

BETWEEN:

LORETTA STO DOMINGO,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

Application heard on March 7, 2024 at Winnipeg, Manitoba

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Applicant: The Applicant herself

Counsel for the Respondent: Janelle Strachan

ORDER

WHEREAS the Court has published its reasons for Order on this date concerning the hearing of the application for an order extending the time within which an appeal may be filed in respect of the assessment and reassessment made under the *Income Tax Act* for the Applicant's 2012 and 2013 taxation years, respectively;

NOW THEREFORE THIS COURT ORDERS THAT the application made under the *Income Tax Act* for an extension of time within which an appeal may be filed in respect of the Applicant's 2012 and 2013 taxation years is dismissed, without costs.

Signed at Ottawa, Canada, this 13th day of March 2024.

“R.S. Boccock”

Boccock J.

Citation: 2024 TCC 29
Date: 20240313
Docket: 2023-1435(IT)APP

BETWEEN:

LORETTA STO DOMINGO,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Bocock J.

[1] This application is brought for an extension of time to file a notice of appeal under the *Income Tax Act* against an assessment for the 2012 taxation year and a reassessment for the 2013 taxation year.

[2] The Applicant, Loretta Sto Domingo (pronounced Santo Domingo), speaks little English. An interpreter presided throughout the hearing. Further, as suggested by the Court at the conclusion of the hearing, Ms. Sto Domingo confirmed written reasons for the Order would be appreciated. Hence, these written reasons.

[3] There are no disputed facts. In response to the 2012 assessment and 2013 reassessment, Ms. Sto Domingo filed notices of objection to the Minister's disallowance of charitable donations claimed in those two tax years. The deductions under section 118.1 concerned purported courseware gifts and cash donations under the Global Learning and Gifting Initiative ("GLGI").

[4] In response to the objections, the Minister confirmed the respective assessment and reassessment by joint notice of confirmation dated March 2, 2022. The next communication, filing or action occurred on July 10, 2023. On that date, Ms. Sto Domingo filed an application for an extension of time to file a notice of appeal.

[5] Ms. Sto Domingo testified directly and on cross-examination that her life between March 2, 2022 and July 10, 2023 was difficult and confused.

[6] Her physical and financial health, and that of her family distracted her. Physically, she contracted COVID-19 several times during that period as did her husband. Financially, her tax preparer died in or around May, 2022. As someone unfamiliar with the language and tax matters, assistance was needed, but difficult to access.

[7] Confusion was the order of the day. After turning to other GLGI subscribers, Ms. Sto Domingo discovered that others too were uncertain and unknowing of where to turn. In short, she did not understand the significance of the notice of confirmation once she re-discovered having received it.

[8] On cross-examination, Ms. Sto Domingo confirmed she received the notice of confirmation, did not contact the CRA in response, instead tried to seek advice elsewhere in vain and, ultimately, only refocused on the issue once garnishment proceedings were threatened. This caused her to begin paying the tax in December 2023, while seeking this extension.

[9] In argument, Ms. Sto Domingo asserts the deadline was “overlooked” because of all of these unforeseen and unfortunate contributing factors.

[10] The *Income Tax Act* clearly states the conditions under which an extension to file a notice of appeal may be granted once an assessment or reassessment for tax has been confirmed and sent by the CRA. Firstly, subsection 169(1) provides the taxpayer with ninety (90) days to file a notice of appeal with the Court.

[11] If the taxpayer misses that deadline, there is further relief. Subsection 167(5) provides that a taxpayer may bring an extension application within (1) one year after the expiration of the ninety days initial deadline.

[12] Those deadlines apply to the facts in this application as follows:

Occurrence/Deadline	Applicable Date of Occurrence
Notice of Confirmation for 2012 and 2013	March 2, 2022
Ninety (90) Days after confirmation to file notice of appeal: ss. 169(1)	May 31, 2022
One Year after the 90 day period to file application to extend time to file notice of appeal: ss. 167(5)	May 31, 2023
Extension Application filed by Ms. Sto Domingo with the Tax Court	July 10, 2023

[13] No excuse exists where a taxpayer fails to act and misses the extension application deadline under subsection 167(5). The final ironclad deadline above relevant in this application is May 31, 2023. Ms. Sto Domingo did not file her application until July 10, 2023. This inflexibility appears, and perhaps rightly has been described as, harsh.

[14] Lest anyone should think that such a clear redline has come from the bench of relevant courts, critics are directed to the preamble of the section. No less a body than Parliament, itself, marshalled the clearest, evocative language it could:

S. 167 ...

When order to be made

(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a *bona fide* intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

[emphasis added]

[15] As such, both the Tax Court and the Federal Court of Appeal have emphasized repeatedly that they have no discretion, flexibility or leniency to pry that forged deadline open. That is true no matter how sympathetic, unforeseen or unavoidable the impediments are to filing the extension application. Unfortunately for Ms. Sto Domingo, that holds in this application.

[16] If the notice of confirmation is sent, as it was in this application, time commences to run. If a taxpayer takes no measureable or meaningful responsive action to file (or even attempt to file), as none occurred in this application, within the combined one year and ninety days, then this Court is powerless to countermand the mandated direction of Parliament. Justice McPhee succinctly reviewed the leading Federal Court of Appeal and Tax Court authorities concerning the clear, unequivocal and fatal nature of the deadlines, no matter how sympathetic the reasons for the omission: *Dutka v. HMQ* 2020 TCC 21 at paragraphs 18 through 26.

[17] Given the above, there is no need for the Court to consider any alternative submissions of the Respondent concerning whether there are “reasonable grounds for the appeal” within the meaning of paragraph 167(5)(iv).

Conclusion

[18] Regrettably, for all these reasons, the application for an extension of time to file a notice of appeal is dismissed. There shall be no costs.

Signed at Ottawa, Canada, this 13th day of March 2024.

“R.S. Boccock”

Boccock J.

CITATION: 2024 TCC 29

COURT FILE NO.: 2023-1435(IT)APP

STYLE OF CAUSE: LORETTA STO DOMINGO AND HIS
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PLACE OF HEARING: Winnipeg, Manitoba

DATE OF HEARING: March 7, 2024

REASONS FOR ORDER BY: The Honourable Mr. Justice Randall S.
Bocock

DATE OF ORDER: March 13, 2024

APPEARANCES:

For the Applicant: The Appellant herself

Counsel for the Respondent: Janelle Strachan

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