

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160314

Docket: A-9-15

Citation: 2016 FCA 85

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

BETWEEN:

TAMER SALLOUM

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on March 14, 2016.
Judgment delivered from the Bench at Vancouver, British Columbia, on March 14, 2016.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160314

Docket: A-9-15

Citation: 2016 FCA 85

CORAM: RYER J.A.
NEAR J.A.
BOIVIN J.A.

BETWEEN:

TAMER SALLOUM

Appellant

And

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on March 14, 2016).

RYER J.A.

[1] This is an appeal from a decision of Justice John Owen of the Tax Court of Canada (the "Judge"), dated December 12, 2014, in Dockets 2012-2746(IT)I and 2012-2750(GST)I.

[2] In the income tax matter, the Judge upheld reassessments, pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "ITA"), of Mr. Tamer Salloum's (the "Taxpayer") 2006,

2007 and 2008 taxation years, which disallowed the Taxpayer's claims for certain business losses in those years on the basis that he had not carried on a business, within the meaning and for the purposes of the ITA, in those years.

[3] In the goods and services tax ("GST/HST") matter, the Judge upheld reassessments, pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the "ETA"), of the Taxpayer's GST/HST reporting periods for January 1, 2005 to December 31, 2008, which disallowed the Taxpayer's claims for input tax credits, within the meaning of subsection 169(1) of the ETA, in respect of those reporting periods on the basis that the Taxpayer was not carrying on a commercial activity, within the meaning of subsection 123(1) of the ETA, during those reporting periods. In the course of argument, counsel for the Taxpayer conceded the appeal with respect to the GST/HST issue.

[4] The remaining question is whether the Taxpayer was carrying on a business for the purposes of the ITA. This is a question of mixed fact and law that is largely factual in nature and, as such, is reviewed on the standard of palpable and overriding error.

[5] The Taxpayer accepts that the Judge used the correct legal test with respect to the question of whether the Taxpayer was carrying on a business for ITA purposes. However, the Taxpayer argues that in applying this test to the facts, the Judge committed a palpable and overriding error that ought to compel us to intervene.

[6] In considering the evidence presented to him, and applying the test laid down in *Stewart v. Canada*, 2002 SCC 47, [2002] 2 S.C.R. 645, the Judge specifically noted the Taxpayer's own testimony to the effect that during the time period under consideration, the Taxpayer did not offer mechanic's services to the public because he lacked the qualifications to do so and his lack of qualifications made it impossible for him to obtain liability insurance. The Judge found that, during the time frame under consideration, the Taxpayer was not engaged in the current pursuit of profit. Instead, the Judge concluded that the Taxpayer was pursuing the "inherently personal activity" of getting an education so that, at some future time, he could use that education to pursue a profit.

[7] In our view, the evidence in the record before the Judge amply supports this conclusion and in reaching it, the Judge committed no palpable and overriding error, even if, as argued before us today by Appellant's counsel, the alleged business was a research and development business, rather than an automotive service business, as found by the Judge in paragraph 40 of his reasons.

[8] The Taxpayer is essentially asking this Court to reweigh the evidence that was before the Judge and to reach a different conclusion than that reached by the Judge. This we cannot do.

[9] Accordingly, the appeal will be dismissed without costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-9-15

(APPEAL FROM A JUDGMENT OF JUSTICE JOHN OWEN OF THE TAX COURT OF CANADA, DATED DECEMBER 12, 2014 (DOCKETS: 2012-2146(IT)I AND 2012-2750(GST)I)

STYLE OF CAUSE: TAMER SALLOUM v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: MARCH 14, 2016

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

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

George Douvelos FOR THE APPELLANT

Whitney Dunn FOR THE RESPONDENT
Sara Fairbridge

SOLICITORS OF RECORD:

Wiebe Douvelos Wittman LLP FOR THE APPELLANT
Vancouver, British Columbia

William F. Pentney FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario