASONS FOR JUDGMENT OF THE COURT BY: GAUTHIER J.A.
WEBB J.A.
NEAR J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

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Rishma Bhimji FOR THE RESPONDENT
H. Annette Evans

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