Docket: 2012-1190(IT)APP

BETWEEN:

SUNNY LYTLE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on July 6, 2012, at Vancouver, British Columbia.

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the Applicant:	Robert Docherty
Counsel for the Respondent:	Amandeep Sandhu

JUDGMENT

The motion filed by the applicant for an extension of time within which notices of objection for the 2001 and 2002 taxation years may be served, is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 19th day of October 2012.

"Réal Favreau"

Favreau J.

Citation: 2012 TCC 368
Date: 20121019
Docket: 2012-1190(IT)APP

BETWEEN:

SUNNY LYTLE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] The applicant has applied for an order extending the time within which notices of objection to reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the "*Act*"), may be served on the Minister of National Revenue (the "Minister"), concerning her 2001 and 2002 taxation years.

[2] Prior to this application, the applicant had successfully appealed her 2001 and 2002 reassessments made under the *Act*. The applicant is now filing an application for an extension of time to file notices of objection against the reassessments dated June 21, 2010, that were issued by the Minister as a result of the judgment rendered by the Tax Court of Canada on January 29, 2010, in respect of docket number 2007-4312(IT)G (the "Judgment").

[3] Following a net worth analysis of the applicant for her 2001 and 2002 taxation years, the Minister determined that the applicant's lifestyle and personal expenditures including the purchase and maintenance of certain real estate properties, exceeded her reported income in the 2001 and 2002 taxation years. On June 6, 2006, the Minister reassessed the applicant's 2001 and 2002 taxation years to include in her incomes, the following unreported incomes and to impose gross negligence penalties:

	Unreported income	**Penalties**

2001	$ 22,430.00	$ 3,179.00
2002	$152,081.00	$21,260.98

[4] On January 29, 2010, Little J. rendered his Judgment ordering the Minister to remove the following amounts from the applicant's income:

2001	$ 10,000.00
2002	$ 105,000.00

and, accordingly, to reduce the penalties that were levied.

[5] According to the supplementary affidavit of Daryl Argue, an officer of the Canada Revenue Agency (the "CRA"), filed on July 6, 2012, the Minister reassessed the applicant's 2001 taxation year on June 21, 2010 in accordance with the Judgment. The Minister sent a manual notice of reassessment to the applicant at 62–11737 236 Street, Maple Ridge, British Columbia, V4R 2E5 and attached a T7W-C to the notice. A true copy of the 2001 manual reassessment is attached as Exhibit "A" to the supplementary affidavit.

[6] According to Daryl Argue's affidavit filed on June 1, 2012, the Minister reassessed, on June 21, 2010, the applicant's 2002 taxation year in accordance with the Judgment. The Minister sent a manual notice of reassessment to the applicant at 62–11737 236 Street, Maple Ridge, British Columbia, V4R 2E5 and attached a T7W-C to the notice. A copy of the 2002 manual reassessment notice, the 2001 and 2002 T7W-Cs and computer printouts of the 2001 and 2002 reassessments are attached as Exhibits "H" and "I" to the affidavit.

[7] According to Daryl Argue's affidavit filed on June 1, 2012, the applicant filed on December 13, 2011, a notice of objection dated December 8, 2011, relating to the reassessments dated June 21, 2010. On December 22, 2011, the Minister sent a letter to the applicant advising her that her notice of objection was invalid and that the Minister could not grant an extension of time for the applicant to file her notice of objection because the application had not been filed within one year after the expiration of the time within which the applicant had to file her objection.

[8] In her notices of objection for the 2001 and 2002 taxation years referred to in the preceding paragraph, the applicant invoked the following reasons:

1) CRA has failed to calculate taxes payable in accordance with the appeals judgement (*sic*) rendered by the Honorable (*sic*) Justice Little, January 29, 2010 (court file #2007-4312(IT)G)

2) CRA has knowingly assessed the wrong taxpayer

3) New evidence filed since the appeal judgment makes CRA'S calculations incorrect and therefore the statement of account incorrect.

4) CRA's refusal to meet and fairly deal with the authorized representative has left the applicant no choice but to file this objection and seeks costs as a result.

5) The statement of account should be set aside and recalculated properly.

[9] At the hearing, the applicant's agent alleged that the applicant never received the official notices of reassessment for 2001 and 2002 and that, for that reason, she was deprived of her right to file notices of objection for the 2001 and 2002 taxation years within the prescribed time limit.

[10] According to the applicant's agent, only a T7W-C for each of the 2001 and 2002 taxation years was effectively attached to the June 21, 2010 letter from Mr. Doug Tarbet of the Appeals Division of the CRA as the said letter specifically stated that "Notices of Reassessment will be issued under separate cover for the 2001 and 2002 taxation years".

[11] The applicant's agent filed at the hearing many letters exchanged amongst himself, the applicant, the CRA and Mr. Matthew Canzer of the Department of Justice, wherein meetings and copies or reproductions of the notices of reassessment were requested but without success.

[12] By letter dated May 25, 2011, Mr. Tarbet of the CRA provided to the applicant what he described as being computerized copies of the 2001 and 2002 notices of reassessment supposedly sent to the applicant on June 21, 2010. According to the applicant, the documents enclosed with that letter were income tax return information dated May 25, 2011 and not notices of reassessment.

[13] By letter dated July 22, 2011, Mr. Doug Tarbet of the CRA informed the applicant that her second and third requests for reproduction of the notices of reassessment sent to her on June 21, 2010 in respect of the 2001 and 2002 taxation years, have been forwarded to the CRA's Ottawa Technology Centre which recently

advised him that they could not reproduce the notices of reassessment for the years in question.

[14] On November 23, 2011, the applicant received a letter from the CRA's Ottawa Technology Centre which stated that a copy of the computerized notices of reassessment could not be reproduced. The applicant seriously doubted that an important document produced by computer could not be reproduced. In a letter dated December 1, 2011, to the Chief of Appeals, the applicant's agent clearly stated that, in his view, the documents were purposely being withheld so that notices of objection could not be filed.

[15] At the hearing, the applicant's agent admitted that there was no problem with the name and address of the applicant for the exchange of correspondence with the CRA and that no application was made before March 20, 2012, the date on which the applicant filed an application for an extension of time to serve her notices of objection for the 2001 and 2002 taxation years at the Tax Court of Canada.

[16] Counsel for the respondent alleged that the notices of reassessment for the 2001 and 2002 taxation years were mailed to the applicant on June 21, 2010, and that the T7W-Cs were attached thereto. Respondent's counsel also pointed out that the computerized copies of the 2001 and 2002 notices of reassessment sent to the applicant in Mr. Tarbet's letter dated May 25, 2011, and filed by the applicant's agent as Exhibit A-12, were not complete as one page was missing. Complete copies of the said computerized notices of reassessment were filed by counsel for the respondent as Exhibit R-1. Counsel for the respondent drew the Court's attention to the fact that the net federal tax payable for 2001 and 2002 matched the amounts of net federal tax indicated on the computerized printouts (Option C) of the 2001 and 2002 notices of reassessment sent to the applicant on June 21, 2010, and filed as exhibits to the affidavit of Daryl Argue.

[17] Counsel for the respondent also alleged that the applicant tried to relitigate the issues dealt with in the Judgment and she referred to the following documents:

(a) the letter dated March 3, 2010, addressed to the CRA whereby the applicant's agent requested a meeting as soon as possible prior to issuing revised reassessments to ensure that accurate reassessments were issued by the CRA. This seems to indicate that the applicant was looking for additional deductions and for changes to the Judgment;
(b) the letter dated September 1, 2010, to the Department of Justice Canada whereby the then representative of the applicant expressed his client's concern

that the net worth analysis from which certain deductions have been made was originally flawed and asked for a meeting with the CRA's original auditor to satisfy his client's concerns that the amount of tax determined by the net worth analysis was, in fact, appropriate; and

(c) the notices of objection filed by the applicant on December 8, 2011, in which there were specific references to the fact that the CRA had failed to calculate tax payable in accordance with the Judgment and that new evidence found since the Judgment made CRA's calculations incorrect and therefore the statement of account incorrect.

