

Date: 20091202

**Dockets: A-577-08
A-578-08**

Citation: 2009 FCA 355

**CORAM: BLAIS C.J.
NOËL J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

Docket: A-577-08

YUNHONG DING

Appellant

and

HER MAJESTY THE QUEEN

Respondent

AND BETWEEN:

Docket: A-578-08

NAN LIN

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on December 2, 2009.

Judgment delivered from the Bench at Toronto, Ontario, on December 2, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on December 2, 2009)

NOËL J.A.

[1] These are two appeals from decisions of McArthur J. of the Tax Court of Canada (the Tax Court Judge) granting the respondent's motion and quashing the appellants' appeals from

reassessments with respect to their 2005 taxation years on the ground that the Tax Court was without jurisdiction to hear them.

[2] The reassessments in question assess no federal tax, (i.e. they are “nil assessments”) but indicate in the case of Nan Lin, taxes owing to the province of Ontario in the approximate amount of \$3,000 pursuant to the *Ontario Income Tax Act*, R.S.O. 1990, c. I.2.

[3] Although it is conceded that the reassessments are nil assessments, the appellants take issue with the underlying distribution of foreign tax credits. That issue, as the Tax Court Judge held, cannot be addressed as the Tax Court has no jurisdiction over nil assessments (*Canada v. Interior Savings Credit Union*, 2007 FCA 151).

[4] With respect to the Ontario taxes, the appropriate recourse is, as the Tax Court Judge suggests, an appeal to the Superior Court of Ontario (*Canada v. Sutcliffe*, 2004 FCA 376 at para. 14; *Mary Beth Susan Stiege v. Minister of National Revenue*, 91 DTC 808 at p. 810).

[5] Both appeals will be dismissed with one set of costs in file A-578-08 which are fixed at \$250.00.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:

A-577-08 & A-578-08

(AN APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE C.H. McARTHUR FROM THE TAX COURT OF CANADA, DATED OCTOBER 21, 2008, IN TAX COURT FILE NO. 2008-486(IT)L.)

(AN APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE C.H. McARTHUR FROM THE TAX COURT OF CANADA, DATED OCTOBER 21, 2008, IN TAX COURT FILE NO. 2008-487(IT)L.)

STYLE OF CAUSE:

YUNHONG DING v. HER MAJESTY THE QUEEN
AND BETWEEN:
NAN LIN v. HER MAJESTY THE QUEEN

PLACE OF HEARING:

TORONTO, ONTARIO

DATE OF HEARING:

DECEMBER 2, 2009

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

(BLAIS C.J., NOËL & LAYDEN-
STEVENSON JJ.A.)

DELIVERED FROM THE BENCH BY:

NOËL J.A.

APPEARANCES:

Yunhong Ding
Nan Lin

FOR THE APPELLANTS (on their
own behalf)

Laurent Bartleman
Marie-Thérèse Boris

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

FOR THE APPELLANTS

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT