Docket: 2012-5192(IT)I

BETWEEN:

EARL ANONBY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 2, 2013, at Vancouver, British Columbia

Before: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Kristian DeJong

JUDGMENT

The Appeal from the reassessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Ottawa, Canada, this 12th day of June 2013.

"Campbell J. Miller"

C. Miller J.

Citation: 2013 TCC 184
Date: 20130612
Docket: 2012-5192(IT)I

BETWEEN:

EARL ANONBY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

C. Miller J.

[1] This is an unusual situation where Mr. Anonby, the Appellant, seeks to have a reassessment vacated so that the original assessment can be reinstated. The original assessment is for a greater amount of tax. Let me explain.

[2] In July 2008, Mr. Anonby was hired by GD Building Envelope Constructors Ltd ("GD Building") at rate of $40 an hour. Mr. Anonby kept track of his hours which he submitted to GD Building. He got paid every couple of weeks in amounts that to him represented the number of hours times the $40 an hour rate, but less an amount for source deductions. For example, in September 2008, he received $5,525 on hours that, he believed, should have yielded $8,480. This was similar for the five months that he worked there. He never received a T4 from GD Building so he complained to the Government, who had a Canada Revenue Agency ("CRA") officer investigate.

[3] Mr. Anonby filed his 2008 tax return making his own calculation of what he believed to be his gross pay, relying on a CRA website to figure out what should have been the appropriate Income Tax Source Deductions. He thus reported $42,931, although this included an estimate of a bonus in the amount of $3,000 and vacation pay of $1,636, which was not in fact paid by GD Building. From this amount,

however, he estimated the tax withheld was $11,288, Canada Pension Plan ("CPP") deductions withheld of $2,053 and Employment Insurance ("EI") deductions withheld of $743.

[4] The CRA sent a Trust Examiner to GD Building. She met with Mr. Doug Edmondson, the owner of GD Building, and determined that the employer never made deductions. The CRA proceeded to issue a T4 showing the employment income to Mr. Anonby in 2008 to be $29,100 and issued a reassessment to Mr. Anonby accordingly. In comparing the Trust Examiner's numbers with Mr. Anonby's, it appears the employer's records reviewed by the Trust Examiner showed no payments to Mr. Anonby in August 2008, while Mr. Anonby's records showed two bank deposits totalling $4,531. This would appear to be in accordance with the starting date of Mr. Anonby in late July: this was referenced in an email between Mr. Anonby and Mr. Edmondson in July 2008 confirming such a starting date, as well as confirming the $40 per hour rate.

[5] Mr. Anonby received a refund of approximately $4,000 on the basis that his return accurately reflected that $11,000 had been withheld as an Income Tax Source Deduction and had been remitted by his employer. Upon the reassessment, based on the Trust Examiner's determination that there was only $29,100 of income, and no tax withheld, Mr. Anonby had to return the refund and pay some additional tax.

[6] Mr. Anonby now seeks a judgment vacating the reassessment (on the $29,100), leaving the original assessment (on $42,000) in place, on the basis that I will find the employer deducted $11,000 but failed to remit it.

Issues

i) Does the Tax Court of Canada have jurisdiction to order as part of a reassessment that Income Tax Source Deductions were taken from Mr. Anonby's paycheques?

ii) Does the Tax Court of Canada have the authority to vacate the reassessment, effectively reinstating the original assessment?

Analysis

i) Does the Tax Court of Canada have jurisdiction to order as part of a reassessment that Income Tax Source Deductions were taken from Mr. Anonby's paycheques?

(a) Nature of an "assessment"

[7] Section 171(1) of the *Income Tax Act* (Canada) (the "*Act*") describes the authority of the Tax Court when disposing of an appeal from an assessment:

> 171.(1) The Tax Court of Canada may dispose of an appeal by
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> (a) dismissing it; or
>
> (b) allowing it and
>
> (i) vacating the assessment,
>
> (ii) varying the assessment, or
>
> (iii) referring the assessment back to the Minister for reconsideration and reassessment.

