

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20200922**

**Docket: A-480-19**

**Citation: 2020 FCA 146**

**CORAM: STRATAS J.A.  
LASKIN J.A.  
MACTAVISH J.A.**

**BETWEEN:**

**SANTOSH SINGH**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Heard at Toronto, Ontario, on September 22, 2020.  
Judgment delivered from the Bench at Toronto, Ontario, on September 22, 2020.

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

**STRATAS J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on September 22, 2020).**

**STRATAS J.A.**

[1] This is an appeal from a decision of the Tax Court of Canada (*per* MacPhee J.): 2019 TCC 265, file 2017-2445(IT)G. The Tax Court dismissed the taxpayer's appeal from an assessment under section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] The Tax Court found the appellant's husband beneficially owned part of the family home until 2009. Then he transferred his beneficial ownership to the appellant. At that time, the husband owed \$60,861 in taxes and accrued interest.

[3] Under section 160 of the *Income Tax Act*, the Minister of National Revenue may assess the recipient of a non-arms length transfer of property, here the appellant, for taxes owing by the transferor, here the husband, at the time of transfer. The appellant concedes section 160 applies in circumstances such as these.

[4] Indeed, in this appeal, the appellant raises no questions of law, only questions of fact. The appellant properly accepts that in order to succeed she must show palpable and overriding error by the Tax Court, a difficult standard for appellants to meet: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Benhaim v. St- Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352, citing this Court in *South Yukon Forest Corp. v. R.*, 2012 FCA 165, 4 B.L.R. (5th) 31 at para. 46.

[5] The appellant points to conflicting evidence and says the Tax Court erred in its fact-finding. She invites us to reweigh the evidence and find different facts.

[6] The palpable and overriding error standard forbids us from doing this. We cannot reweigh the evidence before the Tax Court and replace its factual findings with our own: *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 F.C.R. 344 at paras. 79-80.

[7] In oral argument, the appellant submitted that the Tax Court ignored evidence. We are not persuaded this is so. And in *Housen* at para. 46, we are instructed to presume, absent evidence to the contrary, that the Tax Court considered the evidence before it.

[8] In the end, we conclude that the Tax Court did not commit any palpable and overriding error. In particular, at paras. 12, 25-29 and 33 of its reasons, it considered the conflicting evidence, addressed the conflict in its reasons, and made findings of fact free from palpable and overriding error. It also relied on its interpretation of a 2002 trust agreement to show that the husband had a beneficial interest in the family home, an interest he transferred in 2009 at a time when taxes were owing. On appeal, absent palpable and overriding error on the part of the Tax Court, its interpretation of the 2002 trust agreement stands: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633.

[9] In oral argument, the appellant stressed the financial circumstances of the family and invited us to consider the “justice of the facts”. This is not legally relevant to the section 160 analysis and we cannot give legal effect to it.

[10] Therefore, we will dismiss the appeal with costs.

“David Stratas”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-480-19

**APPEAL FROM A JUDGMENT OF THE HONOURABLE JUSTICE R. MACPHEE  
DATED NOVEMBER 26, 2019, DOCKET NO. 2017-2445(IT)G**

**STYLE OF CAUSE:** SANTOSH SINGH v. HER  
MAJESTY THE QUEEN

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** SEPTEMBER 22, 2020

**REASONS FOR JUDGMENT OF THE COURT BY:** STRATAS J.A.  
LASKIN J.A.  
MACTAVISH J.A.

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

**APPEARANCES:**

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