

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**MOHAMAD E. TAHA, DECEASED, SANAA M.
YASSIN, HIS WIFE,**
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2018-1879

Appeal from the United States Court of Federal
Claims in No. 1:17-cv-01174-CFL, Judge Charles F.
Lettow.

Decided: December 14, 2018

SANAA M. YASSIN, Bradenton, FL, pro se.

JENNIFER MARIE RUBIN, Tax Division, United States
Department of Justice, Washington, DC, for defendant-
appellee. Also represented by MICHAEL J. HAUNGS,
RICHARD E. ZUCKERMAN.

Before REYNA, TARANTO, and HUGHES, *Circuit Judges*.

PER CURIAM.

Plaintiffs-Appellants *pro se*, Mohamad E. Taha (deceased) and Sanaa M. Yassin, with the assistance of Mr. Ali Taha, appeal the decision of the United States Court of Federal Claims dismissing their income tax refund claims for lack of subject-matter jurisdiction. For the reasons discussed below, we *affirm-in-part, vacate-in-part, and remand*.

BACKGROUND

Appellants seek a refund of \$14,177 for federal income taxes paid for the 2002 and 2003 tax years, plus interest and legal costs. Between 2002 and 2004, Mr. M. Taha was a 10% shareholder of Atek Construction, Inc. (“Atek”), a California S Corporation, but had no direct role in its operations. Mr. M. Taha earned shareholder income of \$85,010 in 2002 and \$77,813 in 2003. Appellants assert that Mr. M. Taha received only \$20,000 of that income from Atek during those years. Mr. M. Taha passed away in 2007.

Appellants filed their 2002 and 2003 tax returns with the Internal Revenue Service (“IRS”) on April 3, 2003 and April 14, 2004, respectively, paying the tax due on the full amount of the reported shareholder income for each year. Both returns reported Mr. M. Taha’s shareholder income from Atek as his only income. Appellants did not file a tax return for the 2004 tax year by the due date because they allege they had no income to report.

Atek ceased operations in 2004 due to financial difficulties, and was dissolved in 2006. Appellants contend that at this time it became clear that Atek would not pay the remainder of Mr. M. Taha’s shareholder income for 2002 and 2003. Appellants sought a refund from the IRS of the alleged overpayment of taxes on that income by filing amended tax returns and deducting the unpaid income as bad debt. Appellants filed an amended 2002

tax return (the “2002 claim”) in November 2007.¹ Appellants alleged in their complaint that they also filed an amended 2003 tax return (the “2003 claim”). Both amended returns were dated November 9, 2007. IRS records reflect the filing of the 2002 claim, and make no mention of the 2003 claim.

The IRS first disallowed the 2002 claim on December 20, 2007. It is undisputed that this notice of disallowance only discussed the 2002 claim, not the 2003 claim. The record before us does not indicate that the IRS disallowed the 2003 claim in any other communication. Appellants appealed the disallowance of the 2002 claim to the IRS on January 21, 2008. The IRS denied the appeal on October 29, 2009.

Appellants next attempted to obtain a refund by filing an amended 2004 tax return on November 1, 2009 (the “2004 claim”).² In the 2004 claim, Appellants again deducted the unpaid shareholder income as bad debt. The IRS first disallowed the 2004 claim on November 28, 2012. Appellants also appealed this disallowance to the IRS, and continued pressing their 2004 claim with the IRS until April 2017.

On May 10, 2017, after exhausting their options with the IRS, Appellants filed a tax refund suit in the U.S. District Court for the Middle District of Florida. By this time, Mr. M. Taha was deceased, and Ms. Yassin no

¹ The Court of Federal Claims noted discrepancies in filing dates between Appellants’ contentions and IRS records. The exact filing dates have no bearing on the resolution of the jurisdictional question.

² Appellants filed their initial 2004 tax return on October 5, 2011, after they filed their amended 2004 return, because the IRS would not accept the amended return until an initial return was filed.

longer resided in the United States. Because none of the Appellants resided in its judicial district, the district court found that it lacked jurisdiction under 28 U.S.C. § 1402(a)(1), and transferred the case to the Court of Federal Claims (“Claims Court”). The transfer complaint was filed with the Claims Court on September 18, 2017.

On January 30, 2018, the government moved to dismiss the complaint for lack of jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The government argued that the Claims Court lacked jurisdiction because Appellants did not file their tax refund claims with the IRS within the applicable three-year limitation period. Appellants countered that their tax refund claims were timely filed because they relate to deductions of unpaid business debt, and are therefore subject to a limitations period longer than three years.

On April 10, 2018, the Claims Court granted the government’s motion. The Claims Court combined all three of Appellants’ tax refund claims in its analysis, and concluded that even if Appellants timely filed their tax refund claims with the IRS, it lacked jurisdiction over those claims because Appellants did not initiate their suit within two years from the date the IRS first mailed notices of disallowance for each claim, as required by 26 U.S.C. § 6532(a)(1).

On April 19, 2018, the government filed a motion, asking the Claims Court to clarify when the two-year statutory limitation period began to run with respect to the 2003 claim. The Claims Court granted the government’s motion the same day, and although it questioned whether the 2003 claim was filed, the Claims Court determined that it need not resolve that issue.

This appeal followed. We have jurisdiction pursuant to 28 U.S.C. § 1295(a)(3).

DISCUSSION

We review decisions of the Court of Federal Claims to dismiss for lack of subject-matter jurisdiction *de novo*, and its underlying factual findings for clear error. *See Ferreira v. United States*, 350 F.3d 1318, 1324 (Fed. Cir. 2003) (citations omitted). As plaintiffs, Appellants must establish jurisdiction by a preponderance of the evidence. *Estes Express Lines v. United States*, 739 F.3d 689, 692 (Fed. Cir. 2014). In deciding a motion to dismiss for lack of subject-matter jurisdiction, the court assumes all uncontroverted factual allegations in the complaint to be true and draws all reasonable inferences in the plaintiffs' favor. *Henke v. United States*, 60 F.3d 795, 797 (Fed. Cir. 1995).

The trial court must make sufficient factual findings on the material issues to allow this court to have a basis for meaningful review. *Nutrition 21 v. United States*, 930 F.2d 867, 869 (Fed. Cir. 1991). “[A]ppellate courts may not make findings of fact in the first instance.” *Oracle Am., Inc. v. Google Inc.*, 750 F.3d 1339, 1373 (Fed. Cir. 2014); *see also Golden Bridge Tech., Inc. v. Nokia, Inc.*, 527 F.3d 1318, 1323 (Fed. Cir. 2008) (“Appellate courts review district court judgments; we do not find facts.”). Where there exists a factual dispute with respect to the truth of jurisdictional allegations, the trial court must resolve that dispute, and is permitted to look beyond the pleadings to do so. *See Cedars-Sinai Med. Ctr. v. Watkins*, 11 F.3d 1573, 1583–84 (Fed. Cir. 1993).

The doctrine of sovereign immunity bars suit against the United States unless it has expressly consented to be sued. *United States v. Mitchell*, 445 U.S. 535, 538 (1980). The United States has consented to be sued for taxes improperly assessed or collected, 28 U.S.C. § 1346(a)(1), but only if the plaintiff complies with two additional jurisdictional requirements set forth in 26 U.S.C. §§ 7422 and 6532.

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