

INCOME TAX

PARTNERSHIPS

Consolidated appeals from Tax Court of Canada (T.C.C.) orders allowing motion for order to strike appellants' notices of appeal — Appellants partners of TSI I Limited Partnership (TSI) — TSI allocating losses among its partners — Appellants claiming losses from partnership in determining their incomes for purposes of *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 (Act) — Minister of National Revenue (Minister) making determinations under Act, s. 152(1.4) that business losses of TSI nil — Reassessing appellants, issuing notices of confirmation — Appellants, TSI filing notices of appeal to T.C.C. — TSI later discontinuing its appeal, filing notice of discontinuance pursuant to *Tax Court of Canada Act*, R.S.C., 1985, c. T-2 (TCC Act), s. 16.2(2) — Before T.C.C., issue of whether Minister's determinations made after three-year period prescribed in s. 152(1.4), and therefore statute-barred, raised — Minister bringing motion to strike notices of appeal of appellants pursuant to *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a, r. 53(1)(c) — T.C.C. concluding appellants abusing process if allowed to argue that determinations of losses made by Minister statute-barred — Finding that discontinuance of appeal, as result of application of TCC Act, s. 16.2(2) meaning that any issues raised in appeal deemed adjudicated, dismissed by T.C.C. at partnership level — Whether T.C.C. erring in striking appellants' notices of appeal — Only issue herein whether notices of appeal should have been struck on basis that appellants attempting to re-litigate issue of whether determinations made by Minister made after expiration of three-year time period as prescribed in s. 152(1.4) — Tax Court erring in interpretation of case law, TCC Act, s. 16.2(2) — No findings here by T.C.C. that determinations made by Minister made within or after expiration of time period for doing so as provided in s. 152(1.4) — S. 16.2(2) simply providing that appeal deemed to be dismissed, not deeming that issues determined by T.C.C. — *Canada (Attorney General) v. Scarola*, 2003 FCA 157, [2003] 4 F.C. 645 not supporting T.C.C.'s position — *Scarola* confirming that discontinuance of appeal concluding matter, same person cannot later attempt to revive that appeal — Here, appeal discontinued, no judicial determination of issues made — Not waste of judicial resources or abuse of process to have this statute-barred issue determined in relation to appeals filed by appellants — Motion by Crown to strike appellants' notices of appeal dismissed — Appeals allowed.

TEDESCO V. CANADA (A-208-18, A-209-18, A-210-18, A-211-18, A-212-18, A-213-18, A-214-18, A-215-18, A-216-18, A-218-18, A-219-18, A-220-18, A-221-18, A-222-18, 2019 FCA 235, Webb J.A., reasons for judgment dated September 20, 2019, 16 pp.)