Analysis

[18] Counsel for the respondent takes the position that the issues raised above by the applicant are related to the appeals heard by Little J. and should therefore have been raised at that time. Consequently, the applicant is precluded by the principle of *res judicata*, by subsection 165(1.1) of the *Act* from objecting to the reassessments and by subsection 169(2) of the *Act* from appealing the reassessments. The relevant provisions of the *Act* read as follows:

> 165(1.1) **Limitation of right to object to assessments or determinations**. Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer
>
> (*a*) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 161.1(7), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring the assessment back to the Minister for reconsideration and reassessment,
>
> (*b*) under subsection (3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph (a), or
>
> (*c*) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to (5),
>
> the taxpayer may object to the assessment or determination within 90 days after the day of sending of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded
>
> (*d*) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), (b) or (c), and

(*e*) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

169(2) **Limitation of right to appeal from assessments or determinations**. Notwithstanding subsection (1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(*a*) under, subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring the assessment or referring the assessment back to the Minister for reconsideration and reassessment,
(*b*) under subsection 165(3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph (a), or
(*c*) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to (5),

the taxpayer may appeal to the Tax Court of Canada within the time limit specified in subsection (1), but only to the extent that the reasons for the appeal can reasonably be regarded

(*d*) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(*a*), (*b*) or (*c*), and
(*e*) in any other case, as relating to any matter that gave rise to the assessment or determination

and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

[19] Subsection 165(1.1) of the *Act* is intended to prevent taxpayers from using certain assessments or determinations that have been issued for specific purposes, as a way to object to unrelated matters which have not previously been objected to. It provides that a taxpayer may only object to the assessment or determination on grounds which may reasonably be regarded as relating to a matter that gave rise to the assessment or determination.

[20] In *Chevron Canada Resources Ltd. v. R.*, [1999] 3 C.T.C. 140 (F.C.A.), the Federal Court of Appeal has reviewed the scope of the limitation of subsection 165(1.1) on a taxpayer's right to object to a reassessment issued pursuant to a Consent Judgment of this Court. The Court upheld the judgment and stated that the new issues being raised by the taxpayer were reasonably related to the matter which gave rise to the reassessment and concluded that these issues were conclusively determined by the Tax Court in the Consent to Judgment. The taxpayer was then barred by subsection 165(1.1) of the *Act* from objecting to the reassessment in respect of those issues. The Court held that, by virtue of the principle of *res judicata*, a judgment of a Court conclusively determines all undecided and related issues subject to litigation, including those that could have been raised at the time.

[21] In this case, I am satisfied that the issues being raised by the applicant in paragraph 17 above, are related to the matter that was before the Court previously and that the Judgment had conclusively determined all the issues which had given rise to the reassessments, including all undecided and related matters.

[22] There is nothing before me to indicate that it was not possible for the applicant to raise these issues in her previous appeal, had she wished to do so, and there is no evidence before me of any special circumstances that would warrant the overruling of the principle of *res judicata*.

[23] Therefore, the applicant is prohibited by paragraph 165(1.1)(*e*) from objecting to the reassessments of June 21, 2010 and by paragraph 169(2)(*e*) from appealing the reassessments.

[24] Even if we were to accept that the applicant was entitled to file notices of objection to the 2001 and 2002 reassessments, the applicant did not do so within the prescribed time.

[25] The reassessments for the 2001 and 2002 taxation years were done manually in accordance with the Judgment and were mailed with the T7W-Cs to the applicant. The applicant did not receive them but she knew the amounts being reassessed for 2001 and 2002. Computerized copies of the 2001 and 2002 reassessments were mailed to the applicant in Mr. Tarbet's letter dated May 25, 2011. The applicant filed her notices of objection on December 8, 2011, more than 90 days after receiving the said computerized copies of the reassessments.

[26] If the applicant did not agree with the Tax Court of Canada's decision of January 29, 2010, she should have simply appealed to the Federal Court of Appeal.

[27] For these reasons, the motion is dismissed without costs.

Signed at Ottawa, Canada, this 19th day of October 2012.

"Réal Favreau"

Favreau J.

CITATION:	2012 TCC 368
COURT FILE NO.:	2012-1190(IT)APP
STYLE OF CAUSE:	Sunny Lytle v. Her Majesty the Queen
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	July 6, 2012
REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
DATE OF JUDGMENT:	October 19, 2012

APPEARANCES:

Agent for the Applicant:	Robert Docherty
Counsel for the Respondent:	Amandeep Sandhu

COUNSEL OF RECORD:

For the Applicant:	
Name:	
Firm:	
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada