

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190509

Docket: A-261-17

Citation: 2019 FCA 119

**CORAM: DAWSON J.A.
WOODS J.A.
RIVOALEN J.A.**

BETWEEN:

ROBERT MEERMAN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on April 10, 2019.

Judgment delivered at Ottawa, Ontario, on May 9, 2019.

REASONS FOR JUDGMENT BY:

WOODS J.A.

CONCURRED IN BY:

**DAWSON J.A.
RIVOALEN J.A.**

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REASONS FOR JUDGMENT

WOODS J.A.

[1] Robert Meerman appeals from a judgment of the Tax Court of Canada (*per* Visser J.) which dismissed his appeal under the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 in relation to reassessments for the 2006-2011 taxation years. As the decision is unpublished, reference will be made to the Tax Court docket number 2015-2422(IT)G.

[2] For purposes of the reassessments, the Minister of National Revenue assumed that Mr. Meerman had failed to report income in the aggregate amount of \$1,052,369. This amount was included in Mr. Meerman's income and gross negligence penalties were imposed. In addition, four of the reassessments were issued after the usual time period for reassessing had expired.

[3] The purported income was compensation for labour that Mr. Meerman had performed as a heavy duty mechanic for Meerman Contracting Limited (the Corporation). The Corporation was formed by Mr. Meerman around 1997 to provide contracting services that Mr. Meerman had previously provided personally.

[4] The main thrust of Mr. Meerman's submissions is that the compensation received from the Corporation does not constitute income because he lacked an intent to earn a profit. Mr. Meerman suggests that this is a choice that he is entitled to make and that he decided to carry on this activity as a "non-commercial personal endeavour."

[5] In detailed and cogent oral reasons, the trial judge dismissed this and other submissions that Mr. Meerman had made, and ultimately dismissed the appeal in its entirety.

[6] With respect to Mr. Meerman's argument that he lacked an intent to earn a profit and carried on a non-commercial personal endeavour, the trial judge commented that Mr. Meerman's position was "non-sensical" and similar to those presented in the well-known "detax" cases. The judge considered that the compensation was significant and resulted from considerable amounts

of labour and time. He concluded that the activity had no personal element and was a business (appeal book at p. 303-305).

[7] The trial judge also denied a deduction for business expenses, which Mr. Meerman suggested in the alternative should be allowed. The judge noted that Mr. Meerman acknowledged that he had not incurred any such expenses, and that even if he did, he had destroyed any record of them (appeal book at p. 340).

[8] With respect to gross negligence penalties, the judge referred to a number of factors in reaching a conclusion that penalties were appropriate because Mr. Meerman had knowingly failed to report income. Some of the factors that the judge considered were:

- Mr. Meerman prepared his own tax returns for the relevant taxation years;
- Mr. Meerman's argument that his filing position was based on a "position of law" was doubtful because Mr. Meerman first filed tax returns on this basis in 2006 and yet he was not aware of the "position of law" until about 2008;
- Mr. Meerman made inconsistent statements in his tax returns as to whether he was a Canadian citizen; and

- Mr. Meerman had referred to many arguments previously identified with detaxers, such as “You cannot force someone into commerce against their will and over their objection, that’s called slavery”.

(appeal book at p. 308-312)

[9] The trial judge also determined that Mr. Meerman had been wilfully blind in failing to report the income. This was further support for the imposition of gross negligence penalties and it also supported the issuance of reassessments for the 2006-2009 taxation years beyond the normal reassessment periods.

[10] In finding wilful blindness, the judge adopted the often cited factors set out in *Torres v. The Queen*, 2013 TCC 380, 2014 D.T.C. 1028. The judge noted that the circumstances called for suspicion and the need for an inquiry as to the correctness of the filing position. These circumstances included the large amount of income involved, that the false statements were blatant in their size and nature, and that Mr. Meerman was knowledgeable about arguments often raised by detaxers (appeal book at p. 312-316).

[11] The standard of appellate review that applies to the above issues is the standard set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. All these issues contain a large factual component. As such, the Court should give deference to the Tax Court on these issues unless there is a palpable and overriding error. In my view, the findings of the judge are amply justified by the record and there is no such error.

[12] Mr. Meerman also submits that the trial judge erred on procedural grounds.

[13] First, Mr. Meerman submits that the trial judge erred in declining to hear a motion to strike parts of the respondent's reply. According to Mr. Meerman's argument before the Tax Court on this issue, he was prejudiced by the Minister's assumptions of fact as set out in the reply since they refer to terms used in the Act. The example Mr. Meerman provided was the Minister's assumption that he carried on a business. It was submitted that this was a conclusion of law that was not based on any facts (appeal book at p. 202) and was prejudicial.

[14] Declining a motion to strike is a discretionary procedural issue which can only be reversed for palpable and overriding error or an extricable error of law (*CBS Canada Holdings Co. v. Canada*, 2017 FCA 65, at para. 15). Mr. Meerman has not demonstrated such an error in this case. The judge declined to hear the motion as it was not timely made due to fresh steps being taken, and prejudice had not been demonstrated because the case Mr. Meerman had to meet was clearly known to him. These conclusions were open to the judge.

[15] Mr. Meerman also submits that the trial judge erred by permitting the respondent to introduce a new issue which was not in the pleadings. Mr. Meerman described the issue as "allegations of *OPCA litigant* against the Appellant" (appellant's memorandum at para. 54). Mr. Meerman submits that he was taken by surprise at the Tax Court that this issue was being raised, that he did not have an opportunity to adequately respond, and that this resulted in a breach of natural justice.

[16] The alleged new issue came up during cross-examination of Mr. Meerman in which the respondent questioned him concerning information that he may have learned from his association with a group known as Paradigm Education Group. In argument, the respondent pointed out similarities between the main argument made by Mr. Meerman in this appeal and arguments previously advanced by Paradigm that were criticized in the well-known decision of the Alberta Court of Queen’s Bench in *Meads v. Meads*, 2012 ABQB 571, 543 A.R. 215, at para. 89.

[17] Contrary to Mr. Meerman’s submissions, the “allegations of *OPCA litigant*” was not a new issue raised by the respondent for the first time at the Tax Court hearing. It was merely support for the main issues in the appeal, including whether Mr. Meerman had an intent to profit, and whether false statements in the tax returns were made knowingly or in circumstances amounting to wilful blindness. There was no breach of natural justice.

[18] I would dismiss the appeal with costs fixed in the amount of \$1,700 inclusive of disbursements and applicable taxes.

“Judith Woods”

J.A.

“I agree.
Eleanor R. Dawson J.A.”

“I agree.
Marianne Rivoalen J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-261-17

**APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE VISSER,
DATED JUNE 23, 2017, DOCKET NO. 2015-2422(IT)G**

STYLE OF CAUSE: ROBERT MEERMAN v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: APRIL 10, 2019

REASONS FOR JUDGMENT BY: WOODS J.A.

CONCURRED IN BY: DAWSON J.A.
RIVOALEN J.A.

DATED: MAY 9, 2019

APPEARANCES:

Robert Meerman ON HIS OWN BEHALF

Max Matas FOR THE RESPONDENT

SOLICITORS OF RECORD:

Nathalie G. Drouin FOR THE RESPONDENT
Deputy Attorney General of Canada