

Docket: 2003-2905(IT)APP

BETWEEN:

BERYL RAMDEEN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on November 24, 2003 at Toronto, Ontario

Before: The Honourable Justice R.D. Bell

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Craig Maw

ORDER

UPON application for an order extending the time within which an appeal to this Court may be instituted in respect of each of the applicant's 1998, 1999 and 2000 taxation years;

AND the Court having considered the submissions, both oral and written, of the parties;

IT IS ORDERED, for the reasons set forth in the Reasons for Order attached hereto, that the application be dismissed for those three taxation years.

It is to be noted as set forth in the Reasons that the Applicant may make an application for extension of time to file a Notice of Objection in respect of her 2000 taxation year.

No costs are awarded.

Signed at Ottawa, Canada on this 2nd day of July, 2004.

"R.D. Bell"

Bell, J.

Citation: 2004TCC486
Date: July 2, 2004
Docket: 2003-2905(IT)APP

BETWEEN:

BERYL RAMDEEN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Bell, J.

[1] This is an application for an order extending the time within which an appeal may be instituted in respect of each of the Applicant's 1998, 1999 and 2000 taxation years.

[2] The pertinent dates in respect of each of those taxation years are set out as follows:

1998

Original Assessment

June 17, 1999

Reassessment

May 28, 2002

Notice of Objection

dated July 3, 2002 and
received by Revenue on July
9, 2002

Notification of Confirmation

April 24, 2003

E-mail request by applicant to reassess	September 29, 2003
Reassessment under section 152(4.2) of the <i>Income Tax Act</i>	October 14, 2003
Expiry of "normal reassessment period"	June 18, 2002
<u>1999</u>	
Original Assessment	April 26, 2000
Reassessment	May 28, 2002
Notice of Objection	dated June 3, 2002 and received by Revenue on July 9, 2002
Notification of Confirmation	April 24, 2003
E-mail request by applicant to reassess	September 29, 2003
Reassessment Under Section 152(4.2) of the <i>Income Tax Act</i>	October 14, 2003
Expiry of "normal reassessment period"	April 27, 2003
<u>2000</u>	
Original Assessment	June 11, 2001
Reassessment	May 28, 2002
Notice of Objection	dated July 3, 2002 and received by Revenue July 9, 2002
Notification of Confirmation	April 24, 2003

E-mail Request by Applicant to reassess	September 29, 2003
Reassessment Under Section 152(4) of the <i>Income Tax Act</i>	October 14, 2003
Expiry of "normal reassessment period"	June 12, 2004

ANALYSIS AND CONCLUSION

[3] The pertinent part of the term "normal reassessment period" is defined in subsection 152(3.1) of the *Income Tax Act* ("Act") as follows:

(3.1) Definition of "normal reassessment period" - For the purposes of subsections (4), (4.01), (4.2), (4.3), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is

...

(b) in any other case, the period that ends 3 years after the earlier of the day of mailing of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of mailing of an original notification that no tax is payable by the taxpayer for the year.

The above chart sets out in both the 1998 and 1999 taxation years that the "normal reassessment period" had expired before the e-mail request for an additional reassessment. Accordingly, the second reassessment was properly made pursuant to subsection 152(4.2). That subsection reads as follows:

(4.2) [Reassessment with taxpayer's consent] - Notwithstanding subsections 152(4), 152(4.1) and 152(5), for the purpose of determining, at any time *after the expiration of the normal reassessment period* for a taxpayer who is an individual (other than a trust) or a testamentary trust in respect of a taxation year,

(a) the amount of any refund to which the taxpayer is entitled at that time for that year, or
(b) a reduction of an amount payable under this Part by the taxpayer for that year,

the Minister may, if application therefor has been made by the taxpayer,

(c) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year, and

(d) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability under this Part for the year.

(emphasis added)

As set out above, the second reassessment was made pursuant to subsection 152(4.2) because the Applicant requested a reassessment after the "normal reassessment period". No Notice of Objection may be filed in respect of a reassessment made under subsection 152(4.2), subsection 165(1.2) of the *Act* reading as follows:

(1.2) Determination of fair market value [Limitation on objections] - Notwithstanding subsections 165(1) and 165(1.1), no objection may be made by a taxpayer to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

Accordingly, the Applicant is unable to object to the reassessment issued on October 14, 2003 with respect to the 1998 and 1999 taxation years.

[4] The situation with respect to the 2000 taxation year is different because the reassessment was made pursuant to subsection 152 (4.2) but was made pursuant to subsection 152(4), the pertinent portions of which read as follows:

(4) Assessment and reassessment [limitation period] - The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

...

