

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200203**

**Docket: A-423-18**

**Citation: 2020 FCA 35**

**CORAM: RENNIE J.A.  
DE MONTIGNY J.A.  
LOCKE J.A.**

**BETWEEN:**

**CHENG XIA**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Vancouver, British Columbia, on February 3, 2020.

Judgment delivered from the Bench at Vancouver, British Columbia, on February 3, 2020.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**DE MONTIGNY J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20200203

Docket: A-423-18

Citation: 2020 FCA 35

**CORAM: RENNIE J.A.  
DE MONTIGNY J.A.  
LOCKE J.A.**

**BETWEEN:**

**CHENG XIA**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Vancouver, British Columbia, on February 3, 2020)**

**DE MONTIGNY J.A.**

[1] Mr. Xia appeals a judgment of the Tax Court of Canada (per Campbell J.) rendered orally on November 23, 2018 (2017-3448(IT)I) (Reasons), whereby his appeals from the assessments made under the *Income Tax Act* (R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) as amended) for the 2011 and 2012 taxation years were dismissed.

[2] The Tax Court found that the tips earned by the appellant from his employment as a slot attendant at the casino were properly included in his income for the taxation years at issue.

Applying the criteria developed by this Court in *The Queen v. J.E. Cranswick*, [1982] 1 F.C. 813 (FCA) [*Cranswick*] at pages 818-819 to determine whether or not a particular income is a windfall (and therefore not taxable), the Tax Court concluded that the tips received by slot attendants from the casino patrons, which were pooled and distributed based on certain criteria, were not one-time windfalls. Rather, they were to be considered as recurring amounts received as a result of services provided in carrying out their duties at the casino.

[3] The trial judge also upheld the gross negligence penalties levied against the appellant under subsection 163(2) of the *Income Tax Act*, based *inter alia* on the facts that he had knowledge of tax matters from his previous experience, that he was highly educated, that the amounts involved were a very significant percentage of his annual income, and that he made no inquiries to ascertain the correctness of his view that the tip amounts were not taxable.

[4] Before us, the appellant once again argued that the tip amounts are non-taxable as they arose from the casino patrons' winnings. In our view, the Tax Court made no reviewable error in dismissing this argument. Subsection 5(1) and paragraph 6(1)(a) of the *Income Tax Act* are quite broad as to what constitutes income. The former includes salary, wages and "other remuneration, including gratuities" received by a taxpayer as types of incomes from an office or employment that are to be included in a taxpayer's annual return. The latter states that "benefits of any kind whatsoever received or enjoyed by the taxpayer...in respect of, in the course of or by virtue of the taxpayer's office or employment" are to be included in computing a taxpayer's income for a

taxation year. It is clear from the language of these provisions that gratuities fall within the ambit of taxable income.

[5] The fact that the tip amounts received by the appellant derived from non-taxable income is irrelevant for tax purposes. It is the nature of the gratuity as a source of income in the hands of the appellant that matters. Even if gambling winnings are generally not taxable in the hands of a casino patron, a tip or gratuity given by that same casino patron to a casino employee is not a gift and is taxable income if the criteria set out in *Cranswick* are met (see e.g. *Bach v. HMTQ*, 2003 TCC 328, [2003] 4 C.T.C. 2005 [*Bach*]). Applying these criteria, the Tax Court found that the tip amounts were not windfalls of gifts but were tied to the services that the appellant performed while employed as a slot attendant at the casino.

[6] The appellant has not convinced us that the Tax Court erred in applying these criteria to the case at bar. Indeed, the decision of the Tax Court is consistent with previous decisions according to which tips paid out of gambling winnings constitute taxable income (*Bach*, at para. 5). As the Tax Court stated, “[t]he fact that the amount is paid to a committee and pooled with other amounts paid to the attendants before distribution does not change the nature of the payment. It remains a gratuity for services provided by the slot attendant by virtue of his employment.” (Reasons, at para. 14).

[7] As for the gross negligence penalties, the appellant has not convinced us that the Tax Court erred in coming to the conclusion that he displayed a “dismissive and indifferent attitude” in failing to inquire as to whether he should report the tip amounts. Mr. Xia is an intelligent and

well-educated individual, has provided tax and financial advice, has knowledge of the tax benefits and consequences of security funds and life insurance, and yet made no effort to ascertain whether the tip amounts he received from casino patrons had to be reported. It is clear that the evidence supports a finding that the appellant was liable for willful blindness and gross negligence.

[8] The appellant also raised before this Court arguments of procedural fairness. These arguments seem to arise from the length of time the Minister took to process his notice of objection, the amount of interest owed, and the fact that the Minister may have settled with other taxpayers. None of these arguments have any merit, and also touch on matters of settlement privilege, to which the Crown objected.

[9] For all of the above reasons, the appeal will be dismissed, with costs.

“Yves de Montigny”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-423-18

**STYLE OF CAUSE:** CHENG XIA v. HER MAJESTY THE QUEEN

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** FEBRUARY 3, 2020

**REASONS FOR JUDGMENT OF THE COURT BY:** RENNIE J.A.  
DE MONTIGNY J.A.  
LOCKE J.A.

**DELIVERED FROM THE BENCH BY:** DE MONTIGNY J.A.

**APPEARANCES:**

Cheng Xia SELF-REPRESENTED  
APPELLANT

Shannon Fenrich FOR THE RESPONDENT  
David Everett

**SOLICITORS OF RECORD:**

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