

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240607**

**Docket: A-201-23**

**Citation: 2024 FCA 107**

**CORAM: WOODS J.A.  
LASKIN J.A.  
LOCKE J.A.**

**BETWEEN:**

**MOHAMMAD YADGAR**

**Appellant**

**and**

**HIS MAJESTY THE KING**

**Respondent**

Heard at Toronto, Ontario, on June 7, 2024.

Judgment delivered from the Bench at Toronto, Ontario, on June 7, 2024.

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

**WOODS J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the Bench at Toronto, Ontario, on June 7, 2024).**

**WOODS J.A.**

[1] In this appeal, Mohammad Yadgar submits that the Tax Court of Canada erred when it concluded that he was properly assessed tax and penalties in respect of unreported income in the 2006, 2007, 2008 and 2009 taxation years. The Tax Court decision, written by Justice St-Hilaire, was reported as 2023 TCC 104.

[2] In the Tax Court, the parties agreed that the Minister had correctly calculated the amount of unreported income. In particular, the appellant conceded that he received unreported shareholder appropriations totalling \$512,211 in the four years that were assessed. The dispute was whether the Minister of National Revenue was precluded from assessing because the relevant taxation years were statute barred. The appellant also disputed that gross negligence penalties should have been assessed.

[3] The Tax Court dismissed the appeal. It found that the assessments were not statute barred because the appellant's failure to include the shareholder appropriations in his income was a misrepresentation due to carelessness or neglect. In this regard, the Court found that the appellant did not exercise reasonable care to report the proper amount of income. The Court also found that gross negligence penalties were justified because the appellant's conduct fell markedly below what would be expected of a reasonable person in his circumstances.

[4] The appellant had testified that he knew very little about taxes and simply relied on his accountant to prepare the returns based on the financial information he had provided. The suggestion was that the misrepresentation in the returns was the fault of the accountant and not the appellant.

[5] The Tax Court determined that it was not sufficient to simply rely on the accountant without asking any questions. The Court noted that the appellant was a very successful business owner in Canada who had previously graduated from high school and studied physics for two years at university in his home country of Afghanistan. Further, the Court commented that the

amount of income that was not reported far exceeded the income that was reported. In the four years at issue, the total unreported income was over \$500,000 and the income actually reported in the returns in that period was less than \$40,000.

[6] In this Court, the appellant submits that it is not possible to properly review the Tax Court decision because that Court was not able to provide a transcript. However, we are not satisfied that a transcript is necessary in this particular case. The basis for the Tax Court's conclusion was succinctly stated at paragraph 35 of its reasons: "[T]he Appellant cannot simply throw his hands up and say that he blindly relied on his accountant, without making any attempt at seeking a better understanding of his obligations and without making any effort to verify the accuracy of the income reported in his income tax returns." This conclusion is well supported by facts that are supported without a transcript. A transcript is unnecessary.

[7] The appellant also submits that the Tax Court erred by relying on facts stated in the Reply. Relying on the Reply would be an error since the Crown has the burden of proof. The respondent disagrees that the Tax Court relied on the Reply and submits that all of the facts set out in the Tax Court's reasons were supported by evidence (including evidence given on cross-examination of the appellant) or by admission. However, the respondent acknowledges that some of the facts cannot be verified because there is no transcript.

[8] In our view, the disagreement on this point does not matter. The disputed facts were not central to the Tax Court's decision and there was other evidence that clearly supports its conclusion.

[9] Finally, the appellant submits that the Tax Court took an unduly strict approach to what constitutes carelessness or neglect. There is no basis for this Court to intervene on this. The determination is largely one of fact. This Court can interfere only in the case of a palpable and overriding error. We are satisfied that there is no such error.

[10] We are also not persuaded by the appellant's other arguments. We are all of the view that the Tax Court's conclusion is well supported by facts and by the legal authorities that the Court relied on. There is no basis for this Court to intervene.

[11] The appeal will be dismissed, with costs.

“Judith Woods”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-201-23

**STYLE OF CAUSE:** MOHAMMAD YADGAR v. HIS  
MAJESTY THE KING

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** JUNE 7, 2024

**REASONS FOR JUDGMENT OF THE COURT  
BY:** WOODS J.A.  
LASKIN J.A.  
LOCKE J.A.

**DELIVERED FROM THE BENCH BY:** WOODS J.A.

**APPEARANCES:**

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