

Jurisdiction of the Tax Court - Sas Ansari

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Jurisdiction of the Tax Court of Canada

Bakcorp Management Ltd v The Queen, [2016 TCC 165](#)

This was a motion brought by the Crown to dismiss the taxpayer's appeal to the Tax Court of Canada on the basis that the Court lacked jurisdiction over the matter.

The Court held that so long as the matter was properly framed as an appeal of the correctness of an assessment, variation of an assessment would not be an order of *mandamus* and would clearly be in the TCC's power. It does not matter that the determination of a tax year's appeal requires consideration of tax years not before the court so long as the correctness of the assessment depends on matters in other tax years that are constituent elements of the matters affecting the tax year before the court.

FACTS

The taxpayer filed its 1992 tax return in 2011, relying on ITA s 152(4.3), in which it claimed non-capital losses carried forward to that year from 1989. By Notice of Assessment issued in 2012, the CRA denied the deductions carried forward. The taxpayer objected to the assessment and then appealed to the TCC.

The taxpayer, in its notice of appeal, asked the court whether the income calculation for the 1992 tax year was correct. The Crown brought a motion to dismiss the appeal on the basis that the taxpayer was asking for an order or *mandamus* compelling the Minister to re-assess under 152(4.3) of the [Income Tax Act](#).

ANALYSIS

The Court dismissed the Crown's arguments and asserted that the TCC had jurisdiction. The Minister assessed the taxpayer's 1992 tax year and the Appellant objected under s 165 and appealed under s 169 seeking to have that assessment varied. The correctness of the assessment is within the exclusive jurisdiction of the TCC - *JP Morgan Asset Management (Canada) Inc. v Canada (National Revenue)*, [2013 FCA 250](#).

Basically, the Minister was arguing that the taxpayer did not have non-capital losses to carry forward and as such did not grant the 152(4.3) request. The Taxpayer disagreed and argued that the non-capital losses exist by operation of the ITA and no action is required by the Minister to bring those losses into existence.

The Court noted that the appeal is properly framed as an appeal of the assessment and is asking the court to apply the facts to the law to determine the correctness of the assessment.

Should the court agree with the taxpayer, it has the power to vary the assessment. This is not an order of *mandamus*.

Additionally, even though the losses being carried forward occurred in 1989, a year not before the court, this does not affect the power of the Court to determine the correctness of an assessment before it that draws on facts in other tax years. in *Aallcann Wood Suppliers Inc. v. Canada*. at paragraph 4, [1994] T.C.J. No 280 , it was said:

. . . In challenging the assessment for a year in which tax is payable on the basis that the Minister has incorrectly ascertained the amount of a loss for a prior or subsequent year that is available for deduction under section 111 in the computation of the taxpayer's taxable income for the year under appeal, the taxpayer is requesting the Court to do precisely what the appeal procedures of the *Income Tax Act* contemplate: to determine the correctness of an assessment of tax by reviewing the correctness of one or more of the constituent elements thereof, in this case the size of a loss available from another year.

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