

Citation: 2011TCC255
Date: 20110509
Docket: 2009-2995(IT)APP

BETWEEN:

GEOFFREY SCOTT EDGELOW,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

(Delivered orally from the bench on March 2, 2010, in Calgary, Alberta.)

V.A. Miller, J.

[1] The Applicant has filed an application for extension of time to file a notice of objection for his 1998, 1999, 2000, 2001, 2002 and 2003 taxation years.

[2] The Applicant gave a history of the various court cases in which he was a litigant since 1998. He explained that in 1998 he sold his shares in a corporation called Phoenix Directional Services to another partner in the corporation for \$732,500. Within days, his partner sold the same shares for approximately \$8,000,000. The Applicant sued his former partner and this litigation did not end until 2004 when the Supreme Court of Canada refused leave to appeal. The Applicant was also involved in divorce proceedings which commenced in 1997. In 2004, the Applicant was charged with tax evasion. This proceeding was not concluded until 2008.

[3] The Applicant was assessed for his 1998 taxation year by notice dated June 28, 2005 and for his 1999, 2000, 2001, 2002 and 2003 taxation years by notices dated January 30, 2009.

[4] At the hearing of this application, counsel for the Applicant stated that he was abandoning the application for extension of time for the 1999, 2000, 2001, 2002 and 2003 taxation years as the assessments for these years were nil assessments.

[5] The evidence showed that the Applicant had delivered an application for extension of time to file a Notice of Objection to the Canada Revenue Agency on September 27, 2006. By letter dated October 3, 2006, the Minister of National Revenue (the “Minister”) notified the Applicant that he could not grant his request as the application was filed beyond the one year and ninety days allowed by the *Income Tax Act*.

[6] On May 14, 2009, the Applicant made a further request for an extension of time to file Notices of Objection for the 1998 to 2007 taxation years. The Minister notified the Applicant by letter dated June 24, 2009 that his request could not be granted for the 1998 taxation year which was the only year in issue before me. The Minister informed the Applicant that the time to file an Application for Extension of Time for the 1998 taxation year expired on September 26, 2006. I checked this date and it is the date that is one year and ninety days after the Notice of Assessment which was dated June 28, 2005.

[7] The relevant section of the Act is 166.2. Subsection 166.2(5) reads:

(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;

[8] This subsection is clear that an extension of time to file a Notice of Objection cannot be granted unless the application is made prior to the expiration of one year and ninety days after the date on the Notice of Assessment. In the present case the application was made one date late. As harsh as this may be, I do not have any discretion to extend the time.

[9] Counsel for the Applicant has referred me to the decision in *Cheam Tours Ltd. OP Airport Link Shuttle v. MNR*¹ and *Hickerty v. Canada*² for authority that this court has the discretion in certain cases to grant an extension of time beyond the time limited by the *Act*.

[10] I do not agree with counsel. It is clear from the language used in subsection 166.2(5) that the section is mandatory. My reading of this subsection is in accord with the decision of the Federal Court of Appeal in *Carlson v. R.*³

[11] It is unfortunate but I have no choice but to dismiss the application for extension of time.

Signed at Ottawa, Canada, this 9th day of May 2011.

“V.A. Miller”

V.A. Miller, J.

¹ 2008 TCC 18

² [2007] T.C.J. No. 312 (TCC)

³ 2002 FCA 145

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STYLE OF CAUSE: GEOFFREY SCOTT EDGELOW AND
THE QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: March 2, 2010

REASONS FOR ORDER BY: The Honourable Justice Valerie Miller

DATE OF ORDER: March 11, 2010

DATE OF REASONS FOR
ORDER: May 9, 2011

APPEARANCES:

Counsel for the Applicant: Craig Leggatt
Counsel for the Respondent: Robert Neilson

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