

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211103

Docket: A-463-19

Citation: 2021 FCA 215

**CORAM: GAUTHIER J.A.
WOODS J.A.
MONAGHAN J.A.**

BETWEEN:

CHONE GEE

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on November 1, 2021.

Judgment delivered at Toronto, Ontario, on November 3, 2021.

REASONS FOR JUDGMENT BY:

MONAGHAN J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
WOODS J.A.**

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REASONS FOR JUDGMENT

MONAGHAN J.A.

[1] Mr. Gee appeals from a judgment of the Tax Court of Canada (per Lamarre ACJ) which allowed his appeal of a reassessment under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for his 2009 and 2010 taxation years. Before the Tax Court, the respondent conceded that the unreported income should be reduced significantly: in 2009, from \$146,029 to \$56,263, and in 2010, from \$236,690 to \$66,111. Moreover, the Tax Court accepted Mr. Gee's evidence

regarding an \$11,639 expense incurred in 2010, further reducing the assessed income in that year.

[2] As a result, Mr. Gee's appeal was allowed. But the result is not satisfactory to Mr. Gee because the Tax Court only reversed a part of the reassessed income and upheld the imposition of gross negligence penalties. The penalties were reduced because they are based on income, but were not entirely eliminated.

[3] Mr. Gee does not suggest that the Tax Court made errors of law, but rather challenges its factual findings. Therefore, to succeed Mr. Gee must show that the Tax Court made a palpable and overriding error. This is a very high standard; it is one that is very difficult to meet: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 [*Housen*]. It means the error must be obvious: *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 SCR 729, at para 33; it must be plain to see and it must affect the result: *Canadian Imperial Bank of Commerce v. Canada*, 2021 FCA 10, 456 D.L.R. (4th) 722, at para. 55. It means the Tax Court Judge's findings of fact must be treated with a high degree of deference: *Housen*, at para. 10. That different factual findings might be made were the evidence weighed differently does not mean that a palpable and overriding error has occurred: *Nelson (City) v. Mowatt*, 2017 SCC 8, [2017] 1 S.C.R. 138, at para. 38, and *Packers Plus Energy Services Inc. v. Essential Energy Services Ltd.*, 2019 FCA 96, at para. 33.

[4] CRA issued the reassessments to Mr. Gee based on a bank deposit analysis. Mr. Gee argues that the unreported income derived from the bank deposit analysis was revenue from a rental property, but that there was no income from that property because of the expenses.

[5] Mr. Gee advanced this same explanation when he testified before the Tax Court and presented a number of documents to the Tax Court in support. As we pointed out to Mr. Gee, he presented two different versions of the Statement of Real Estate Rentals. One version identifies two 50% owners, neither of whom is Mr. Gee, and the other identifies three 33% owners, one of whom is Mr. Gee. Other documents included bank statements, an agreement of purchase and sale and a mortgage document.

[6] The Tax Court is not required to accept Mr. Gee's explanation of the facts. Rather, the Tax Court considered and weighed all the evidence before it. Given that evidence, the Tax Court Judge was not convinced by Mr. Gee's explanation for the bank deposits for reasons she identified: the rental income was never raised prior to the Tax Court hearing; the agreement of purchase and sale for the property did not mention Mr. Gee; Mr. Gee admitted he did not report the rental income in filing his tax returns; Mr. Gee could not explain or justify any expenses associated with the rental property; and the Statement of Real Estate Rentals was prepared in 2019, long after the tax years under appeal. She concluded that Mr. Gee "did not report all his income and the explanations given at the hearing were not satisfactory and not credible in the circumstances."

[7] In his written materials, Mr. Gee also argued the Tax Court made a mistake by not accepting his explanation regarding \$12,000—an amount he claims he was given by his wife, and that he reported as other income. Again, the Tax Court is not required to accept Mr. Gee's version of the facts.

[8] As we explained to Mr. Gee, the Tax Court Judge is in the best position to review and assess the evidence, including the documents and the testimony. Yet Mr. Gee is asking this Court to re-examine the evidence and reweigh it; he asks us to review the evidence and come to our own findings of fact. Without a palpable and overriding error, that is not something we are permitted to do: *Singh v. Canada*, 2020 FCA 146, 2020 D.T.C. 5077, at para. 6 and *AE Hospitality Ltd. v. Canada (National Revenue)*, 2020 FCA 207, at para. 15. Mr. Gee has not identified any palpable and overriding error.

[9] At the hearing before us, the respondent withdrew its request for costs.

[10] For these reasons, I would dismiss the appeal, without costs.

"K. A. Siobhan Monaghan"

J.A.

"I agree
Johanne Gauthier J.A."

"I agree
Judith Woods J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A DECISION OF THE HONOURABLE JUSTICE LUCIE LAMARRE
OF THE TAX COURT OF CANADA DATED NOVEMBER 18, 2019, IN DOCKET NO.
2015-3968(IT)G**

DOCKET: A-463-19

STYLE OF CAUSE: CHONE GEE v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 1, 2021

REASONS FOR JUDGMENT BY: MONAGHAN J.A.

CONCURRED IN BY: GAUTHIER J.A.
WOODS J.A.

DATED: NOVEMBER 3, 2021

APPEARANCES:

Chone Gee FOR THE APPELLANT
ON HIS OWN BEHALF

Brent Cuddy FOR THE RESPONDENT

SOLICITORS OF RECORD:

A. François Daigle FOR THE RESPONDENT
Deputy Attorney General of Canada