Federal Court of Appeal | Cour d'appel fédérale

Date: 20261021

Docket: A-23-26

Citation: 2026 FCA 175

2026 FCA 175 (CanLII)

CORAM: **LEBLANC J.A.**
MONAGHAN J.A.
BIRINGER J.A.

BETWEEN:

TUNA TEMPLE INC.

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on October 21, 2026.
Judgment delivered from the Bench at Toronto, Ontario, on October 21, 2026.

REASONS FOR JUDGMENT OF THE COURT BY: MONAGHAN J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 21, 2026).

MONAGHAN J.A.

[1] The appellant, Tuna Temple Inc., undertook fourteen projects over the course of its 2005 to 2009 taxation years. It viewed the projects as "scientific research and experimental development"— a term commonly referred to as SRED—as defined in the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.). The appellant deducted its project expenses and claimed investment tax credits.

[2] Following an audit, the Minister of National Revenue concluded that thirteen projects did not qualify as SRED and reassessed the appellant to disallow the deductions and the investment tax credits associated with those projects.

[3] On appeal of those reassessments, the Tax Court of Canada concluded that the projects did not qualify as SRED and dismissed the appellant's appeal: *Tuna Temple Inc. v. The King*, 2025 TCC 183.

[4] The appellant now appeals that decision to this Court. To succeed, it must persuade us that the Tax Court made an error of law or a palpable and overriding error of fact or mixed fact and law: *Housen v. Nikolaisen*, 2002 SCC 33 at paras. 8, 10, 33, 36.

[5] The appellant's principal argument can be summarized as follows: the Tax Court found the appellant's witness credible; that witness described the structure and methodology of the thirteen projects and that, according to that witness, there was technological uncertainty because the appellant sought to break new ground in the industry. That evidence was tested but not displaced on cross-examination, and because the Crown did not call a witness to refute the appellant's evidence, it must be accepted.

[6] But accepting that argument does not establish that the Tax Court erred.

[7] The Tax Court properly identified the five criteria necessary to establish SRED, first articulated in *Northwest Hydraulic Consultants Ltd. v. The Queen*, [1998] 3 C.T.C. 2520,

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1998 CanLII 553 (TCC) at paragraph 16, and approved by this Court in *R I S - Christie Ltd. v. Her Majesty the Queen*, [1999] 1 C.T.C. 132, 1998 CanLII 8876 (FCTAD), at paragraph 10: *CW Agencies Inc. v. Canada*, 2001 FCA 393 at para. 17.

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[8] For each of the thirteen projects, the Tax Court found that the appellant failed to meet more than one of those criteria: none had a hypothesis, and for each, the appellant employed existing technology and processes, used trial-and-error rather than a systematic approach, kept inadequate records, and failed to establish there was a gap in knowledge in the industry. These are findings that we cannot overturn absent a palpable and overriding error—a very difficult standard to meet: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38; *H.L. v. Canada (Attorney General)*, 2005 SCC 25.

[9] In assessing a taxpayer, the Minister relies on assumptions concerning the facts; the taxpayer has the initial onus of "demolishing" or refuting those factual assumptions: *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336, 1997 CanLII 357 (SCC) at para. 92, citing *Johnston v. Minister of National Revenue*, [1948] S.C.R. 486, 1948 CanLII 1 (SCC) and *Kennedy v. M.N.R.*, [1973] F.C. 839 (F.C.A.), 1973 CanLII 2268 (FCTAD) at p. 843; *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 63. The appellant can do that by adducing evidence that raises a *prima facie* case the assumptions are wrong: *Hickman Motors* at para. 93.

[10] The Minister's reply to the appellant's notice of appeal in the Tax Court describes the Minister's factual assumptions. While we need not address them all, they include assumptions

that the appellant did no work to overcome technological uncertainties or to dispel scientific knowledge gaps through systematic investigation. The reply includes additional details regarding these and other assumptions for each of the projects at issue.

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[11] Contrary to the appellant's submission, the Tax Court did not treat the Minister's assumptions as evidence. Rather, it considered whether the appellant led sufficient evidence to contradict those assumptions and concluded it had not. In these circumstances, it does not matter that the witness was credible: *Bykov v. Canada*, 2025 FCA 103 at para. 9.

[12] Nor is the Minister required to adduce evidence: *Jefferson v. Canada*, 2022 FCA 81 at para. 27; *Laliberté v. Canada*, 2020 FCA 97 at para. 56. The Minister may rely on the taxpayer's evidence—its documents and the testimony of its witnesses, including on cross-examination: *Jefferson* at para. 29; *Grenon v. Canada*, 2025 FCA 129 at para. 262. The Tax Court considers all the evidence to determine whether the assessment is correct, as it did here.

[13] Despite the very able submissions of the appellant's counsel, we are not persuaded that the Tax Court made any error warranting our intervention. Accordingly, we will dismiss the appeal with costs.

"K.A. Siobhan Monaghan"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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