

Docket: 2019-1935(GST)APP

BETWEEN:

JIAHUA CAR RENTAL INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on October 24, 2019, at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Applicant: Shirley Shi

Counsel for the Respondent: Eric Myles

ORDER

IN ACCORDANCE WITH the attached Reasons for Order, the application from the reassessment made under the Excise Tax Act, RSC 1985, c. E-15, as amended (the “ETA”), in respect of the reporting period of April 20, 2016 to June 30, 2016 is dismissed, without costs.

Signed at Toronto, Ontario, this 19th day of November 2019.

“R.S. Boccock”

Boccock J.

Citation: 2019TCC258
Date:20191119
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Respondent.

REASONS FOR ORDER

Bocock J.

[1] The Applicant, Jiahua Car Rental Inc. (“JCRI”), represented by Ms. Shi, brings this application to extend the time for filing a notice of objection. That sought objection concerns the Minister’s reassessment of an HST return for the reporting period April 16, 2016 to June 30, 2016.

[2] The relevant and excerpted legislation outlining the prescribed time restrictions for filing notices of objection provides as follows:

305 (1) Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

Contents of application

(2) An application made under subsection (1) shall set out the reasons why the appeal to the Tax Court was not instituted within the time otherwise limited by this Part for doing so.

[...]

When order to be made

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

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for appealing; and

[...]

Appeal

306 A person who has filed a notice of objection to an assessment under this Subdivision may appeal to the Tax Court to have the assessment vacated or a reassessment made after either

(a) the Minister has confirmed the assessment or has reassessed, or

(b) one hundred and eighty days have elapsed after the filing of the notice of objection and the Minister has not notified the person that the Minister has vacated or confirmed the assessment or has reassessed,

but no appeal under this section may be instituted after the expiration of ninety days after the day notice is sent to the person under section 301 that the Minister has confirmed the assessment or has reassessed.

[3] There is no dispute concerning the date of the Notice of Reassessment relating to JCRI: March 21, 2017. Similarly, JCRI and its principal, Ms. Qu, marshalled no evidence to suggest the Notice of Reassessment had not been sent nor was there any suggestion that it was not sent. Likewise again, it is agreed that no Notice of Objection was received before January 29, 2019.

[4] Absent any other considerations, the application would be dismissed for the following reasons. The 90-day period for filing the Notice of Objection expired on June 19, 2017. The one-year period thereafter for filing an application to extend expired on June 19, 2018. Nothing was initiated by JCRI or Ms. Qu with the Minister or the Tax Court within that period. No objection was received until some 7 months after June 19, 2017; the Notice of Reassessment is presumed to have been sent to the then current address on file for the Applicant. There is no denial by the Applicant of the receipt of the Notice of Reassessment or its having been sent as in some applications: *Aztec Industries Inc. v. Canada* [1995] 1 CTC 327 at paragraph 12.

[5] There are however some additional facts which the Applicant has raised in this application. The Court had considered these on August 21, 2018, the Minister wrote to Ms. Qu. The letter threatened legal proceedings, against Ms. Qu, for vicarious liability as a director for JCRI's tax arrears. Likely as a result of this, Ms. Qu, with the assistance of Tonda Accounting ("Tonda"), filed an amended HST

Return for the period and requested relief of the Minister. On October 8, 2018, Tonda filed that request. The Minister refused to amend the return.

[6] In response, Tonda persisted by submitting on January 16, 2019 further representations concerning the amendment request. A Notice of Objection was filed with and received by the CRA on January 31, 2019. This was rejected by the Minister as out of time on February 26, 2019. Not to be deterred, a notice of application to extend was filed, utilizing the Minister's rejection letter of January 16, 2019 as the date of reassessment or confirmation. The representative of Tonda suggested that the rejection letter should effectively be construed as a confirmation.

[7] The Court cannot agree. There is no confusion concerning the exchange of letters in this appeal. The time for objection and/or application for an extension of time to extend the time to file an objection ended on June 19, 2018. This was substantially before any action whatsoever was taken on October 9, 2018.

[8] This conclusion holds true for any action or actor in the piece: JCRI, Ms. Qu and/or Tonda. No step requesting an extension was taken by any before the initial step was taken on October 9 or 10, 2018. At that time, the statutorily mandated and inescapable time to act had expired by at least 3 and one-half months.

[9] There is simply no further reassessment or confirmation concerning the Minister's reassessment of JCRI on March 27, 2017. The denial of a request to reassess, itself outside the 90 day and one year period, does not qualify as a assessment, reassessment or confirmation: *Abakhan & Associates Inc. et al v. Attorney General of Canada*, 2007 FC 1327 at paragraph 8. If there is no operative assessment, reassessment or confirmation within the statutory period, then the latest subsisting reassessment date remains relevant: March 27, 2017. So too do the concordant 90 day and one year dates: June 19, 2017 and June 19, 2018, respectively. No action was taken before the end of that period; even the Minister's refusal to amend the return and the request to do so fall well outside that period. Therefore, the Court need not consider that issue.

[10] Lastly, even if all the foregoing were not applicable, the 30 day restriction in the Act concerning the time to file an application before this Court to extend the time to late-file an objection was also missed. The Minister's final refusal was on February 26, 2019. JCRI did not file its application with the Tax Court until May 27, 2019. This is a stand-alone, inescapable prohibition as well: *Bellemare v.*

HMQ, 2013 TCC 381 at paragraph 7. On this additional basis, the application must be rejected.

[11] For these reasons, the application is dismissed without costs.

Signed at Toronto, Ontario, this 19th day of November 2019.

“R.S. Boccock”

Boccock J.

CITATION: 2019TCC258

COURT FILE NO.: 2019-1935(GST)APP

STYLE OF CAUSE: JIAHUA CAR RENTAL INC. AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 24, 2019

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.
Bocock

DATE OF JUDGMENT: November 19, 2019

APPEARANCES:
Agent for the Applicant: Shirley Shi
Counsel for the Respondent: Eric Myles

COUNSEL OF RECORD:

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Name:

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