

Citation: 2009 TCC 336  
Date: 20091022  
Docket: 2008-3815(IT)APP

BETWEEN:

ESESSON CANADA INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

**AMENDED**  
**REASONS RESPECTING APPLICATION FOR EXTENTION OF TIME**

Campbell J.

[1] This application dated January 2, 2008 was brought to extend the time for filing and serving an Appeal to the Notice of Reassessment dated August 28, 2007 in respect to the Applicant's 2002 and 2003 taxation years. Because the Agent for the Applicant corporation was residing in Australia when this application was scheduled for hearing, he was permitted to present his application by telephone conference on March 31, 2009. The Respondent did not oppose the application for the 2002 taxation year because the Applicant was within the time period stipulated in subsection 167(5) of the *Income Tax Act* (the "Act"). However, the Respondent opposed the application for the 2003 taxation year because the Applicant had not satisfied the statutory prerequisites to an extension of time as set out in paragraph 167(5)(b) of the *Act* and, most importantly, the Applicant had received a nil assessment for the 2003 taxation year from which the Applicant had no right to appeal.

[2] By Amended Order dated ~~April 7~~ **May 11**, 2009, I ordered that the extension of time for the 2002 taxation year be granted and that the Applicant's Notice of Appeal, received January 16, 2008 for the 2002 taxation year, ~~be deemed to be a valid Notice of Appeal as of the date of the Order~~ **would not be deemed to be a valid Notice of Appeal until the date that a decision was rendered for the 2003 taxation year.** Due to difficulties encountered with telephone connections during the hearing held on March 31, 2009, I ordered the parties to provide written submissions respecting the Applicant's request for an extension of time for the 2003 taxation year. The submissions have now been received from both parties.

[3] According to the last paragraph of the Applicant's submissions, Esession Canada Inc. is requesting that this Court consider:

- The year 2003 case of Esession Canada Inc. for review.
- An extension of time be granted, and any delays be condoned.

In the submissions the Applicant's Agent seems to be requesting an extension to have the Minister of National Revenue (the "Minister") account for various amounts contained in cheques that have been submitted with the application, apparently in support of the contention that money has been paid to the Minister in 2003 which remains unaccounted for. As a result, he is seeking to have "CRA's system of maintaining accounts" reviewed (paragraph 1, page 1/16). There is also a request to have a review of expenses that were originally claimed but denied. In summary, the Applicant wants to present:

... a real time case study "why small scale business fail in rural sector in Canada"  
...

(Applicant's Submissions, paragraph 1, page 2/16).

[4] Finally the Applicant submits that no reassessment has been sent for the 2003 taxation year (paragraph 2, page 2/16) but that the Minister has done a number of reassessments to correct its own errors which has affected both the 2002 and 2003 taxation years for the Applicant as well as Mr. and Mrs. Sugnamam.

[5] The Federal Court of Appeal in *The Queen v. Interior Savings Credit Union*, 2007 DTC 5342, definitively states that a "nil assessment" of a taxpayer identifies an assessment that cannot be appealed by that taxpayer. At paragraphs [17] and [18] of that decision, the Federal Court of Appeal sets out the two reasons why a notification to a taxpayer that no tax is payable cannot be appealed to the Tax Court of Canada:

[17] ...First, an appeal must be directed against an assessment and an assessment which assesses no tax is not an assessment (see *Okalta Oils Limited v. MNR*, 55 DTC 1176 (SCC) at p. 1178: "Under these provisions, there is no assessment if there was not tax claimed"). Second, there is no right of appeal from a nil assessment since: "Any other objection but one related to an amount claimed [as taxes] was lacking the object giving rise to the right of appeal ..." (*Okalta Oils, supra*, at p. 1178).

[18] The two aspects of the rule are succinctly put by Lamarre Proulx, J. in *Faucher v. Canada*, 94 DTC 1575, at p. 1579:

In conclusion, there is no right of appeal from an assessment of a nil amount, or from an assessment of which a reduction is not requested, ...

[6] A taxpayer has the right to appeal to this Court pursuant to subsection 169(1) to have an assessment vacated or varied. The relief which this Court can provide to a taxpayer is in respect to the taxes, interest or penalties assessed by the Minister. It follows that if it is determined that a taxpayer owes nothing, then there is no relief which this Court can provide to that taxpayer. That is exactly the case for the Applicant in this application. There is nothing owing by the Applicant because essentially a nil assessment is not an assessment. In addition, none of the submissions or documentary evidence reference any amount for which the Minister was required to make a determination in respect to this year which would provide the Applicant with any special rights to appeal to this Court.

[7] I have reviewed the copies of the cheques provided by the Applicant, but I am satisfied with the explanation contained in the affidavit of H el ene Dhal. Most of those cheques were accounted for and they reference payroll remittances, tax arrears for 2002, and taxes paid for individuals other than the Applicant. One cheque could not be traced and copies of two new cheques, submitted with the Applicant's submissions, were payable to the "Newfoundland Exchequer Account". However, as the Respondent counsel pointed out, since no tax had been assessed in respect of the Applicant's 2003 taxation year, none of these cheques could have been applied to federal taxes in respect to this taxation year because none were assessed. Finally, with respect to the balance of the Applicant's submissions, this Court is not the forum where the Applicant can have Canada Revenue Agency's accounting system reviewed or present a study of why businesses fail in rural Canada. This Court's statutory power is in its ability to vacate or vary an assessment.

[8] The Respondent also argued that the Applicant adduced no evidence to satisfy the prerequisites to be met before an extension for time can be granted by this Court pursuant to paragraph 167(5)(b). This provision states:

167(5) No order shall be made under this section unless

...

(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.

The Applicant was also unable to satisfy the requirements of this provision but even if the requirements could be satisfied, for the reasons stated, there can be no appeal in these circumstances from a nil assessment.

[9] In conclusion, the Applicant's application for an extension of time to appeal the 2003 taxation year is denied.

Signed at Ottawa, Canada, this 22nd day of October, 2009.

“Diane Campbell”

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Campbell J.

CITATION: 2009 TCC 336

COURT FILE NO.: 2008-3815(IT)APP

STYLE OF CAUSE: Esession Canada Inc. and  
Her Majesty the Queen

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: March 31, 2009

REASONS RESPECTING  
APPLICATION FOR EXTENTION  
OF TIME: The Honourable Justice Diane Campbell

DATE OF ORDER: April 7, 2009

DATE OF AMENDED ORDER: May 11, 2009

DATE OF REASONS  
RESPECTING APPLICATION  
FOR EXTENSION OF TIME: June 26, 2009

**DATE OF AMENDED  
REASONS RESPECTING  
APPLICATION FOR  
EXTENSION OF TIME:** **October 22, 2009**

SUBMISSIONS:  
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