

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180321

Docket: A-61-17

Citation: 2018 FCA 57

**CORAM: RENNIE J.A.
WOODS J.A.
LASKIN J.A.**

BETWEEN:

WESTSOURCE GROUP HOLDINGS INC.

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Toronto, Ontario, on March 21, 2018.
Judgment delivered from the Bench at Toronto, Ontario, on March 21, 2018.

REASONS FOR JUDGMENT OF THE COURT BY:

WOODS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 21, 2018).

WOODS J.A.

[1] Westsource Group Holdings Inc. appeals from a judgment of the Tax Court of Canada that upheld a determination by the Minister of National Revenue to deny certain refundable investment tax credits for research and development under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] Scientific research and experimental development under the Act is commonly referred to as SR&ED. For the 2011 taxation year, the Minister considered a claim by Westsource for tax credits in respect of SR&ED for two projects. The claim for one of the projects was allowed. The other claim, which is at issue in this appeal, was denied on the basis that Westsource did not comply with the requirement contained in subsections 37(11) and (12) of the Act to file a prescribed form with prescribed information within 12 months of the taxpayer's filing due date for the year.

[3] In reasons by Justice V. Miller (2017 TCC 9), the Tax Court concluded that the prescribed form filed by Westsource did not contain all the prescribed information that was required because no information was provided in boxes 240, 242 and 244 of the form. The Tax Court determined that the missing information was important to verify the claim because it addressed key legislative requirements for SR&ED - technological advancement, technological uncertainty and systematic investigation.

[4] In this Court, Westsource submits that it did comply with the requirements of the legislation even though the three boxes were left blank.

[5] This issue raises a question of law for which the standard of review is correctness.

[6] Westsource submits that what is encompassed by prescribed information that is required to be included on the form is not clear either in the legislation or in administrative policy statements. As a result, it suggests that the Minister's restrictive approach to interpreting

prescribed information is not appropriate given that the purpose of the SR&ED legislation is to encourage research and development activity.

[7] We do not agree with this submission. In our view, the legislation is clear that prescribed information includes information necessary to determine whether the activity qualifies as SR&ED, such as the information elicited in the boxes that Westsource did not fill in. Neither a textual, contextual nor purposive interpretation leads to a different interpretation. In addition, this interpretation is consistent with the administrative policy statements that we have been referred to.

[8] In support of a more liberal interpretation of subsection 37(11), Westsource urges the Court to consider the legislative objective of encouraging research and development activities. Although this is undoubtedly one of the purposes of the SR&ED regime, another objective is to facilitate tax administration by denying the tax incentives if the filing requirement has not been satisfied.

[9] Westsource submits that the purpose of the filing requirement, as gleaned from budgetary material, is simply to deny retroactive claims for these tax incentives. A general statement of legislative intent in budget material cannot take precedence over clear language in the legislation. In this case, the legislation is not ambiguous - the information that was missing from the form was required to be included.

[10] Westsource also submits that the missing information was not important to its particular claim because the Minister was already in possession of the relevant information. It noted that a corporation related to Westsource had participated in the same project, and that its claims for this project had been accepted by the Minister. Westsource also mentions that its own form states that the project is a continuation from a prior year.

[11] The problem with this submission is that the legislative scheme is clear. The information must be provided by the taxpayer on the prescribed form. Westsource suggests that the result is harsh in its particular circumstances. However, relief cannot be provided on the basis of fairness alone.

[12] We are of the view that the Act clearly required the information requested in boxes 240, 242 and 244 to be included in this form. There is no reviewable error in the Tax Court's decision.

[13] The appeal will be dismissed, with costs.

"Judith Woods"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-61-17

APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE MILLER OF THE TAX COURT OF CANADA DATED JANUARY 24, 2017 IN DOCKET NO. 2015-3982 (IT)G.

STYLE OF CAUSE: WESTSOURCE GROUP HOLDINGS INC. v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: MARCH 21, 2018

REASONS FOR JUDGMENT OF THE COURT BY: RENNIE J.A.
WOODS J.A.
LASKIN J.A.

DELIVERED FROM THE BENCH BY: WOODS J.A.

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