

Federal Court of Appeal



Cour d'appel fédérale

Date: 20210510

Docket: A-442-19

Citation: 2021 FCA 88

**CORAM: WEBB J.A.
NEAR J.A.
BOIVIN J.A.**

BETWEEN:

KAM-PRESS METAL PRODUCTS LTD.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by online video conference hosted by the registry on April 27, 2021.

Judgment delivered at Ottawa, Ontario, on May 10, 2021.

REASONS FOR JUDGMENT BY:

WEBB J.A.

CONCURRED IN BY:

**NEAR J.A.
BOIVIN J.A.**

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REASONS FOR JUDGMENT

WEBB J.A.

[1] Kam-Press Metal Products Ltd. (Kam-Press) was reassessed, for its 2009 and 2010 taxation years, to deny its claims for certain scientific research and experimental development (SR&ED) expenditures and the investment tax credits that were claimed in relation to these expenditures. Kam-Press appealed the reassessments to the Tax Court of Canada. Its appeal was dismissed (2019 TCC 246, *per* Owen, J.). Kam-Press then appealed to this Court.

[2] In paragraph 5 of its memorandum, Kam-Press submits:

The Tax Court found:

- A) The Tax Court concluded “that the Appellant has not demonstrated that the procedures adopted for the Project accord with established and objective principles of scientific method, characterized by trained and systematic observation, measurement and experiment, and the formulation, testing and modification of hypotheses.”

Appeal Book pg 17, para 29

COMMENT:

- 1) If *Northwest Hydraulics* is good law, then this finding is fatal to the Appellant.

[...]

[3] In paragraph 16 of *Northwest Hydraulic Consultants Limited v. Her Majesty the Queen*, [1998] 3 C.T.C. 2520, 52 D.T.C. 1839 (*Northwest Hydraulics*), Justice Bowman (as he then was) set out the approach to be followed to determine if a particular project qualified as SR&ED for the purposes of the *Income Tax Regulations*, C.R.C., c. 945 (the Regulations).

[4] The finding that Kam-Press acknowledged was fatal to its appeal was made by the Tax Court Judge in applying the third criteria as set out by Justice Bowman:

3. Did the procedures adopted accord with established and objective principles of scientific method, characterized by trained and systematic observation, measurement and experiment, and the formulation, testing and modification of hypotheses?

[5] After *Northwest Hydraulics* was decided, the definition of SR&ED was moved from the Regulations to the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act). Kam-Press acknowledges that the definition of SR&ED applicable in 2009 and 2010 is not materially different from the definition that was considered in *Northwest Hydraulics*.

[6] In its memorandum, Kam-Press does not acknowledge that this Court considered and approved the approach as set out in *Northwest Hydraulics*. Instead, Kam-Press focuses on the text of the definition of SR&ED and emphasizes, in particular, that there was no reference to “scientific method” in the text of the definition and therefore that the third criteria, as set out in *Northwest Hydraulics*, should not have been applied by the Tax Court Judge in this case. However, the role of the court is not merely to recite the exact words that are used, but rather to interpret the words of a provision of the Act or the Regulations based on a textual, contextual and purposive analysis (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, at para. 10, [2005] 2 S.C.R. 601). In setting out the criteria for a project to qualify as SR&ED, Justice Bowman was interpreting the definition of SR&ED.

[7] In *RIS-Christie Ltd. v. The Queen*, (1998) 99 D.T.C. 5087, 235 N.R. 258, at paragraph 10, this Court endorsed the approach to the determination of whether a particular project qualified as SR&ED as set out in *Northwest Hydraulics*. In *C.W. Agencies Inc. v. Canada*, 2001 FCA 393, this Court, at paragraph 17, acknowledged that the five criteria as set out in *Northwest Hydraulics* are useful in determining whether a particular activity is SR&ED and were approved by this court in *RIS-Christie*. In 2011, in *Jentel Manufacturing Ltd. v. The Queen*, 2011 FCA 355, at paragraph 6, this Court confirmed that the criteria for determining whether work

performed qualified as SR&ED were as set out in *Northwest Hydraulics*. Again in 2016, in *R&D Pro-innovation Inc. v. Canada*, 2016 FCA 152, at para. 4, this Court endorsed the criteria set out in *Northwest Hydraulics*.

[8] Kam-Press did not address any of these decisions of this Court or provide any basis upon which these cases should not be followed. There is no basis to overturn *Northwest Hydraulics* or the decisions of this Court that have adopted the approach to be followed, as set out therein, to determine if a particular project or activity qualifies as SR&ED. The Tax Court Judge did not err in applying the criteria as set out in *Northwest Hydraulics*.

[9] As a result, I would dismiss this appeal with costs fixed in the amount of \$1,670.

“Wyman W. Webb”

J.A.

“I agree
D. G. Near J.A.”

“I agree
Richard Boivin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**APPEAL FROM A JUDGMENT OF THE TAX COURT OF CANADA DATED
OCTOBER 30, 2019, CITATION NO. 2019 TCC 246 (DOCKET NO. 2016-4880(IT)G**

DOCKET: A-442-19

STYLE OF CAUSE: KAM-PRESS METAL
PRODUCTS LTD. v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: HEARD BY ONLINE VIDEO
CONFERENCE HOSTED BY
THE REGISTRY

DATE OF HEARING: APRIL 27, 2021

REASONS FOR JUDGMENT BY: WEBB J.A.

CONCURRED IN BY: NEAR J.A.
BOIVIN J.A.

DATED: MAY 10, 2021

APPEARANCES:

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