

BETWEEN:

SARUP KUNDI,

appellant,

and

HER MAJESTY THE QUEEN,

respondent.

Agent for the appellant: Carim Mohamed

Counsel for the respondent: Christina Ham

ORDER AND REASONS FOR ORDER

Whereas the appellant's appeal before this Court was heard on October 5, 2009, reasons were rendered from the bench on the same date and a judgment dismissing the appeal, in accordance with the reasons rendered from the bench, was signed on October 14, 2009;

Whereas the appellant, by letter dated October 25, 2011 addressed to the Court, in effect, seeks to have the judgment set aside;¹

Whereas the respondent, by letter dated November 30, 2011, made submissions opposing any setting aside of the judgment;

And whereas, among other considerations, the letter from the appellant alleges no valid ground for setting aside the judgment;²

The application is dismissed.

¹ The *Tax Court of Canada Rules (Informal Procedure)* make no provision for this kind of application, but one can proceed by analogy with Rule 172(2)(a) of the *Tax Court of Canada Rules (General Procedure)*.

² In particular, the Court notes that no fraud is alleged and that it is not alleged that the appellant seeks to present evidence which could not reasonably have been found prior to the hearing; one or the other would constitute at least one of the essential elements before this Court could consider reopening the hearing. See *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59, at paragraphs 59 to 65, and *Grenier v. Canada*, 2008 FCA 63, at paragraphs 4, 30 and 31. Given this, it is unnecessary for me to deal with the fact that there is no evidence in support of the application in the form of an affidavit. *Sagaz* dealt with Rule 59.06(2) of the *Rules of Civil Procedure* of Ontario; that rule is substantially the same as Rule 172(2)(a) of this Court.

Further, the Court directs the registry to send to the parties an unedited copy of the transcript of the reasons for judgment.

The Court points out that the unedited transcript contains a certain number of errors in transcribing the recording.³

The Court further points out to the appellant the penultimate paragraph at page 6 of the transcript which reads:⁴

Finally, the appellant's representative asked for [relief] with respect [to] interest and penalties. I have no jurisdiction over any such request. The taxpayer relief provisions, which is what I assume you were referring to, require that application be made to the Minister of National Revenue, so that is where you have to go for that.

The taxpayer relief provisions are in subsection 220(3.1) of the *Income Tax Act*. The Canada Revenue Agency publishes an information circular on the subject as well as a form for making application.

Signed at Ottawa, Ontario, this 25th day of January 2012.

“Gaston Jorré”

Jorré J.

³ For example, there are the following errors: at page 2, line 17, the word “whether” should read “letter”; at page 3, line 16, the word “when” should read “while”; it would appear that at page 5, line 13, “2003” should read “2006”; at page 6, line 16, the word “leave” should read “relief”.

⁴ In the text reproduced, I have corrected the word “leave” and put in the word “relief”.

CITATION: 2012 TCC 35

COURT FILE NO.: 2009-450(IT)I

STYLE OF CAUSE: SARUP KUNDI v. THE QUEEN

REASONS FOR ORDER BY: The Honourable Justice Gaston Jorré

DATE OF ORDER: January 25, 2012

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Ontario