

Docket: 2016-2493(IT)I

BETWEEN:

BERNARD LEBRUN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with docket 2016-2494 (*GST*)I,
on March 30, 2017, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

| | |
|-----------------------------|-----------------------|
| For the appellant: | The appellant himself |
| Counsel for the respondent: | Mounes Ayadi |

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2001, 2002, 2003, 2004 and 2005 taxation years is dismissed in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 1st day of June 2017.

“Rommel G. Masse”

Masse D.J.

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on March 30, 2017, at Montréal, Quebec.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

| | |
|-----------------------------|-------------------------|
| For the appellant: | The appellant himself |
| Counsel for the respondent: | Marie-Pierre Létourneau |

JUDGMENT

The appeal from the assessment made under Part IX of the *Excise Tax Act* dated August 31, 2010, is dismissed in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 1st day of June 2017.

“Rommel G. Masse”

Masse D.J.

Citation: 2017 TCC 90
Date: 20170601
Docket: 2016-2493(IT)I

BETWEEN:

BERNARD LEBRUN,

Appellant,

and

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Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Masse D.J.

[1] The case at bar involves two appeals heard on common evidence. Docket 2016-2493(IT)I involves an appeal under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (hereinafter the ITA), with respect to the 2001 to 2005 taxation years. Docket 2016-2494(GST)I involves an appeal under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (hereinafter the ETA), from an assessment dated July 31, 2010.

[2] With respect to Docket 2016-2493(IT)I, the respondent submits that this Court does not have jurisdiction to rule on the merits of this appeal owing to the fact that the appellant did not serve on the Minister a notice of objection in respect of the reassessments dated March 5, 2007, within the time prescribed by subsection 165(1) of the ITA. The appellant served the notice of objection only after the prescribed time.

[3] Concerning Docket 2016-2494(GST)I, the respondent challenged the jurisdiction of the Court on the ground that the appellant appealed when no objection under section 301 (1.1) ETA was filed with the Minister. Moreover, the time for appealing was prescribed.

Factual background

Docket 2016-2493(IT)I – the *Income Tax Act*

[4] On March 2007, the Minister of National Revenue reassessed the appellant's 2001 to 2005 taxation years which increased the appellant's net business income, and imposed penalties for late filing. At the time, Mr. Lebrun had 90 days to serve on the Minister his notices of objection under subsection 165(1) of the ITA, which he did not do. The deadline for serving on the Minister his notices of objection was June 3, 2007. However, Mr. Lebrun was not without recourse, as, under subsection 166.1(1), Mr. Lebrun had one year to apply to the Minister to extend the time for serving the notice of objection. That date expired on June 3, 2008. Unfortunately, Mr. Lebrun did not apply to the Minister for an extension of time.

[5] On November 24, 2008, the appellant served on the Minister his notices of objection in respect of the reassessments of March 5, 2007, for the 2001 to 2005 taxation years—more than five months after the due date. Moreover, when he served his notices of objection, the appellant was outside the time prescribed by paragraph 166.1(7)(a) of the ITA to apply to the Minister to extend the time for serving his notices of objection, which expired on June 3, 2008.

[6] By letter dated January 14, 2009, the Minister informed the appellant that his notices of objection could not be accepted, as they were served outside the prescribed time to apply for an extension of time to serve his notices of objection.

[7] On July 23, 2010, the appellant applied to the Minister for relief under subsections 152(4.2) and 220(3.1) of the ITA for the same taxation years, which was denied by the Minister. On September 9, 2011, the appellant requested a reconsideration of his application for relief. On March 22, 2013, following a reconsideration of the application for relief, the Minister reassessed the appellant's 2004 and 2005 taxation years, which vacated the gross negligence penalties for late filing. The Minister also cancelled the appellant's interest for the period from March 5, 2007, to August 5, 2010. On April 4, 2013, the appellant requested a reconsideration of his application for relief for reasons of financial hardship. The Minister upheld his decision. On April 30, 2014, the appellant requested another reconsideration of the application for relief and the Minister again upheld his decision.

[8] The appellant appealed the reassessments on May 2, 2016.

Docket 2016-2494(GST)I – Excise Tax Act (GST)

[9] On August 31, 2010, the Minister of the Agence du revenu du Québec on behalf of the Minister of National Revenue assessed the appellant under Part IX of the ETA, and sent him a notice of assessment bearing the same date.