As a result, when allowing an appeal, the Court's authority is limited by subsection 171(1) to making certain orders in respect of the assessment that has been appealed from. Similarly, by virtue of subsection 169(1) of the *Act*, a taxpayer may only appeal to the Court in respect of an assessment.

[8] For these purposes, it has been held that an "assessment" is understood as the quantum of tax assessed, not how much remains to be collected. In *Canada v. Consumers' Gas Co.*[1], the FCA made the following comments about the nature of an assessment:

> [13] […] What is put in issue on an appeal to the courts under the *Income Tax Act* is the Minister's assessment. While the word "assessment" can bear two constructions, as being either the process by which tax is assessed or the product of that assessment, it seems to me clear, from a reading of sections 152 to 177 of the *Income Tax Act*, that the word is there employed in the second sense only. This conclusion flows in particular from subsection

[1] [1987] 2 F.C. 60.

> 165(1) and from the well established principle that a taxpayer can neither object to nor appeal from a nil assessment.

[9] Similarly, in *Loewen v. Canada*[2], Sharlow J.A., described the nature of an "assessment" in the following terms:

> [6] An assessment is the determination by the Minister of the amount of a person's tax liability: *Pure Spring Co. Ltd. v. Minister of National Revenue*, [1946] Ex. C.R. 471. A taxpayer's initial assessment for a taxation year typically takes into account what is reported by the taxpayer in an income tax return. An initial assessment may be appealed, but most appeals are from reassessments, in which the Minister assesses additional tax to reflect specific changes to the taxpayer's taxable income. The word "assessment" is used to refer to assessments and reassessments.

This suggests that, in an appeal from an assessment, the Court's authority is limited to making certain decisions relating to the appellant's tax liability, not the collection of that tax.

(b) Jurisdiction over collections matters

[10] Subsection 222(2) of the *Act* provides that:

> A tax debt is a debt due to Her Majesty and is recoverable as such in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

It is unclear which court, other than the Federal Court, is a "court of competent jurisdiction" for the purposes of tax collections matters. There does not appear to be any provision in the *Act* or the *Tax Court of Canada Act* that explicitly provides that the Tax Court of Canada is such a court of competent jurisdiction. In addition, as discussed below, the Federal Court of Appeal has held that the Tax Court of Canada is not such a court of competent jurisdiction.

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[2] 2004 FCA 146.

(c) Determinations regarding source deductions: The broad approach

[11] Some pre-2000 Tax Court of Canada decisions have taken a broad approach with respect to the Court's authority to determine whether Income Tax Source Deductions have been deducted by an employer. In *Ashby v. The Queen*,[3] the Minister of National Revenue (the "Minister") had reassessed an employee by reclassifying his employment income as "other income" and disallowing deductions claimed in respect of CPP contributions, unemployment insurance ("UI") premiums and Income Tax Source Deductions. The respondent argued that the matter was outside the Court's jurisdiction because "the issue raised does not relate to an assessment of income tax, rather it relates to whether certain amounts, being income tax, CPP contributions and UI premiums were in fact deducted at source" (at paragraph 9). Sarchuk J. held that:

> [14] This Court has original jurisdiction to hear and determine appeals in matters arising under the Act (and other statutes). I am satisfied that the matter before me is an appeal from an assessment of tax within the meaning of the provisions of subsection 171(1) of the Act. I am not inclined to follow the decision in *Brooks* (*supra*) [[1994] T.C.J. No. 1244] for two reasons. First, the prayer for relief in Brooks' Notice of Appeal discloses that he was seeking a declaratory order from this Court. Clearly such relief is not contemplated by subsection 171(1) of the Act. Second, and this point was not argued in *Brooks*, section 118.7 of the Act provides that for the purpose of computing the tax payable under Part I of the Act by an individual for a taxation year there may be deducted an amount in respect of an employee's premium for the year under the *Unemployment Insurance Act*, 1971 and the employee's contribution under the *Canada Pension Plan*. These are statutory deductions permitted to a taxpayer which this Appellant says were made but have been denied to him. There is no basis upon which the Respondent can reasonably argue that this Court is not entitled to determine the question whether these deductions had in fact been made and if so, to direct the Minister to reassess accordingly. A taxpayer is entitled to the benefit of each statutory exemption and deduction in the Act applicable to him. I see no difference between a taxpayer's entitlement to deduct the premiums and contributions pursuant to section 118.7 of the Act and a taxpayer's entitlement to deduct appropriate expenses pursuant to section 18 of the Act. Disallowance of a deduction by the Minister founded on an incorrect assumption of facts is a reversible error. Furthermore, while it might be argued that income tax deducted at source is treated differently in the Act than UI premiums and CPP contributions, it seems to me inappropriate, if I

[3] [1995] T.C.J. No. 1379.

> were to find that First Choice made the required deductions from the Appellant's wages, to grant relief in respect of CPP and UI and to deny relief with respect to a deduction of tax at source. In my view the calculation of income tax payable is an integral part of an assessment by the Minister. If the Minister's calculation is wrong the Appellant is entitled to relief. To reject his appeal on the basis of "lack of jurisdiction" in these circumstances is not warranted.

[12] Similarly, in *Manke v. The Queen*,[4] an issue was whether the Court could properly determine whether Income Tax Source Deductions had been withheld. McArthur J. wrote:

> [13] The matter before the Court is not a "collections matter" which is outside the scope of its jurisdiction.
>
> [14] The Court's jurisdiction begins once a taxpayer has appealed an assessment of tax pursuant to section 169 of the Act. The Tax Court can only grant the relief provided in subsection 171(1) of the Act, that is, it can dismiss an appeal from an assessment of tax or it can allow the appeal by vacating the assessment, varying the assessment, or referring the assessment back to the Minister for reconsideration and reassessment. It is well-established that the Tax Court cannot grant declaratory relief. The Tax Court's jurisdiction is limited to what is expressly conferred on it by Parliament and what is necessarily implied from what is expressly conferred: *Lamash Estate v. The Queen*, [1990] 2 C.T.C. 2534, 91 D.T.C. 9 (T.C.C.) per Christie A.C.J.T.C.C.
>
> […]
>
> [17] […] The ultimate question before the Court is whether the Minister's assessment of tax is correct. One of the constituent elements of the assessment is the amount of credits to which the taxpayer is entitled. The Appellant has appealed the assessment of tax to this Court on the basis that the Minister has not properly taken into account the credits to which he was entitled. The Court is entitled to make a determination on this point so as to determine whether the Minister's assessment of tax was correct. The Court is not making a declaratory order that the Minister shall grant the Appellant a tax credit, but rather the Court is referring the matter back to the Respondent to reassess the Appellant in accordance with the reasons, as is provided for under section 169 of the Act.

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[4] 52 DTC 1969; [1999] 1 CTC 2186 (TCC).

McArthur J. then found as a fact that amounts had been withheld at source in respect of income tax, and allowed the appeal.

[13] A subsequent decision by Sarchuk J., *Ramsay v. The Queen*,[5] follows the reasoning from *Ashby* and *Manke*. It does not contain any additional analysis.

[14] *Suermondt v. The Queen*,[6] involved a taxpayer who had received a taxable settlement payment from a former employer. He testified that his understanding was that the settlement was for $111,540, and source deductions were going to be taken in respect of income tax, CPP and UI premiums from that amount (and remitted to the government) such that he would receive a net amount of $72,500. No amounts were remitted, and the issue was whether the source deductions had actually been taken. Bowman J. (as he then was) dismissed the appeal on the basis that there was merely an oral understanding that the taxpayer would receive the settlement "net of taxes" that did not bind the Minister or create a trust in favour of the Queen (at paragraphs 14-16). The Federal Court Appeal allowed the taxpayer's appeal (this decision is reported as *Suermondt v. Canada*.[7] At paragraph 9, Noël J.A. wrote that:

> In as much as the trial judge was of the view that the compensation agreed to between Datapoint and the applicant was $111,540, and that only part of that amount was in fact paid, he should have found that the balance was withheld by the employer, who thereby became liable to the tax authorities for the income tax owed by the applicant to the extant of the amount withheld (see paragraph 227(9.4) of the *Income Tax Act*).

The Court went on to conclude:

> [15] In short, the evidence shows unequivocally that the agreement negotiated was for a retiring allowance of $111,540, and therefore the trial judge had to conclude that the difference between that amount and the amount actually paid to the applicant had been withheld by the employer.

The jurisdictional issues discussed herein were not discussed in either Bowman J.'s or Noël J.A.'s reasons, suggesting that they were not raised by the parties.

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5 [2000] 4 C.T.C. 2397 (TCC[IP]).

6 [1999] T.C.J. No. 353 [IP].

7 2001 FCA 155.

[15] While these cases provide some support for Mr. Anonby's position, more recent Federal Court of Appeal decisions do not.

(d) Determinations regarding source deductions: The narrow approach

[16] Before turning to the two determinative Federal Court of Appeal decisions, there are two other Tax Court of Canada cases which are contrary to the *Ashby* and *Manke* approach.

[17] In *Liu v. The Queen*[8] the taxpayer was a self-employed real estate agent who was associated with a real estate agency. The taxpayer and the agency had agreed that the agency would withhold Income Tax Source Deductions, and make remittances, from the taxpayer's commission and fees. No amounts were remitted and the issue was whether the taxpayer was entitled to a credit for the amounts withheld. Bowman J. held that, since the taxpayer was self-employed, the *Act* did not require any source deductions, and the amounts withheld were not withheld under the *Act* such that they did not satisfy the taxpayer's obligations to the government. Bowman J. also expressed the view that:

> [13] Even if I had concluded differently it would not have been within the power of this court to declare that in determining the balance owing to the Government of Canada by Mr. Liu there should be taken into account the amount withheld from his commissions but not remitted. This court's jurisdiction, insofar as it is relevant to this case, is to hear and determine references and appeals on matters arising under the *Income Tax Act*. Essentially in an appeal under the *Income Tax Act* the question is the correctness of an assessment or determination of loss. Here there is no issue with respect to the correctness of the assessment. The question of amount of the balance of tax owing by a taxpayer may be a matter within the jurisdiction of the Federal Court but if that court sees the substantive issue in the same manner in which I do I doubt that it could give the appellant any more relief than I can.

[18] Similarly, in *Valdis v. The Queen*,[9] Hamlyn J. was very clear tax withholdings are not part of the assessment:

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8 [1995] 2 C.T.C. 2971D #2 (TCC).

9 [2001] 1 C.T.C. 2827 (TCC[IP]).

> [17] With respect, while section 118.7 of the Act specifically makes provision for the calculation of credits pertaining to EI and CPP amounts which reduce a taxpayer's exigible tax, income tax deducted at source by an employer does not reduce exigible tax under the Act. In my view, under subsection 152(1), an "assessment" is stipulated by Parliament to "assess the tax for the year ... if any, payable" and not to assess the tax for the year owing by a taxpayer after source deductions withheld by an employer are subtracted from exigible tax as assessed for the year. I conclude it cannot be said that income tax withheld by an employer is a constituent element of an assessment that can be appealed under section 169. However, I do agree with the decision in *Ashby*, that to the extent that there has been an amount withheld for EI or CPP under section 118.7, such amounts are integral to an assessment, therefore this Court has jurisdiction to consider these credits in an appeal.

[19] Clearly this rejects the earlier line of cases. Two recent decisions of the Federal Court of Appeal have now explicitly provided that the Tax Court of Canada does not have the authority to determine, for purposes of the correctness of an assessment, whether Income Tax Source Deductions have been deducted by an employer. Both *Neuhaus v. Canada*,[10] and *Boucher v. Canada*,[11] involved taxpayers who, in appeals to the Tax Court of Canada, argued that source deductions had reduced or eliminated their net tax liability. In the Court's decision of *Neuhaus* (reported at [2000] T.C.J. No. 821 [IP]), Lamarre J. described the background to the appeal in the following terms:

> [1] During the 1995 and 1996 taxation years, the appellant reported $20,000 in employment income from the Élise de Cotret medical office and claimed a tax refund for the tax that she said she had paid through source deductions.
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> [2] By assessment, the Minister of National Revenue ("Minister") reduced the appellant's employment income from Élise de Cotret to $15,000 in 1995 and $15,750 in 1996. He calculated the appellant's federal tax to be $554.10 in 1995 and $979 in 1996. The appellant is not contesting the federal tax. She submits that that tax has already been paid through tax deductions at source. The Minister did not grant any tax credit on the wages from Élise de Cotret on the ground that no source deductions had been made or remitted to the Receiver General by Élise de Cotret.

Lamarre J. went on to suggest that the evidence did not support the taxpayer's position and cited *Liu* for the proposition that the matter was "a tax collection

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10 2002 FCA 391.

11 2004 FCA 47.

question which falls within the jurisdiction of the Federal Court" (at paragraph 4). Noël J.A. dismissed the taxpayer's appeal, writing:

> [4] In this case, the applicant is not seeking to have the disputed assessments vacated or varied. Rather, she is claiming that the taxes as assessed by the Minister have already been paid by way of a deduction at source (see subsection 227(9.4), which *inter alia* makes the employer liable for the taxes owing by an employee up to and including the amounts deducted from the salary and not remitted). In these circumstances, the judge below rightly held that she did not have jurisdiction and it was therefore wrong for her to consider the dispute on its merits.
>
> [5] The problem raised by the applicant is a collection problem. In this regard, section 222 assigns jurisdiction to the Federal Court in these words:
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> All taxes, interest, penalties, costs and other amounts payable under this Act are debts due to Her Majesty and recoverable as such in the Federal Court ...
>
> […]
>
> [6] Insofar as the applicant claims to have already paid the taxes being claimed from her, she may assert her rights in the Federal Court when the Minister attempts to recover the sums he considers payable. We wish to emphasize that in *Suermont v. The Queen*, recently decided by this Court (2001 D.T.C. 5389), the issue of jurisdiction had not been raised.

[20] *Boucher* involved a situation that bears some similarity to Mr. Anonby's appeal. In the Tax Court of Canada decision (reported at 2003 TCC 86), Teskey J., after finding that no source deductions had been taken from amounts paid to the taxpayer, stated:

> [30] Normally this would conclude my reasons and the appeal would be dismissed, with costs. However, the Appellant asks the Court to raise the assessment to $414,617, which increases the appealed assessment by $201,545 and that I should direct the Minister of National Revenue to provide to the Appellant a credit of $201,545.
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> [31] When I questioned the Appellant on the basis that if I should decide that a direction by me to the Minister to give the Appellant the claimed credit was beyond the Court's jurisdiction, the Appellant stated she wanted the assessment raised in any event.

Because of his earlier factual finding, Teskey J. declined to comment on the Court's jurisdiction to increase a reassessment on request. On appeal, Sharlow J.A. wrote:

> [6] […] [T]he Tax Court Judge found as a fact that no tax had been withheld. The record discloses no error in that finding of fact.
>
> [7] However, it does not follow that this appeal should be dismissed. The difficulty with the judgment under appeal is that Parliament has not given the Tax Court the authority to determine the issue that Ms. Boucher sought to have determined, which was whether or not tax had been withheld at source so that it should be credited against her tax liability.
>
> [8] In my view, Ms. Boucher made the same error as the applicant in *Neuhaus v. Canada* […]
>
> [9] Ms. Boucher cannot be faulted for proceeding as she did. There are contradictory decisions in the Tax Court on this very point. Ms. Boucher pointed out that in *Suermondt v. Canada*, 2001 D.T.C. 5389 (F.C.A.), this Court implicitly accepted that the Tax Court had jurisdiction in cases such as this. However, in the later *Neuhaus* case (quoted above), this Court indicated that the question of jurisdiction was not raised in *Suermondt*. The obvious implication is that if the question of jurisdiction had been raised in *Suermondt*, the result in that case would have been different.

[21] The *Neuhaus* and *Boucher* decisions have been cited for the proposition that the Court does not possess the jurisdiction to determine whether Income Tax Source Deductions have been withheld. As noted by Angers J. in *Forrester v. The Queen*,[12] at paragraph 17:

> Since those two decisions [*Neuhaus* and *Boucher*], this Court has consistently held that it does not have jurisdiction to determine whether tax has been withheld at source. See *Curwen v. R.*, 2005 TCC 226 (T.C.C. [Informal Procedure]), *Pintendre Autos Inc. c. R.*, 2003 TCC 818 (T.C.C. [General Procedure]), *Surikov v. R.*, 2008 TCC 161 (T.C.C. [Informal Procedure]) and *Welford v. R.*, 2009 TCC 464 (T.C.C. [General Procedure]).

[22] Several more recent Tax Court of Canada decisions also follow *Neuhaus* and *Boucher*, including *Sutcliffe v. The Queen*,[13] and *McIntosh v. The Queen*.[14] In *Sutcliffe*, Woods J. cited *Boucher* and wrote at paragraph 10:

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12 2010 TCC 608.

13 [2013] 1 C.T.C. 2123.

14 2011 TCC 147.

> The authority over whether source deductions have been taken resides with the Federal Court and not the Tax Court.

[23] Similarly, in a recent decision of the Federal Court of Appeal, *Alciné v. Canada*,[15] Noël J.A. made the following statement:

> [2] More specifically, neither the Tax Court of Canada, as a court of original jurisdiction, nor this Court, pursuant to the powers conferred on it by subsection 27(1.2) of the *Federal Courts Act*, has jurisdiction to address issues related to the collection of tax debts.

[24] So, while source deductions in respect of CPP contributions and EI premiums can form a constituent part of an assessment (by virtue of section 118.7 of the *Act*, which provides a tax credit for those amounts), Income Tax Source Deductions do not form a constituent part of an assessment.

[25] It is difficult to distinguish the *Neuhaus* and *Boucher* appeals from Mr. Anonby's appeal. *Neuhaus* involved a taxpayer who did not contest the amount of tax assessed, but submitted that that tax had already been paid through tax deductions at source. In contrast, Mr. Anonby suggests that he should have been assessed more tax than he was, and requests that the reassessment that he issued be vacated. However, this difference does not appear to be germane to the question of whether the Court possesses the authority to determine whether Income Tax Source Deductions have been taken, especially in light of the Federal Court of Appeal comment that the problem raised by the applicant is a collection problem. Furthermore, *Boucher* involved an appeal of an assessment by the taxpayer who, like Mr. Anonby, requested that the assessment be raised and credit be given for Income Tax Source Deductions. The Federal Court of Appeal set the Tax Court of Canada's decision aside and ordered it replaced with a judgment quashing the taxpayer's appeal.

[26] The law does, however, throw a taxpayer in Mr. Anonby's position a lifeline by suggesting the Federal Court has authority to deal with collection matters. While this Court cannot do so, there is nothing that precludes me from making a finding of fact that Mr. Anonby received net pay, not gross pay. The only explanation is that something was deducted from his pay and not remitted. This leads to the conclusion that the reassessment is incorrect as it reflects an amount of income less than what

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[15] 2010 FCA 325.

Mr. Anonby earned, yet, allowing the Appeal, without the ability to order the reassessment take account of unremitted Income Tax Source Deductions, would not do Mr. Anonby any favour. Could I even do so? This raises the second issue.

ii) Does the Tax Court of Canada have the authority to vacate the reassessment, effectively reinstating the original assessment, if more tax would be owing?

[27] The common law principle that the Tax Court of Canada does not have the authority to allow an appeal if the result would be an increase in the tax assessed for any year at issue is derived from the fact that, under the *Act*, the Minister has no entitlement to appeal an assessment.

[28] In *Harris v. Canada (Minister of National Revenue)*[16], aff'd [1966] S.C.J. No. 28, the Minister had reassessed the taxpayer to deny Capital Cost Allowance ("CCA") in respect of a property that the taxpayer had leased, but to allow the taxpayer a deduction in respect of rent paid on the property. On appeal, the Minister sought to amend his pleadings to argue that, if CCA was allowed by the Court, the deduction in respect of rent should be denied. At paragraph 17, the Court held that it could not allow the amendment to the pleadings sought by the Minister:

> On a taxpayer's appeal to the Court the matter for determination is basically whether the assessment is too high. This may depend on what deductions are allowable in computing income and what are not but as I see it the determination of these questions is involved only for the purpose of reaching a conclusion on the basic question. No appeal to this Court from the assessment is given by the statute to the Minister and since in the circumstances of this case the disallowance of the $775.02 while allowing $525 would result in an increase in the assessment the effect of referring the matter back to the Minister for that purpose would be to increase the assessment and thus in substance allow an appeal by him to this Court.

[29] The principle from *Harris* that the Court does not have jurisdiction to increase an assessment has been cited frequently, and has been followed even in cases where the taxpayer sought an order that would have increased an assessment in one year but reduced assessments in other years. For example, in *Skinner Estate v. The Queen*[17], the taxpayers sought an order from the Court that would have increased their tax liability by a small amount in one year, but would have given rise to deductions of a

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16 [1965] 2 Ex.C.R. 653.

17 2009 TCC 269.

substantially greater magnitude in other years. After thoroughly discussing the *Harris* principle, Sheridan J. held that the Court did not have jurisdiction to make the order sought by the taxpayers:

> [30] As I read the jurisprudence, however, the governing factor in determining the Court's jurisdiction is not who is seeking the order or the nature of the remedy sought, but rather, whether the ultimate result would be an increase in the quantum assessed in the assessment under appeal. If that question is answered in the affirmative, the "effect" is, by definition, to permit the Minister to appeal his own assessment and the Court is without authority to make such an order. As shown by both *Pedwell* and *Petro-Canada*, the Court stands in no better position than the Minister where the order granted results in an increase in the taxpayer's assessment. The effect of an order vacating that assessment is still to increase the tax assessed in that year, an outcome beyond the Court's power to impose. Thus, whether the request originates with the taxpayer or the Minister and whether the order is to vary or vacate, the effect of ordering such a remedy is the same.

The principle from *Harris* has been cited by the Federal Court of Appeal (see, for example, *Chevron Canada Resources Ltd. v. Canada*[18], at footnote 20). In addition, in *Petro-Canada v. Canada*[19], the Federal Court of Appeal held that the Tax Court of Canada does not even have the authority to "indirectly" allow an appeal by the Minister.

[30] It is well-settled that the Court cannot increase the assessment under appeal. The amount of Income Tax Source Deductions do not form a constituent part of an assessment. As a result, I cannot make an order vacating a reassessment and reinstating an earlier assessment where the earlier assessment was for a larger gross tax liability (even if the earlier assessment results in a lower net amount owing to the government after accounting for Income Tax Source Deductions), since such an order would appear to result in an increase in the amount of tax assessed.

[31] Mr. Anonby may wish to consider obtaining professional advice as to how to deal with what is basically a collection issue. Unfortunately, nothing more can be done in this Court and I must dismiss the Appeal.

Signed at Ottawa, Canada, this 12th day of June 2013.

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18 (1998) 98 D.T.C. 6570.

19 [2004] F.C.J. No. 734.

"Campbell J. Miller"

C. Miller J.

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APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Kristian DeJong

COUNSEL OF RECORD:

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Firm:	
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