

Federal Court of Appeal



Cour d'appel fédérale

Date: 20160519

Docket: A-357-15

Citation: 2016 FCA 152

**CORAM: GAUTHIER J.A.
TRUDEL J.A.
SCOTT J.A.**

BETWEEN:

R&D PRO-INNOVATION INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on May 17, 2016.

Judgement delivered at Montréal, Quebec, on May 19, 2016.

REASONS FOR JUDGMENT:

SCOTT J.A.

CONCURRED IN BY:

**GAUTHIER J.A.
TRUDEL J.A.**

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REASONS FOR JUDGMENT

SCOTT J.A.

[1] The appellant argues that the Judge of the Tax Court of Canada (the Judge) erred in finding that it did not carry out scientific research and experimental development activities within the meaning of subsection 248(1) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the Act) because its research project did not satisfy the criterion of technological risk or uncertainty for the taxation years ending on August 31, 2009, and August 31, 2010.

[2] The appellant submits that the Judge was also mistaken in failing to consider, among other things, the July 6, 2011 letter from the Canada Revenue Agency that recognizes, according to the appellant, that its research work involved technological uncertainty.

[3] The question in this appeal is not how our Court would have decided on the relevant facts and evidence presented by the appellant, but instead whether the Tax Court of Canada made an error that warrants our intervention.

[4] In my view, an intervention is not warranted. The Judge made no errors of fact or otherwise and examined the evidence in this case. He properly applied the criteria of *Northwest Hydraulic Consultants Ltd. v. The Queen*, 98 D.T.C. 1839, [1998] T.C.J. No. 340 (QL), confirmed by our Court in *C.W. Agencies Inc. v. Canada*, 2001 FCA 393, [2001] F.C.J. No 1886, at paragraph 17, and concluded that he was not persuaded that the appellant's research project to develop a chocolate spread made from cocoa butter and milk protein involved a technological risk or uncertainty.

[5] It must be assumed that the Judge considered all the evidence given before him and that he accepted it, including the letter of July 6, 2011, from the Canada Revenue Agency, especially since the appellant referred to this letter several times in the case before the Tax Court of Canada.

[6] At the hearing of this appeal, the appellant also referred to us two cases from the Tax Court of Canada: *Les Abeilles Service De Conditionnement Inc. v. Her Majesty the Queen*,

2014 TCC 313, [2014] T.C.J. No. 241, as well as 6379249 *Canada Inc. v. Her Majesty the Queen*, 2015 TCC 77, [2015] T.C.J. No. 62, in support of its position that the Judge erred in applying the criteria to determine whether there was technological uncertainty. Having considered these cases, I must find that they do not apply in this case, since the facts and expertise brought up therein are substantially different from the case before us.

[7] The parties having left the adjudication of costs to the Court's discretion, I would propose that this appeal be dismissed without costs.

“A.F. Scott”

J.A.

“I agree.

Johanne Gauthier J.A.”

“I agree.

Johanne Trudel J.A.”

TRANSLATION

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-357-15

STYLE OF CAUSE: R&D PRO-INNOVATION INC. v.
HER MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: MAY 17, 2016

REASONS FOR JUDGMENT BY: SCOTT J.A.

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

DATED: MAY 19, 2016

APPEARANCES:

DENIS REMON (SELF-REPRESENTED)

GABRIEL GIROUARD
MARIE-CLAUDE LANDRY FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of Canada FOR THE RESPONDENT