

Docket: 2008-2680(IT)I

BETWEEN:

AHMAD A. KHAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Motion heard on April 15, 2009, at Toronto, Ontario.

Before: The Honourable Justice Patrick Boyle

Appearances:

For the appellant: The appellant himself

Counsel for the respondent: Samantha Hurst

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**ORDER**

UPON motion made by counsel for the respondent requesting an order quashing the appeal;

AND UPON hearing the submissions of the parties;

The respondent's motion is dismissed.

IT IS ORDERED THAT:

The appellant shall file an amended notice of appeal within 45 days from the date of this Order. Failure to do so will result in the dismissal of the appeal.

The Crown shall file its reply within 60 days of the filing of the amended notice of appeal.

Signed at Halifax, Nova Scotia, this 5<sup>th</sup> day of May 2009.

"Patrick Boyle"

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Boyle J.

Citation: 2009 TCC 248  
Date: 20090505  
Docket: 2008-2680(IT)I

BETWEEN:

AHMAD A. KHAN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR ORDER**

(Delivered orally from the Bench on April 15, 2009, in Toronto, Ontario  
and modified for clarity and accuracy.)

**Boyle J.**

[1] The Crown has brought a motion to quash the taxpayer's informal income tax appeal as having been instituted by filing his notice of appeal with this Court beyond the maximum period of one year and 90 days from the day the post-objection reassessments were mailed to him.

[2] On the facts of this case, the sole issue boils down to whether the Minister mailed the reassessments to the taxpayer when they mailed them to an address which may have had an incorrect street name on it.

[3] The confusion may have arisen when the taxpayer or his tax preparer typed a Brampton street name on a T1 return instead of a somewhat similar-sounding Mississauga street name. The uncertainty cannot be resolved to my satisfaction today because the CRA cannot locate its Appeals file from the objection stage. I just do not know what address the taxpayer put on his notice of appeal and I do not know what address the reassessments in question were sent to since I do not have copies of either.

[4] Subsection 169(1) precludes a taxpayer from appealing to this Court more than 90 days after reassessments have been mailed to the taxpayer. Other provisions permit a further one-year extension in certain circumstances. If the 2006 reassessments in response to the taxpayer's objections were mailed to him, the time had long since expired before the taxpayer filed his notice of appeal with this Court. The question is whether the 2006 reassessments were mailed to him.

[5] I am satisfied on the evidence before me on this motion and the *Income Tax Act* rules that the 2006 reassessments were mailed on March 16, 2006. However, the record does not satisfy me that they were mailed to the taxpayer. Unless they were mailed to him on March 16, 2006, the period within which the taxpayer could file a valid notice of appeal with this Court did not end before he filed his notice of appeal.

[6] It is generally this Court's preference to have taxpayers' disputes heard and decided on their merits. Obviously, we cannot do so if we do not have jurisdiction because a valid appeal was not instituted. However, on a motion to quash, the onus is on the Minister to show that the proper period for instituting an appeal to this Court ended before an appeal was filed.

[7] In order to show that the period ended, the Crown must first be able to show that the period began to run. That is essentially what the Federal Court of Appeal said in *Aztec Industries Inc. v. The Queen*, 95 DTC 5235, in 1995. It is that which the Crown has been unable to show because the absence of the Appeals file, the 2006 reassessments and the objection that leaves me with insufficient evidence to conclude that the 2006 reassessments were mailed to the taxpayer.

[8] A further consideration in my decision not to quash this appeal is that the Court Registry has opened it as an income tax appeal. The taxpayer's notice of appeal clearly seeks to dispute both income tax and GST assessments. It is not clear whether a separate GST file has been opened.

[9] In the circumstances, I will not be allowing the Crown's motion. I will be ordering that Mr. Khan amend his notice of appeal within 45 days to do two things.

[10] First, his amended notice of appeal must clarify his income tax appeal with facts and details sufficient to allow the Court to understand the nature of his underlying disagreement with the CRA.

[11] Second, his amended notice of appeal must clarify his references to GST and his position on GST sufficient to allow the Court to determine if a separate GST appeal file needs to be opened.

[12] If Mr. Khan fails to amend his notice of appeal within 45 days, his appeal will be dismissed. The Crown will have 60 days from the filing of the amended notice of appeal to file its reply.

Signed at Halifax, Nova Scotia, this 5<sup>th</sup> day of May 2009.

"Patrick Boyle"

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Boyle J.

CITATION: 2009 TCC 248

COURT FILE NO.: 2008-2680(IT)I

STYLE OF CAUSE: AHMAD A. KHAN v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 15, 2009

REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle

DATE OF ORDER: May 5, 2009

APPEARANCES:

For the appellant: The appellant himself

Counsel for the respondent: Samantha Hurst

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada