

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160113

Docket: A-246-15

Citation: 2016 FCA 6

**CORAM: PELLETIER J.A.
STRATAS J.A.
GLEASON J.A.**

BETWEEN:

TOLASHWAR NARAINÉ

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on January 12, 2016.

Judgment delivered at Toronto, Ontario, on January 13, 2016.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY

**PELLETIER J.A.
STRATAS J.A.**

Federal Court of Appeal



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REASONS FOR JUDGMENT

GLEASON J.A.

[1] In this appeal, the appellant, Mr. Naraine, seeks to set aside the December 8, 2014 Judgment of the Tax Court in which Justice Campbell denied the bulk of Mr. Naraine's claim for legal expenses. Mr. Naraine alleges that he incurred these expenses in connection with a successful human rights claim that he made against his former employer under the Ontario

Human Rights Code, R.S.O. 1990, c. H.19 and so the claimed expenses should be deductible under subsection 60(o.1) of the *Income Tax Act*, R.S.C. 1985, c.1 [the *ITA*].

[2] The Tax Court refused the bulk of Mr. Naraine's claimed legal expenses because it found that Mr. Naraine had failed to establish that he had incurred these expenses during the relevant time period. This determination is a factual one and can be set aside by this Court on appeal only if the Tax Court made a palpable and overriding error in reaching its conclusion: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paragraph 10.

[3] I do not believe that the Tax Court made any such error because Mr. Naraine produced no documentary evidence to support his assertion that he incurred the expenses during the time frames contemplated in subsection 60(o.1) of the *ITA* and provided no explanation as to why he was unable to produce copies of the bills that his lawyers would have delivered to him. While, as this Court held in *House v. The Queen*, 2011 FCA 234 at paragraph 80, documentary evidence need not necessarily be produced in every tax case to support a claimed deduction, I believe that it was reasonable to expect that it be produced here or that a cogent explanation be furnished as to why the evidence was not available as Mr. Naraine would have received bills confirming the amount and timing of his legal expenses. The Tax Court thus did not commit a reviewable error in refusing to recognize the claimed legal expenses.

[4] Therefore, I would propose that this appeal be dismissed with costs.

"Mary J.L. Gleason"

J.A.

"I agree

J.D. Denis Pelletier J.A."

"I agree

David Stratas J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-246-15

**APPEAL FROM THE JUDGMENT OF THE HONOURABLE MADAM JUSTICE
DIANE CAMPBELL DATED 28-APR-2015, IN THE TAX COURT OF CANADA FILE
NO. 2013-2807(IT)G.**

DOCKET: A-246-15

STYLE OF CAUSE: TOLASHWAR NARAINÉ v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 12, 2016

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: PELLETIER J.A.
STRATAS J.A.

DATED: JANUARY 13, 2016

APPEARANCES:

Tolashwar Naraine

FOR THE APPELLANT
(ON HIS OWN BEHALF)

Lorraine Edinboro
Christian Cheong

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada

FOR THE RESPONDENT