Docket: 2022-453(IT)I

BETWEEN:

SCOTT GILLIES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on April 9, 2024, at Toronto, Ontario

Before: The Honourable Justice Bruce Russell

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Samantha Jennings
	Carol Calabrese

JUDGMENT

This appeal is quashed, on the basis that this Court is without jurisdiction to address the matter of collection of taxes that the Appellant asserts were withheld but not remitted by his former employer. That is a "collection problem" and as such comes within subsection 222(2) of the *Income Tax Act*, which assigns jurisdiction to the Federal Court. There will be no order as to costs.

Signed at Ottawa, Canada, this 30th day of April 2024.

"B. Russell"

Russell J.

Citation: 2024 TCC 53
Date: 20240430
Docket: 2022-453(IT)I

BETWEEN:

SCOTT GILLIES,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Russell J.

I. Introduction:

[1] The Respondent Crown has brought a motion to quash this appeal, on the basis that the relief sought by the Appellant, Mr. Scott Gillies, is not within the jurisdiction of this Court.

[2] Mr. Gillies seeks a decision of this Court in respect of his 2016 and 2017 taxation years that he is not responsible to the Minister of National Revenue (Minister) for tax under the *Income Tax Act* (Act) that his then employer, Love That River Inc. (LTRI), withheld from income paid to him qua employee, but did not remit to the Minister.

II. Background:

[3] In the Respondent's Reply, the Attorney General of Canada pleads that the Respondent's "…preliminary objection… [is that]…insofar as the [a]ppellant seeks to appeal the income tax assessed on the assessment for 2016 and 2017 taxation years, no remedy lies to this Honourable Court with respect of [sic] tax properly owing under the Act."[1]

[1] Reply para. 1

[4] According to the Reply, LTRC filed amended T4s for the 2016 and 2017 taxation years indicating that no tax had been withheld for either said year.[2]

[5] Also, per the Reply, the Appellant had reported income tax deducted for 2016 in the amount of $54,900 which in reassessing, the Minister reduced to $49,844. Similarly, for 2017 income tax deducted was reported by the Appellant as being $28,063, which on reassessing, the Minister reduced to $19,744.[3]

[6] Mr. Gillies testified also that subsequently LTRI argued that he had not been an employee, but rather had been an independent contractor and therefore responsible himself for his remittances to the Minister of required withholdings.

[7] This assertion by LTRI was rejected by a decision of the Minister. That decision is reflected in a letter to Mr. Gillies from Canada Revenue Agency (CRA) on behalf of the Minister, said to have been mailed December 21, 2017 (Ex. A-1). The letter informed that the Minister upheld a September 27, 2017 ruling under the *Canada Pension Plan and Employment Insurance Act* that the Appellant's relationship with LTRC had met the requirements of a contract of service and that accordingly an employer-employee relationship had existed between LTRC as employer and the Appellant as employee.

[8] As stated, the Appellant's continuing concern is that the Minister not look to him for collection of the tax for his 2016 and 2017 taxation years LTRC had withheld but not remitted. He testified that he had negotiated an agreement with LRTC that in return for payment of an agreed sum for constructive dismissal, he would not sue LRTC for the un-remitted withholdings.

[9] I asked Mr. Gillies why he had brought this matter to the Tax Court of Canada. His answer was to point to the above-mentioned letter (Ex. A-1) from CRA on behalf of the Minister sent December 21, 2017. It stated that if he disagreed with the decision that he had been an employee of LTRC then he "can appeal to the Tax Court of Canada…" Of course, he is quite satisfied with that decision of the Minister. In this proceeding, he is seeking a quite different decision.

III. Analysis:

[2] Reply, paras. 12(e) and (h)
[3] Reply, para. 8

[10] With this background, I now return to the above-referenced motion of the Respondent Crown to quash this proceeding. In the Reply, the Attorney General asserts that this Court has no jurisdiction "to relieve the [a]ppellant from the obligation to pay tax which he is liable for, pursuant to section 222 of the Act".[4]

[11] Also in the Reply, the Attorney General, "admits the employer is responsible to [sic] remitting to the Minister any tax withholdings from employees", and as well "admits the employer did not remit any tax withheld from the Appellant's income".[5]

[12] In arguing that this proceeding should be quashed, Respondent's counsel cited *Boucher v. Her Majesty*, 2004 FCA 47, which followed the earlier Federal Court of Appeal (FCA) decision of *Neuhaus v. Canada*, [2003] 2 C.T.C. 177, 2003 D.T.C. 5469 in which per Noel, J. as he then was stated (paragraphs 4-6):

> 4. In this case, the applicant is not seeking to have stated 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) [of the Act], 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 [Tax Court] 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 [of the Act] assigns jurisdiction to the Federal Court in these words:
>
> > 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…

[13] In 2004, section 222 of the Act was revised as subsection 222(2), headed "Debts to Her Majesty", and providing:

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

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[4] Reply, para. 2
[5] Reply, paras. 5(c) and 5(e)

[14] In *Boucher*, the FCA approvingly cited at paragraph 8 the same above paragraphs from *Neuhaus*. Paragraphs 10 and 11 of the *Boucher* decision, rendered by a panel per Sharlow J.A., read:

> 10. …Parliament has not empowered the Tax Court to determine a dispute as to whether or not tax has been withheld at source from particular payments.
>
> 11. The only possible remedy is to allow this appeal [to the FCA], set aside the judgment of the Tax Court and replace it with a judgment quashing the Tax Court appeal…

[15] In *Reese McIntosh v. Her Majesty the Queen*, 2011 TCC 147, my colleague Justice D'Arcy considered a somewhat similar situation. He concluded, at paragraphs 19 – 21 that,

> 19. It is clear…that the jurisdiction of this Court is limited to appeals from an assessment. It is only appeals from an assessment that arise under the Act (see the comments of Rip J. (as he then was) in *McMillen Holdings Limited v. The Minister of National Revenue*, 87 DTC 585, at pages 591-592).
>
> 20. Under subsection 152(1) of the Act, the Minister is required to assess the tax payable for the year under the Act. I agree with counsel for the Respondent that subsection 152(1) of the Act does not provide for calculating "tax owing" after source deductions and therefore this Court does not have jurisdiction to credit the Appellant for the alleged greater amount of income tax source deductions.
>
> 21. My conclusion is consistent with the decision of this Court in *Liu v. Her Majesty the Queen* [1985] 2 C.T.C. 2971…and the decision of the Federal Court of Appeal in *Neuhaus v. R*….

IV. Conclusion:

[16] I will issue judgment quashing this appeal, on the basis that this Court is without jurisdiction to address the matter of an employer withholding but not remitting tax payable under the Act, which is "a collection problem" falling within subsection 222(2) of the *Income Tax Act*, which assigns jurisdiction to the Federal Court. There will be no order as to costs.

Signed at Ottawa, Canada, this 30th day of April 2024.

"B. Russell"

Russell J.

CITATION:	2024 TCC 53
COURT FILE NO.:	2022-453(IT)I
STYLE OF CAUSE:	SCOTT GILLIES AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	April 9, 2024
REASONS FOR JUDGMENT BY:	The Honourable Justice Bruce Russell
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APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Samantha Jennings Carol Calabrese

COUNSEL OF RECORD:

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