[10] Under subsection 301(1.1) of the ETA, the appellant had a period of 90 days, until November 29, 2010, to file with the Minister a notice of objection.

[11] The appellant did not file with the Minister a notice of objection against the assessment. Moreover, the appellant did not apply to the Minister to extend the time for serving the notice of objection as provided for in section 303 of the ETA.

[12] On May 2, 2016, after the expiration of the time otherwise limited to appeal the assessment and although no objection was filed within the time limited for doing so, the appellant appealed from the assessments made against him and filed a notice of appeal in that regard with the Court.

Mr. Lebrun's situation

[13] The appellant, Bernard Joseph Lebrun, lives in Montréal. He was an orthotic and prosthetic technician at the Hôpital Sainte-Justine. He also worked part-time as a self-employed worker manufacturing advertising signage. He explained that following a car accident in 1975, his life completely changed. He suffered physiological and neurological effects. He had an emotional breakdown and experienced a change in personality. It was a very difficult and confusing time in his life. He lost control of his professional and personal life. He suffered memory losses and had difficulty concentrating. He did not have the concentration required to prepare his income tax returns. He had to stop working completely in 2011. Today, he is retired.

[14] Mr. Lebrun submits that his appeal is well founded, as he was taxed, assessed and penalized with regard to the amounts that he had borrowed from his credit cards and lines of credit and deposited into his bank account. This was not income.

[15] In the beginning, when he wished to challenge the notices of assessment, he gave everything to a person he thought was a tax professional. That person asked for \$7,000 in fees to take care of the file. Unfortunately, that person misled him.

That person was a fraudster and did nothing on the file for nine months. Therefore, he turned the file over to another person who took control of the file.

[16] Mr. Lebrun admits that he did not meet the timelines for objecting to the notices of assessment. He was incapable of managing his affairs and personal problems. He trusted other people to take care of his tax problems. Mr. Lebrun wants the Court to rule on the merits of his appeal so that he can turn the page on this sad chapter in his life.

Analysis

[17] At the commencement of the hearing, the respondent brought a motion requesting an order that the appeals in both files be quashed on the basis that this Court does not have jurisdiction to grant judgment on the merits of the appeals because the timelines for objecting to assessments, and therefore the right to appeal, are prescribed. The respondent submits that the appellant cannot institute legal proceedings to appeal the assessments, as under the provisions of section 169 of the ITA and section 306 of the ETA, this Court does not have jurisdiction to pronounce judgment on the assessments as the appeals were filed late and without an objection being validly served or filed within the prescribed time.

[18] The relevant provisions of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) can be found in Schedule “A” and the relevant provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, can be found in Schedule “B”. Upon a reading of these provisions, it can be seen that the schemes, with regard to objections and appeals in the ITA and ETA, are similar, if not the same.

Income Tax Act

[19] In the case at bar, the Minister issued the notices of assessment on March 5, 2007. The appellant had 90 days to serve the Minister with his notices of objection (subsection 165(1) of the ITA)—which he failed to do. The deadline for serving the Minister with his notices of objection was June 3, 2007. The appellant had one year from June 3 to apply to the Minister for an extension of time to serve the notice of objection. It was not until November 24, 2008, that the appellant served the Minister with notices of objections in respect of the reassessments—more than five months after the deadline. The Minister did not accept the notices of objection, as they were served outside the prescribed deadline for serving a notice of objection. Moreover, at the time of serving the notices of objection, the appellant was outside the time prescribed by paragraph 166.1(7)(a) of the ITA to apply to the

Minister for an extension of time to file his notices of objection. That period of time expired on June 3, 2008.

[20] The jurisdiction of this Court is limited by subsection 169(1) of the ITA, which provides that no appeal may be made to the Tax Court of Canada after the expiration of 90 days from the day notice has been sent to the taxpayer. There was no extension of time. Therefore, the deadline for appeal expired on June 3, 2007. The notice of appeal is dated May 2, 2016—well after the deadline.

[21] The appellant filed applications for relief with the Minister under subsections 152(4.2) and 220(3.1) of the ITA. On March 22, 2013, following the reconsideration of one of his applications for relief, the Minister reassessed the appellant's 2004 and 2005 taxation years and cancelled the interest for the period from March 5, 2007, to August 5, 2010. The appellant can neither object to nor appeal to this Court from the Minister's decisions in respect of the applications for relief. Taxpayers may challenge such a decision of the Minister with an application for judicial review to the Federal Court of Canada (see *Wei Ming Lee v. The Queen*, 2012 TCC 275 (CanLII), a Tax Court of Canada decision by Justice Lamarre).

