

Court File No. 2005-1368(IT)I;
2005-1959(IT)I

TAX COURT OF CANADA

IN RE: the Income Tax Act

BETWEEN:

WALTER T. YOURKIN

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

HEARD BEFORE THE HONOURABLE MR. JUSTICE PARIS
heard at Courts Administration Service premises, Courtroom No.2
200 King Street West, 9th Floor,
Toronto, Ontario,
on Monday, January 30, 2006 at 10:55 a.m.

APPEARANCES:

Mr. Walter T. Yourkin the Appellant in person

Ms Dupe Oluyomi for the Respondent

Also Present:

Ms Roberta Colombo Court Registrar
Ms Penny Stewart Court Reporter

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Upon commencing on Monday, January 30, 2006 at
10:55 a.m.

JUSTICE PARIS: These are appeals from assessments of the Appellant's 2002 and 2003 taxation years. The appeals were heard on common evidence and these reasons apply to both matters.

The issue in these appeals is whether the appellant is entitled to deduct support payments allegedly made to an ex-spouse in 2002 and 2003. The same issue was brought before this court by the Appellant in two earlier appeals respecting his 2000 and 2001 taxation years.

The Appellant is also appealing the imposition of penalties under subsection 163(2) of the Income Tax Act.

The material facts are largely undisputed. They are as were set out by Justice McArthur of this Court in paragraphs 2 and 3 of the decision relating to the Appellant's 2002 appeal. The only difference to those facts is in the amounts paid by Unilever to the Appellant's ex-spouse in both years. In 2002 and 2003 those amounts were \$13,587.00 and \$13,723.00 respectively.

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I will not read out paragraphs 2 and 3 of Justice McArthur's decision as both parties are familiar with it.

The Appellant takes the same position in these appeals as he took before Justice McArthur, that the order of Mr. Justice Walsh dated January 13th, 1997 was not binding on him because he did not sign the underlying Minutes of Settlement or authorize them in any way.

I agree with the reasons of Justice McArthur at paragraph 4 of his decision and adopt them in these matters. He said that the judgment of Justice Walsh is binding and he had no jurisdiction to find otherwise; that the appellant would have to make an application to a court of competent jurisdiction to have it set aside.

Authority for the proposition that an order of a superior court cannot be attacked collaterally unless it is lawfully set aside is found in the Supreme Court of Canada decision in *R. v. Wilson* [1983] 2 S.C.R. 594.

The Supreme Court said at p. 599 of the *Wilson* decision:

"The record of a superior court is to be

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treated as absolute
verity so long as it
stands unreversed."

In this case no evidence has been presented to show that the order of Mr. Justice Walsh has been reversed in any manner whatsoever. Therefore, that order is binding upon this court, and the decision with respect to the division of property contained in that order is binding. The payment by Unilever of a portion of the pension cannot be found to be a payment by Mr. Yourkin to his ex-spouse.

With respect to the imposition of penalties under subsection 163(2) of the Act, I am not satisfied that the evidence shows that the appellant knowingly or in circumstances amounting to gross negligence made a misrepresentation or a false statement in the course of filing his income tax returns for those years.

Firstly, the claim by the Appellant was based on his view of the validity of the January 13th, 1997 court order. The amounts claimed matched or were very close to the amounts received by his ex-spouse from Unilever and were not pure invention on the part of Mr. Yourkin.

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Furthermore, the Appellant appears quite genuinely to believe that he did not authorize the signing of the Minutes of Settlement. The onus to prove penalties is on the Respondent, and if the Respondent wished to show that the Appellant's belief could not be substantiated, the Respondent should have brought evidence to that effect, such as by calling the appellant's counsel who represented him in those proceedings.

Finally, as decisions of this Court are not of precedential value in the Informal Procedure, the fact that this Court had dismissed the earlier appeals would not in and of itself support the application of penalties.

For all of these reasons the appeals are allowed in part, only to the extent that the penalties should be reversed. Otherwise, the reassessments regarding the payment of support will be upheld. There will be no order as to costs.

--- Whereupon concluding at 12:48 p.m.

I HEREBY CERTIFY THAT I have, to the best
of my skill and ability, accurately recorded
by Shorthand and transcribed therefrom, the
foregoing proceeding.

Penny Stewart, Chartered Shorthand Reporter

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