

Docket: 2008-486(IT)I

BETWEEN:

NAN LIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on common evidence with the motion in *Yunhong Ding*,
2008-487(IT)I, on September 5, 2008 at Toronto, Ontario

By: The Honourable Justice C.H. McArthur

Appearances:

Agent for the Appellant: Yunhong Ding

Counsel for the Respondent: Laurent Bartleman

ORDER

UPON motion by the Respondent for an Order quashing the purported appeal from a reassessment made under the *Income Tax Act* for the 2005 taxation year;

AND UPON reading the materials filed;

AND UPON hearing the agent for the Appellant and counsel for the Respondent;

IT IS ORDERED THAT the motion is granted, and the purported appeal from the reassessment made under the *Act* for the 2005 taxation year is quashed.

Signed at Ottawa, Canada, this 21st day of October, 2008.

“C.H. McArthur”

McArthur J.

Docket: 2008-487(IT)I

BETWEEN:

YUNHONG DING,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on common evidence with the motion in *Nan Lin*,
2008-486(IT)I, on September 5, 2008 at Toronto, Ontario
By: The Honourable Justice C.H. McArthur

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Laurent Bartleman

ORDER

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AND UPON reading the materials filed;

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Signed at Ottawa, Canada, this 21st day of October, 2008.

“C.H. McArthur”

McArthur J.

Citation: 2008 TCC 577
Date: 20081021
Docket: 2008-486(IT)I
2008-487(IT)I

BETWEEN:

NAN LIN and YUNHONG DING,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

McArthur J.

[1] The Respondent brought a motion in each of these appeals for Orders quashing the purported appeals from reassessments made under the *Income Tax Act* for the 2005 taxation year, on the grounds that they were in respect of nil reassessments of federal tax in both appeals, but for provincial tax owing in the amount of approximately \$3,000 by Nan Lin. It is common ground that no federal tax is in dispute, but that Ms. Lin has received a reassessment for an additional \$3,000 in tax owing to the Province of Ontario.

[2] The Appellants are husband and wife and Mr. Yunhong Ding represented both himself and his spouse at the hearing. They are residents of Ontario, but both work in the United States. In 2005, Ms. Lin earned approximately \$100,000 and Mr. Ding earned approximately \$36,000.¹

¹ All amounts are reflected in Canadian funds.

[3] As a result of determinations by the Minister of National Revenue in the computation of credits for the foreign tax paid by the Appellants, Ms. Lin ended up with additional provincial tax payable. Counsel for the Respondent states that the Ontario Superior Court is the proper forum for dealing with provincial tax assessments, and not the Tax Court of Canada. After receiving the U.S. tax credits, no federal income tax was payable by either party, but as stated, Ms. Lin had additional provincial tax payable. This led to the Appellants appealing the manner in which the Respondent calculated the foreign tax credit, pursuant to subsection 126(1) of the *Income Tax Act*.²

[4] The Appellants pooled their income in 2005, and completed a joint filing of an income tax return in the United States. The Respondent allocated 73% of the jointly paid U.S. tax to Ms. Lin, resulting in less foreign tax deemed to have been paid by Ms. Lin, and therefore, increasing her provincial tax. The Appellants question the Respondent's policy and manner in which the joint foreign tax credit is treated. They state in their submissions:

8. The current appeal raises a *[sic]* issue about how to distribute foreign tax credit in appellant's family member, who claimed jointed *[sic]* tax return in US. This distribution calculation of foreign tax credit is located on 431 item in T2209, Federal Foreign Tax Credits. So this calculation is Federal tax agency's duty, not Provincial Tax Agency's duty.

[5] Counsel for the Respondent stated that this Court has no jurisdiction to consider the appeals (i) because the appeals deal with an assessment of provincial (Ontario) income tax; and (ii) because there was no federal tax payable (nil reassessments).

[6] Perhaps the best decision on the subject of a provincial tax assessment is that of Justice Mogan in *Stiege v. M.N.R.*³ where he carefully reviewed the law with respect to this question and stated as follows:

The Appellant purports to appeal from an assessment made by the Minister of National Revenue with respect to Ontario property tax credits permitted as deductions under subsection 7(2) of the Ontario Act. The authority granted to the Minister of National Revenue to administer the Ontario Act does not bestow upon this Court the jurisdiction to hear an appeal from assessment concerning only the Ontario Act.

² R.S.C. 1985, c. 1 (5th Supp.), as amended.

³ *Stiege v. The Minister of National Revenue*, 91 DTC 808.

With some regret, I will grant the Respondent's application and issue the requested order quashing the purported appeal herein. My regret is based on an assumption that most individuals residing in Ontario would not know that there was an Ontario Income Tax Act and a separate appeal to the Supreme Court of Ontario for disputes relating to matters arising under that Act. Such individuals have contact with only the federal Department of National Revenue concerning income tax matters: filing the tax return; subsequent inquiries; receiving a notice of assessment; serving an objection; receiving a reassessment or confirmation. At that point, most individuals would expect (as the purported Appellant herein) to follow the well-worn path of appeals under the federal Income Tax Act. It is regrettable that the Appellant must learn at this late stage in the proceedings that she has appealed to the wrong court.

The above quote applies equally to the present case.

Nil Assessment

[7] I agree with counsel for the Respondent to the effect that the Tax Court of Canada does not have jurisdiction with respect to provincial tax. Also, in *Baluyot v. The Queen*,⁴ Justice V. Miller dealt primarily with the question of whether the Tax Court of Canada has jurisdiction to decide nil assessment appeals. She quoted, with approval, the Federal Court of Appeal decision in *Interior Savings Credit Union v. Canada*,⁵ wherein the Court found that a nil assessment cannot be appealed.

[8] There may be authority in the decision of Bowman J. in *Aallcann Wood Suppliers Inc. v. Her Majesty the Queen*⁶ for the proposition that it is open to a taxpayer to challenge the Minister of National Revenue's calculation of a loss for a particular year in another year in which the loss impacts on the taxes assessed. However, that is not the situation before me where the Appellants are challenging the Minister's calculation of a foreign tax credit, which created an increased provincial tax owing by Ms. Lin. Since the Appellants do not take issue with the federal tax assessed for 2005 which is nil, there is nothing to appeal. This is a rather unfortunate situation, in that as a direct result of the Minister's calculations, Ms. Lin was assessed \$3,000 in provincial tax. Possibly, she can appeal the assessment with respect to provincial tax to the Superior Court of Ontario provided she is within time limits and other possible criteria.

⁴ [2008] 3 C.T.C. 2081.

⁵ 2007 FCA 151.

⁶ 94 DTC 1475.

[9] I believe that recently the Minister of National Revenue now, at long last, informs the taxpayer, with the initial assessment, of the situation with respect to provincial tax and how an appeal may be instituted. While applause is in order for those responsible for instituting the new format, one wonders why it took over 20 years.

[10] The motions are granted, and the appeals are quashed.

Signed at Ottawa, Canada, this 21st day of October 2008.

“C.H. McArthur”

McArthur J.

CITATION: 2008 TCC 577

COURT FILE NO.: 2008-486(IT)I and 2008-487(IT)I

STYLE OF CAUSE: NAN LIN and YUNHONG DING
and HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 5, 2008

REASONS FOR ORDERS BY: The Honourable Justice C.H. McArthur

DATE OF ORDERS: October 21, 2008

APPEARANCES:

Agent for the Appellants:	Yunhong Ding
Counsel for the Respondent:	Laurent Bartleman

COUNSEL OF RECORD:

For the Appellants:

Name:	N/A
Firm:	N/A

For the Respondent:

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