[22] I therefore conclude that the Tax Court of Canada does not have jurisdiction to rule on the merits of the appeal.

Excise Tax Act

[23] Subsection 306 of the ETA provides that a person who has filed with the Minister a notice of objection to an assessment may appeal to the Tax Court to have the assessment vacated, but no appeal may be instituted after the expiration of ninety days after the day notice is sent to the person. In the case at bar, the appellant did not file with the Minister a notice of objection to the notice of assessment dated August 31, 2010. According to the provisions of section 306 of the ETA, the filing of a notice of objection with the Minister by a taxpayer is a prerequisite to the institution of an appeal process before this Court. Furthermore, no appeal may be instituted after the expiration of ninety days after the day notice is sent to the taxpayer. The appellant had until November 29, 2010, to file a notice of objection with the Minister. His notice of appeal is dated May 2, 2016. Therefore, the notice of appeal is late.

[24] I conclude that the Tax Court of Canada does not have jurisdiction to pronounce judgment on these assessments as the notice of appeal of said

assessments was filed by the appellant with the Court Registry outside the time limit and furthermore, no objection was validly filed with the Minister.

Conclusion

[25] For these reasons, the Court orders

- (a) for docket 2016-2493(IT)I (income tax), that the Court does not have jurisdiction to hear the matter and therefore the appeal from the notices of assessment concerning the 2001, 2002, 2003, 2004 and 2005 taxation years is dismissed; and
- (b) for docket 2016-2494(GST)I (Goods and Services Tax), that the Court does not have jurisdiction to hear the matter and therefore the appeal from the notice of assessment dated August 31, 2010, is dismissed.

Signed at Kingston, Ontario, this 1st day of June 2017.

“Rommel G. Masse”

Masse D.J.

Schedule “A”

The relevant provisions of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) are the following:

165 (1) Objections to assessment - A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts:

(a) if the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a graduated rate estate for the year, on or before the later of

(i) . . .

(ii) the day that is 90 days after the day of sending of the notice of assessment; and

. . .

166.1 (1) Extension of time by Minister - Where no notice of objection to an assessment has been served under section 165. . . within the time limited by those provisions for doing so, the taxpayer may apply to the Minister to extend the time for serving the notice. . .

. . .

(7) When order to be made - No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection. . .

. . .

166.2 (1) Extension of time by Tax Court - A taxpayer who has made an application under subsection 166.1 may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister’s decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

...

(5) When application to be granted - No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

...

167 Extension of time to appeal –

(1) Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted. . . .

...

(5) When order to be made - 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

...

169 Appeal –

(1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

Schedule “B”

The relevant provisions of the *Excise Tax Act*, R.S.C. 1985, c. E-15, are the following:

301 (1.1) Objection to assessment - Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

...

303 (1) Extension of time by Minister - Where no objection to an assessment is filed under section 301. . .within the time limit otherwise provided, a person may make an application to the Minister to extend the time for filing a notice of objection. . . and the Minister may grant the application.

...

(7) **When order to be made** - No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for objecting. . .

...

304 (1) Extension of time by Tax Court - A person who has made an application under section 303 may apply to the Tax Court to have the application granted after either

(a) the Minister has refused the application, or

(b) ninety days have elapsed after service of the application under subsection 303(1) and the Minister has not notified the person of the Minister’s decision,

but no application under this section may be made after the expiration of thirty days after the day the decision has been mailed to the person. . .

...

(5) When application to be granted - No application shall be granted under this section unless

(a) the application was made under subsection 303(1) within one year after the expiration of the time otherwise limited by this Part for objecting. . .

...

305 (1) Extension of time to appeal - Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

...

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

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

...

306 Appeal - A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

(a) the Minister has confirmed the assessment or has reassessed, or

(b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,

but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

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COURT FILE NOS.: 2016-2493(IT)I
2016-2494(GST)I

STYLE OF CAUSE: Bernard Lebrun v. Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 30, 2017

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse, Deputy
Judge

DATE OF JUDGMENT: June 1, 2017

APPEARANCES:

For the appellant: The appellant himself
Counsel for the respondent: Mounes Ayadi
Counsel for the respondent: Marie-Pierre Létourneau

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