Federal Court of Appeal | Cour d'appel fédérale

Date: 20151126

Docket: A-109-15

Citation: 2015 FCA 267

CORAM: **GAUTHIER J.A.**
BOIVIN J.A.
DE MONTIGNY J.A.

BETWEEN:

BRUNO ELVIO ROSSI

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on November 26, 2015.

Judgment delivered from the Bench at Montréal, Quebec, on November 26, 2015.

REASONS FOR JUDGMENT OF THE COURT BY: DE MONTIGNY J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on November 26, 2015.)

DE MONTIGNY J.A.

[1] Mr. Rossi is appealing from a decision by a Tax Court of Canada judge (the judge) dated January 26, 2015, whereby the respondent's motion for dismissal of the appeal regarding the new assessment for the tax year was allowed.

[2] In response to the notice of objection filed by the appellant against the new assessment by the Canada Revenue Agency (CRA) for the 2003 tax year, on June 17, 2010, the CRA sent the appellant a notice of confirmation, by registered mail, reaffirming the new assessment. A copy of that notice of confirmation was also sent the same day by first-class mail to the appellant's accountant. On July 3, 2010, Canada Post returned the registered letter, unclaimed by the appellant, to the CRA. The CRA subsequently made arrangements to forward the notice of confirmation to the appellant by first-class mail.

[3] Four years later, on September 3, 2014, the appellant filed a notice of appeal with the Tax Court of Canada against the notice of confirmation. The appellant claimed that neither he nor his accountant had received the notice of confirmation by registered mail or otherwise. He further claimed to have been misled by the fact that all statements of account received from the CRA up to June 20, 2014, indicated that the new assessment for the 2003 tax year was still subject to an objection.

[4] Pursuant to subsection 165(3) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act) and the case law of this Court and the Tax Court of Canada, the judge concluded that the Minister had fulfilled the obligation to notify the taxpayer in writing by sending the notice of confirmation by registered mail to the appellant. The Minister was not required to notify the taxpayer personally of his decision or to prove that he had received it. She accordingly ruled that the time limit for an appeal to the Tax Court of Canada, as set out in subsection 169(1) of the Act, namely 90 days from the date on which the notice of confirmation was sent, had not been met.

[5] The appellant argued before this Court that since it had not been claimed by the appellant, the sending of the notice by registered mail on June 17, 2010 could not constitute valid delivery, from the date of which the 90-day time limit set out in the Act should run. In the appellant's view, in deciding to send the notice of confirmation by registered mail, the respondent had a duty to ensure that it had been delivered to the appellant; under the circumstances, the tax authorities could not avail themselves of the presumptions set out in subsections 244(14) and 248(7) of the Act for the purpose of sending by regular mail.

[6] It is common ground in this case that the applicable standard of review is "palpable and overriding error": *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. The questions raised here are of mixed fact and law.

[7] Despite his highly skilled argument, counsel for the appellant failed to convince us that the judge erred in applying the provisions of the Act to the facts in dispute. First, there is clear evidence that the notice of confirmation was sent to the appellant by registered mail at the address the appellant had himself provided; moreover, the fact that it was sent is not in dispute. Second, neither subsection 165(3) nor section 169 requires that notice be served, or that it be proven that it was received by the taxpayer. The decisions in *Canada (Attorney General) v. Bowen*, [1992] 1 F.C., 311, [1991] 2 T.C.C. 266 (C.A.); *Schafer v. Canada*, [2000] F.C.A. No. 1480 and *Grunwald v. Canada*, 2005 FCA 421, [2005] F.C.A. No. 2064 clearly hold that the Minister is not required to verify whether the taxpayer has actually received a notice sent by registered mail, once is it proven that the notice was sent by the Minister to the address provided

by the taxpayer. The fact that the Act has been amended and no longer makes it mandatory to use registered mail does nothing to alter this principle.

[8] Lastly, the appellant provided us with no authority to support his claim that the presumptions set out in the Act with respect to dates of dispatch or delivery did not apply to registered mail. On the contrary, subsection 244(5) of the Act actually provides that "evidence of the sending" may take the form of an affidavit stating that a notice was sent "by registered letter", which means that there is no reason in this case to make a distinction between first-class mail and registered mail.

[9] For these reasons, the appeal is dismissed without costs.

"Yves de Montigny"

J.A.

Certified true translation
François Brunet, Revisor

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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