(b) the assessment, reassessment or additional assessment is made before the day that is 3 years after the end of the normal reassessment period for the taxpayer in respect of the year and ...

[5] Because the Applicant was reassessed for the 1998 and 1999 years on October 14, 2003 the previous Notices of Reassessment were nullified and cannot form the basis of an appeal. In *Abrahams v. The Minister of National Revenue*, 66 DTC 5451 at page 5452, Mr. Justice Jackett of the Exchequer Court said:

Assuming that the second re-assessment is valid, it follows, in my view, that the first re-assessment is displaced and becomes a nullity. The taxpayer cannot be liable on a original assessment as well as on a re-assessment. It would be different if one assessment for a year were followed by an "additional" assessment for that year. Where, however, the "re-assessment" purports to fix the taxpayer's total tax for the year, and not merely an amount of tax in addition to that which has already been assessed, the previous assessment must automatically become null.

The learned Justice concludes that due to the existence of a valid second reassessment the Court could not grant relief to the Appellant seeking to appeal a previous assessment.

I am, therefore, of the opinion that, since the second reassessment was made, there is no relief that the Court could grant on the appeal from the first re-assessment because the assessment appealed from had ceased to exist. There is no assessment, therefore, that the Court could vacate, vary or refer back to the Minister. When the second re-assessment was made, this appeal should have been discontinued or an application should have been made to have it quashed.

This view was adopted by the Federal Court of Appeal in *TransCanada Pipelines Ltd. v. The Queen*, where the Court decided that the issuance of notices of reassessment for the taxation years in question displaced earlier Notices of Reassessment. The Court noted that earlier reassessments:

...ceased to exist when the November 8, 1999 reassessments were issued and there was nothing that the Tax Court could vary or refer back to the Minister with respect to them.

[9] For the 2000 taxation year the application with respect to the May 28, 2002 Notice of Reassessment cannot be granted for the reasons stated above, namely that such reassessment has been nullified by the October 14, 2003 Notice of Reassessment. The Applicant has not served a Notice of Objection to that reassessment as required by section 159 of the *Act*. The Applicant could, of course, have filed a Notice of Objection within 90 days after the day of mailing of that Notice of Reassessment. The time for so doing would have expired (and did expire) on January 12, 2004.

[10] The application for an order extending the time for appealing from the May 28, 2002 reassessment was made on August 8, 2003. This was *before* the second reassessment of the 2000 taxation year which was made on October 14, 2003. The application was not heard before October 14, 2003 and accordingly, as above stated, the May 28, 2002 reassessment to which the Applicant thought to object, was a nullity.

[11] No Notice of Objection was filed for the 2000 taxation year within 90 days after October 14, 2003. That 90 days expired on January 12, 2004.

[12] The application was heard on November 24, 2003 at which time the Court ordered written submissions by the Respondent on or before December 10, 2003 and by the Applicant on or before December 31, 2003. In fact, the Respondent's written submissions were filed with the Court on December 10, 2003 and the Applicant's written submissions were filed with the Court on December 24, 2003.

[13] As indicated above, had the Applicant received this order before January 12, 2004 she could have filed a Notice of Objection in respect of the October 14, 2003 reassessment. Unfortunately, with the intervention of the Christmas season and the subsequent inadvertent misplacement of the Judges' file this matter was not promptly dealt with by the Court. It is, of course, open for the Applicant to make an application to the Minister of National Revenue for an order extending the time in which to file a Notice of Objection to the October 14, 2003 reassessment. That application can be made pursuant to section 166.1 of the *Act*. It must be made within one year after the expiration of the time for serving a Notice of Objection. That year expires on January 12, 2005. Such application is made to the Minister of National Revenue who may grant or refuse same. If it is refused by the Minister

the Applicant may apply to this Court to have the application granted under section 166.2 of the *Act*. Such application must be made before the expiration of 90 days after the date of mailing to the taxpayer of the notification of the Minister's decision. Because of the circumstances described above it is highly recommended that the Minister grant such application, if made. Obviously, the Applicant had a *bona fide* intention to object to ministerial action. In the event that the Minister does not grant the application, the Applicant, under section 166.2 of the *Act* may apply to this Court to have such application granted.

Signed at Ottawa, Canada on this 2nd day of July, 2004.

"R.D. Bell"

Bell, J.

CITATION: 2004TCC486
COURT FILE NO.: 2003-2905(IT)APP
STYLE OF CAUSE: Beryl Ramdeen v. The Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: November 24, 2003
REASONS FOR JUDGMENT BY: Justice R.D. Bell
DATE OF JUDGMENT: July 2, 2004
APPEARANCES:

Counsel for the Appellant: The Appellant herself

Counsel for the Respondent: Craig Maw

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada