

BETWEEN:

HRISHIKESH PRABHU SWARGATHMADOM RAJAGOPALA,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on December 15, 2021 at Toronto, Ontario

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Applicant: The Applicant himself
Counsel for the Respondent: Eric Myles

ORDER

The application for an extension of time to file a notice of objection to reassessments both dated March 23, 2015 for the 2011 and 2012 taxation years is hereby dismissed because the Applicant did not apply to the Minister or this Court within the mandatory timelines prescribed under the *Income Tax Act*, RSC 1985, c.1, as amended (the “*Act*”).

Signed at Ottawa, Canada, this 14th day of January 2022.

“R.S. Boccock”

Boccock J.

Citation: 2022TCC8
Date: 20220114
Docket: 2020-2213(IT)APP

BETWEEN:

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REASONS FOR ORDER

Bocock J.

[1] The Applicant, Mr. Rajagopala, brings this application to extend the time to file a notice of objection concerning his 2011 and 2012 taxation years. There are no material facts in dispute. As is seen below, Mr. Rajagopala's circumstances engender much sympathy.

[2] These reasons are delivered in writing. That is because of the COVID caused structuring of set afternoon hearings times before the Tax Court and recently renewed pandemic restrictions suspending in-person hearings. These prevent the Court from directly providing Mr. Rajagopala with these reasons in open court and still otherwise easily complying with the 90 day time limitation for so doing. Therefore, the Court provides its reasons for order in writing and departs from its usual custom.

[3] Mr. Rajagopala testified at his application. His evidence was clear, credible and reliable. In fact, cross-examination was short and complementary to that evidence-in-chief.

[4] Mr. Rajagopala first came to Canada under a temporary work visa for the period May 24, 2011 to November 24, 2012. During that initial stint, he worked for Canadian clients of Tata Consultancy Services ("Tata"). Tata paid a certain housing allowance to Mr. Rajagopala during his residency in Canada. He filed his Canadian tax returns for 2011 and 2012. While he reported his Canadian income in Canada,

he like all other Tata work visa employees did not claim the housing allowance. Tata did not issue a T4A to such employees.

[5] The Minister reassessed Mr. Rajagopala and other Tata employees, asserting that the housing allowance was taxable. Those assessments arose during the 2014-2015 period. Unlike other Tata employees, Mr. Rajagopala was no longer in Canada, having left in November 2012. Therefore, the March 23rd, 2015 notices of reassessment were sent to Mr. Rajagopala's last address in Canada on file with the CRA. From 2013 to 2019, Mr. Rajagopala lived in various different locations in India, the United Kingdom and around the world.

[6] Mr. Rajagopala returned to Canada in 2019 and has been here since. After his return, he discovered the uncontested 2015 reassessment and the resulting outstanding tax debt represented by the taxable benefit and accrued interest. He received notice of those amounts in May 2020. Responsably, he took action and objected. He soon received the Minister's position: any objection to the sent notices of reassessment was long overdue thereby nullifying any ability of Mr. Rajagopala to appeal to reassessment.

[7] These have not been easy times for Mr. Rajagopala. His wages hover at subsistence. He is the sole wage earner for his family, including his aged and ill father in India. He cannot afford to pay the tax debt. He barely gets by.

[8] Two further ironies exist. The Minister appears to have reconsidered the taxable benefit concerning the housing allowance for other Tata employees who did object to and contest the reassessed taxable housing benefit. Those successful resolutions occurred after specific taxpayers filed timely notices of objection. Secondly, it is Mr. Rajagopala's return to Canada to seek a better life which has saddled him with this tax debt and no statutory ability to appeal. Practically, had he not returned, he would not be before the Court.

[9] As to the issue of the notices of reassessment having been sent, there is no contest. The evidence before the Court shows Mr. Rajagopala's last recorded address for service as the address to which the reassessments were sent. The reassessments were provided to the Court and Mr. Rajagopala confirmed the address and that the reassessments were likely sent to him there. In fact, given how many places abroad he lived from 2013 to 2019, it would have been very difficult for him to have provided accurate, then current addresses.

[10] The *Income Tax Act*, RSC 1985, c.1, as amended (the “*Act*”) is clear on when and only when this Court may grant an application to extend the time to file a notice of objection. There are two components. They operate conjunctively. An Applicant must satisfy both. The first such component is paragraph 166.2(5)(a) of the *Act* which provides:

Extension of time by Tax Court

166.2 (1) A taxpayer who has made an application under subsection 166.1 may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

...

When application to be granted

(5) 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; and

[11] The law interpreting this section is clear. Unless an application to extend the time to file an objection has been filed in some form or another before the expiration of the one-year period after the initial 90 day appeal period, the Court, like the Minister (under 166.1), is prohibited by Parliament from granting the application or even considering the subsequent grounds in paragraph (b) which follow (a): *Riley v. HMQ*, 2012 TCC 208 at paragraph 7; and *Vo v. HMQ*, 2015 FCA 246 at paragraph 7. Similarly, the sending by the Minister of the (re)assessment to the last known address on file is the critical event and date, not its receipt by the taxpayer: *Rossi v. HMQ*, 2015 FCA 267 at paragraph 7; and *Denelzen v. HMQ*, CarswellNat 1911 at paragraph 6.

[12] In conclusion and regrettably, there is simply no legal or factual basis or combination thereof which affords this Court the power to grant the application given the clear and uncontroverted facts before it. The appeal has not been dismissed on its merits because the Court is prevented from considering them. The technical provisions of this clear and unavoidable deadline for filing an application to extend

the time apply. Therefore, the application is dismissed, even with these sympathetic circumstances.

[13] The Court raises two less than perfect alternative solutions. It does so because it is a rare occasion where the legal merits of contesting a reassessment plainly appear so certain to succeed and technical non-compliance arising from unfortunate circumstances impede any action by the Court. As such, some gentle nudging and support may help. The Court is clear it has no authority to compel either one.

[14] The first concerns a voluntary reassessment by the Minister with the consent of the taxpayer under subsection 152(4.2) of the *Act*.

[15] The provisions are contained in Part IV of Information Circular 07-1. Mr. Rajagopala should inquire and move quickly, if he elects to proceed, referencing the fact that the Court could not consider his appeal on its merits.

[16] The second alternative is less attractive still. It involves seeking an interest waiver under the Taxpayer Relief provisions outlined in Part II of the same Information Circular 07-1.

[17] This is not an instance of the Court providing legal direction or advice, but with its own reduced sitting restrictions, simply providing observations it would otherwise outline orally in open Court.

[18] In summary, the Court cannot grant the application and will not. The application is dismissed without costs. Aspirationally, the Court merely suggests that Mr. Rajagopala and the Minister explore the outlined alternatives in these reasons.

Signed at Ottawa, Canada, this 14th day of January 2022.

“R.S. Boccock”

Boccock J.

CITATION: 2022TCC8
COURT FILE NO.: 2020-2213(IT)APP
STYLE OF CAUSE: HRISHIKESH PRABHU
SWARGATHMADOM RAJAGOPALA
AND THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 15, 2021

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

DATE OF ORDER: January 14, 2022

APPEARANCES:

For the Applicant: The Applicant himself
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