Docket: 2024-1175(GST)I

BETWEEN:

ANEETA RAM,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on February 27, 2025 at Toronto, Ontario

Before: The Honourable Justice Perry Derksen

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Tyler Alviano John Chapman

JUDGMENT

In accordance with the attached Reasons for Judgment;

The appeal from a Notice of Reassessment dated January 15, 2020 made under the *Excise Tax Act* in respect to the Appellant's application for the Goods and Services Tax/Harmonized Sales Tax New Housing Rebates is dismissed, without costs.

Signed this 25th day of March 2025.

"Perry Derksen"

Derksen J.

Citation: 2025 TCC 49
Date: 20250325
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REASONS FOR JUDGMENT

Derksen J.

I. Overview

[1] This is an appeal from an assessment made by the Minister of National Revenue denying new housing rebates with respect to the purchase of a new house located at 57 Tabaret Crescent in Oshawa, Ontario.

[2] The appellant, together with Pardeep Kumar (also known as Paul Kumar), signed an agreement of purchase and sale in April 2016 with the builder. At that time, the appellant and Mr. Kumar were friends, and the house did not yet exist (or it was under construction). The appellant says that she and Mr. Kumar purchased the new house together on a 50/50 basis and that the purchase was undertaken as an investment. As such, the appellant and Mr. Kumar were not acquiring the new house for use as their primary place of residence, or that of a relation. The purchase closed in July 2018 and at that time an application for the rebates was submitted to the builder and the amounts claimed were credited by the builder in favour of the purchasers. Soon after, the appellant and Mr. Kumar sold the property. The transactions have the hallmarks of a "house-flip."

[3] The appellant agrees that the conditions for the new housing rebates are not satisfied. Instead, the appellant says that she was caught by surprise in that she did not know an application for the new housing rebates had been made when the purchase closed in July 2018 and the amount of the rebates was assigned to the builder. She testified that Mr. Kumar signed the application using her name as the

claimant and applied for the rebates without her knowledge or consent, and only learned that the Minister had disallowed the rebates upon receiving a collection notice from the Canada Revenue Agency ("CRA") in January 2023.

[4] The appellant made inquiries with the CRA Collections Division and eventually the CRA sent a copy of the Minister's notice of assessment dated January 15, 2020, to the appellant at her address on Bourne Crescent in Oshawa, Ontario. The Minister had previously sent the notice of assessment on January 15, 2020, to the appellant using the address where the new home was located at 57 Tabaret Crescent.

[5] The appellant paid $11,227.50 toward the assessment, which in her view represented one-half of the benefit that she enjoyed through the claim for the new housing rebates and excludes arrears interest.

[6] The appellant raised three issues. First, the appellant says that she should only be liable for one-half of the rebates denied (since this was the extent of the benefit that she received) and that the CRA should pursue Mr. Kumar for the other half because they were operating as 50/50 partners. Second, the appellant says interest should not be charged because the Minister's notice of assessment was sent to the address at 57 Tabaret Crescent, rather than the mailing address that the CRA used for her personal income tax matters under the *Income Tax Act*, R.S.C., c. 1 (5th Supp.) ("ITA"). The appellant argues that this resulted in an unfair and unjustified accrual of interest. The appellant's third argument was raised for the first time during closing argument; she says that the assessment was sent to an incorrect address on January 15, 2020, and by the time the CRA sent her a copy of the notice of assessment on February 28, 2023, the assessment was made beyond the statutory limitation period and as such is statute-barred.

[7] For the reasons that follow, the appeal is dismissed.

II. Statutory Framework for the GST/HST New Housing Rebates

A. The General Provisions

[8] There are two new housing rebates in issue: (i) a new housing rebate under s. 254(2) of the *Excise Tax Act*, R.S.C., 1985, c. E-15 ("ETA"); and (ii) an Ontario new housing rebate under s. 256.21 of the ETA — as prescribed by the *New Harmonized Value-added Tax System Regulations, No. 2*, SOR/2010-151, as amended ("Regulations").

[9] The statutory framework for the GST/HST new housing rebates was thoroughly reviewed by the Federal Court of Appeal in *Canada v. Cheema*, 2018 FCA 45 and *Canada v. Ngai*, 2019 FCA 181.

[10] Under the ETA, tax is generally payable when a person acquires a new house. However, the ETA also provides that, subject to certain conditions, the purchaser of a new house is entitled to a rebate of a portion of the tax paid.

[11] In particular, s. 254(2) of the ETA provides for a rebate of a portion of the tax paid under s. 165(1) (i.e., the tax calculated at the rate of 5% or the federal portion of the HST). This rebate is subject to a phase out according to a formula in s. 254(2) and is only available if the total consideration payable for the house (excluding GST or HST) is less than $450,000.

[12] For a new house acquired in Ontario, a separate rebate is available under s. 256.21 of the ETA as prescribed in s. 41(2) of the Regulations and it applies to a portion of the tax paid under s. 165(2) of the ETA (i.e., the 8% provincial portion of the HST). For this rebate, there is no restriction on the amount of the consideration payable for the house, but the rebate amount is limited to the lesser of $24,000 and 75% of the tax paid under s. 165(2). Subsection 41(2) of the Regulations incorporates the conditions in s. 254(2).

[13] I will use the expression “GST/HST new housing rebates” when referring to both rebates collectively.

[14] Two conditions for the GST/HST new housing rebates in s. 254(2) are important here.

[15] First, s. 254(2)(b) of the ETA provides that when a “particular individual” becomes liable under the agreement of purchase and sale made with the builder, that individual must be acquiring the residential complex as his or her primary place of residence or as the primary place of residence of a relation to that individual.

[16] Second, s. 254(2)(g) of the ETA provides that, subject to certain exceptions, the particular individual (or a relation to that individual) must be the first person to occupy the residential complex as a place of residence after it is substantially completed.

[17] In *Cheema*, where only the Ontario new housing rebate was in issue, the majority of the Federal Court of Appeal held that s. 40 of the Regulations (as it then

read) provided that if a supply of the residential complex was made to two or more individuals, the references to "a particular individual" in s. 254(2) of the ETA are to be read as references to all of those individuals as a group.

[18] A parallel rule in s. 262 of the ETA (as it then read) had the same effect in respect of the new housing rebate available in s. 254(2) of the ETA.

[19] Thus, if under an agreement of purchase and sale, the supply of a residential complex was made to two individuals, the conditions in ss. 254(2)(b) and 254(2)(g) of the ETA had to be satisfied by both individuals. (Section 40 of the Regulations and s. 262 of the ETA were amended in 2021 applicable to purchase and sale agreements entered into after April 19, 2021, and those amendments are not germane to the outcome of this appeal.)

[20] Since both the appellant and Mr. Kumar signed the agreement of purchase and sale, in order to be eligible for the GST/HST new housing rebates, the applicable conditions in ss. 254(2)(b) and 254(2)(g) would need to be satisfied by both the appellant and Mr. Kumar.

[21] The appellant accepts, however, that these conditions were not satisfied because, at the time that she and Mr. Kumar entered into the agreement of purchase and sale with the builder, they were acquiring the property as a real estate investment that, in time, would be sold; it was not being acquired for use as their primary place of residence. Moreover, at no time did the appellant and Mr. Kumar occupy the property. Although the text in s. 254(2) also refers to "a relation of the particular individual", that element of the provision is not engaged or relevant here.

[22] And so, the appellant and Mr. Kumar were not eligible for the GST/HST new housing rebates in ss. 254(2) and 256.21 of the ETA.

B. Only one Claimant can Apply for the GST/HST New Housing Rebates

[23] Where a supply of a residential complex is made to two or more individuals, only one of those individuals may apply for a rebate: see s. 262(3) of the ETA and the parallel rule in s. 40 of the Regulations. And an application for a rebate must be made in prescribed form containing the prescribed information and shall be filed with the Minister in the prescribed manner: s. 262(1) of the ETA.

[24] The effect of s. 262 of the ETA, and the parallel rule in s. 40 of the Regulations, is that the appellant and Mr. Kumar could only submit one application,

in prescribed form, for the GST/HST new housing rebates, and only one person could be made the claimant.

[25] At the risk of stating the obvious, the GST/HST new housing rebates are only available to individuals. Thus, neither a partnership nor a corporation are eligible for these rebates.

C. Submitting the Application to a Builder & Overpayments

[26] The provisions in s. 254(4) of the ETA and the parallel rule in s. 256.21(3) allow a builder to pay or credit the GST/HST new housing rebates against the tax payable in respect of the supply of the new home where an individual submits the prescribed application to the builder. In such circumstances, the builder transmits the application to the Minister with the builder's return for the reporting period in which the rebate was paid or credited and claims a credit against the builder's net tax owing.

[27] The ETA also contemplates the possibility of an overpayment of a rebate in s. 264(1). This provision provides, in part, that where an amount is paid to, or applied to a liability of, a person as a rebate under Division VI of the ETA and the person is not entitled to the rebate, or the amount paid or applied exceeds the rebate to which the person is entitled, the person shall pay to the Receiver General an amount equal to the rebate or excess on the day the amount is paid to, or applied to the liability of, the person.

[28] The full text of s. 264(1) of the ETA reads as follows:

> 264(1) **Where an amount is paid to, or applied to a liability of, a person as a rebate under** section 215.1, subsection 216(6) or **this Division** (other than section 253) or as interest under section 297 **and the person is not entitled to the rebate** or interest, as the case may be, or the amount paid or applied exceeds the rebate or interest, as the case may be, to which the person is entitled, **the person shall pay to the Receiver General an amount equal to the rebate**, interest or excess, as the case may be, **on the day the amount is paid to, or applied to a liability of, the person.**
>
> [Emphasis added.]

[29] Parliament also contemplated the possibility that a builder might pay or credit a new housing rebate to or in favour of an individual in circumstances where the builder knows or ought to know that the individual is not entitled to the rebate, or

that the amount paid or credited exceeds the rebate to which the individual is entitled. In such circumstances, the builder and the individual are jointly and severally liable to pay the amount of the rebate or excess to the Receiver General under s. 264 (see s. 254(6) of the ETA and also the parallel rule in s. 256.21(5) of the ETA.

[30] To avoid the risk of joint and several liability, builders will commonly require a purchaser who "assigns" a new housing rebate to the builder to provide a statutory declaration indicating that the purchaser is eligible to apply for the GST/HST new housing rebates (for an example, see *Afkari v. The Queen*, 2019 TCC 173 at para. 13).

[31] The Minister may assess, reassess or make an additional assessment of an amount payable by a person as an overpayment under s. 264: s. 297(2.1) of the ETA; and see *Zdzieblowska v. The Queen*, 2019 TCC 40 at paras. 27–31.

[32] Having reviewed the applicable statutory framework, I now turn to the issues raised by the appellant.

III. Analysis of the First Issue: Is the Appellant Liable for the Full Amount of the GST/HST New Housing Rebates?

[33] The Minister assessed the appellant for an overpayment of the GST/HST new housing rebates, relying on ss. 264(1) and 297(2.1) of the ETA, on the basis that the conditions in s. 254(2) of the ETA were not satisfied. The appellant first argues that she should only be liable for one-half of the rebate denied since this was the extent of the benefit that she says she received. The appellant says that the CRA should split the debt and pursue Mr. Kumar for the other half because they were operating as "50/50 partners". But this is not how the legislative scheme works. I will begin my analysis by reviewing the evidence relevant to the first issue.

[34] At the hearing of the appeal, the appellant and her spouse, Samir Thacker, testified. The assumptions of fact made by the Minister were not generally challenged by the appellant.

[35] The essential facts are summarized as follows.

[36] On April 20, 2016, the appellant and Mr. Kumar signed an agreement of purchase and sale with the builder, Minto Metropia (Windfields) Limited Partnership ("Minto"), for the purchase of a new home located at 57 Tabaret Crescent in Oshawa, Ontario. The transaction was completed on July 13, 2018, when

possession and legal title to the property was transferred to the appellant and Mr. Kumar.

[37] An application for the GST/HST new housing rebates, in prescribed form and bearing the appellant's name as the claimant, was submitted to the builder. The application was dated July 10, 2018.

[38] The name of Pardeep Kumar was recorded on the application in the box requiring a list of all the other purchasers if more than one individual purchased the house. And the question in the application, "Did you purchase the house for use as your or your relation's primary place of residence?" was answered affirmatively with a "Yes."

[39] The purchase price for the new home, excluding HST, as reflected in the application, was $287,889.31.

[40] The amount of $5,182.01 was claimed in respect of the 5% federal portion of the HST (i.e., $14,394.47) as a new housing rebate under s. 254(2) of the ETA. The further amount of $17,273.36 was claimed in respect of the 8% provincial portion of the HST as a new housing rebate under s. 256.21 of the ETA and s. 41(2) of the Regulations. The $17,273.36 was 75% of the provincial portion of the HST of $23,031.14. In total, HST of $37,425.61 was payable on the supply of the new home. When combined, the GST/HST new housing rebates claimed totalled $22,455.37 ($5,182.01 + $17,273.36).

[41] Because the application for the GST/HST new housing rebates was submitted to Minto, the builder in turn credited $22,455.37 to the appellant against the total amount payable for the new house.

[42] Minto next submitted the application for the GST/HST new housing rebates to the Minister and claimed a deduction against its net tax owing of $22,455.37, being the amount credited to the appellant on the closing of the transaction.

[43] In October 2018, only a few months after the transaction with the builder had closed, the appellant and Mr. Kumar sold the property located at 57 Tabaret Crescent for $439,000.

[44] The Minister assessed the appellant on January 15, 2020, to disallow the GST/HST new housing rebates claimed totalling $22,455.37, plus arrears interest of $2,128.51. The Minister sent the notice of assessment to the appellant using the

address at 57 Tabaret Crescent, Ottawa, Ontario. This was the address where the new home was located, and this address was reflected on the application form as both the address of the house purchased and the mailing address of the claimant (i.e., the appellant).

[45] In her testimony, the appellant described purchasing the new home together with Mr. Kumar in 2016 as an investment property in a 50/50 partnership. Mr. Kumar was a real estate agent, and the appellant had become friends with Mr. Kumar through an earlier real estate transaction that he had worked on, and which involved a purchase by the appellant's mother.

[46] The appellant also testified that in January 2023 she received a letter from the CRA Collections Division advising that she had a GST/HST debt owing of $28,517.77. The letter, dated January 18, 2023, was addressed to the appellant at her address on Bourne Crescent in Oshawa, Ontario ("Bourne Crescent Address"). Because the letter had few details relating to the nature of the debt, the appellant contacted the CRA and eventually learned that the matter concerned an application for the GST/HST new housing rebates.

[47] Later, under a cover letter sent on February 28, 2023, the CRA provided the appellant with a copy of the notice of assessment dated January 15, 2020, which had previously been sent to the address at 57 Tabaret Crescent.

[48] The appellant also testified that she contacted the builder to inquire about whether an application had been made for the rebates. A representative of the builder told the appellant to contact her lawyer to request the statement of adjustments to find out whether the rebate was applied, or whether it was an error.

[49] The appellant said that she contacted the SherGill Law Firm, the firm that acted as the solicitor for the appellant and Mr. Kumar, and she received copies of the closing documents.

[50] Included among the documents that the appellant received from the law firm was a copy of the GST/HST new housing rebate application. The appellant testified that the signature on the application was not her signature, and that she believed it was Mr. Kumar's signature. She insisted that Mr. Kumar had applied for the GST/HST new housing rebates without her knowledge or consent. The appellant also maintained that the property was purchased as an investment for resale and later she learned that they did not qualify for the rebates.

[51] The appellant agrees that the amount of the rebates was applied toward the purchase price, and, in this way, she received half the benefit. The appellant also testified that she tried contacting Mr. Kumar several times and said he has refused to compensate her for the share that he benefited from.

[52] The appellant offered a bundle of documents that she received from the law firm as an exhibit, and these were marked as Exhibit A-1. Exhibit A-1 is comprised of seven pages: the first page of a longer reporting letter dated July 13, 2018, from the SherGill Law Firm addressed to both Mr. Kumar and the appellant; an acknowledgement and direction relating to a mortgage (one page); a direction re title (one page); two pages from the GST/HST new housing rebate application; and two pages relating to the Ontario land transfer tax. Some of these documents were incomplete copies.

[53] It seems clear that in the appellant's mind, the documents at Exhibit A-1 demonstrate that the property was acquired by the appellant and Mr. Kumar on a 50/50 basis. And I accept that the documents do establish that the appellant and Mr. Kumar acquired the property as tenants in common, with each having a 50% interest.

[54] Regarding the two pages copied from the GST/HST new housing rebate application, the appellant acknowledges that her name is reflected on the application as the claimant. The appellant also made markings and notes on the documents at Exhibit A-1. In reference to the signature on the rebate application, the appellant's note states, "This is not my signature. The signature seems to match that of Mr. Pradeep (sic) Kumar. (AKA Paul Kumar)."

[55] The documents marked as Exhibit A-1 were not all the documents that the appellant received from the SherGill Law Firm. Certain pages are noted as being part of a larger bundle of documents comprising 62 pages.

[56] I have concluded that the appellant took a highly self-interested and selective approach in choosing which documents she would provide to the Court and counsel for the respondent. The appellant also referred several times in her evidence to being encouraged, including during her communications with CRA officials, to request the statement of adjustments for the closing of the purchase of the property at 57 Tabaret Crescent.

[57] Moreover, prior to the hearing of the appeal counsel for the respondent wrote to the appellant by letter dated February 19, 2025 (which was sent to the appellant at her correct email address) and requested her cooperation in providing copies of

the documents that she would rely on at the hearing. Counsel for the respondent also asked the appellant to provide a copy of all documents relating to the purchase and sale of the property located at 57 Tabaret Crescent, including specifically copies of the purchase and sale agreement and the final statement of adjustments. The appellant did not provide these documents to counsel for the respondent. (In hindsight, counsel for the respondent might have instead chosen to serve a subpoena on the appellant requiring her to bring certain documents to the hearing.)

[58] Under cross-examination by counsel for the respondent, the appellant sought to leave the impression that the documents at Exhibit A-1 comprised the totality of the documents that she received from the SherGill Law Firm. In particular, she said, "Those are the only documents that I have…". But that is not so. This is apparent from the page numbering on some of the documents; they were part of a larger bundle of documents that the appellant obtained.

[59] Moreover, under cross-examination, the appellant acknowledged that she received a copy of the statement of adjustments from the SherGill Law Firm. She also acknowledged that a copy of the statement of adjustments was not provided to counsel for the respondent. Eventually, the appellant acknowledged that the amount of the rebate was applied against the purchase price and that she found this out when she requested the statement of adjustments.

[60] In cross-examination, counsel for the respondent also asked the appellant whether she had a copy of the purchase and sale agreement that was entered into with the builder present with her in Court. She said she did not. It was at this point that counsel for the respondent confronted the appellant about the existence of other documents based on the page numbering on some of the documents at Exhibit A-1 and suggested that she had received a larger package of documents. In response, the appellant said that there were other documents but the ones among Exhibit A-1 showed that she and Mr. Kumar had purchased the property on a 50/50 basis and so she said she did not "omit anything" and had brought only the documents that were "relevant to the case". The appellant emphasized that she was always willing to pay her share, but that she wanted the CRA to pursue Mr. Kumar for his share.

[61] Counsel for the respondent also cross-examined the appellant on the complete copy of the application for the GST/HST new housing rebates, which was later entered as part of Exhibit R-1. The appellant maintained that the signature on page two of the application was not her signature. She said the signature looked like Mr. Kumar's signature. And counsel for the respondent did not suggest that the appellant had signed the application.

[62] The appellant also testified in cross-examination that she did not know whether the rebate application was among the documents reviewed with her on the closing of the purchase in July 2018. She said they reviewed lots of documents, the lawyer explained things and she signed a stack of documents. She did not review documents in detail and had emphasized in her direct evidence that the process was rushed.

[63] The thrust of the respondent's cross-examination of the appellant regarding the closing process was that the appellant had an opportunity to review documents at the closing with her lawyer and that she did not take steps to inquire about the reduction in the amount laid out for the purchase. The appellant also agreed that the statement of adjustments would have shown that the GST/HST new housing rebate was credited toward the purchase price.

[64] The appellant also admitted under cross-examination that the property at 57 Tabaret Crescent was sold in October 2018. The appellant agreed that it was sold for more than the purchase price. Counsel for the respondent suggested there was a surplus of about $135,000. The appellant was uncertain as to the precise amount but agreed that she made a profit on the sale and said it was split 50/50 with Mr. Kumar.

[65] Counsel for the respondent also asked the appellant whether she reported the profit on her income tax return filed for the 2018 taxation year. And this is where matters for the appellant become more tangled. In particular, the appellant agreed that she did not report the disposition on her income tax return filed for the 2018 taxation year. The appellant testified that she did not receive any T4s or T5s and said, "I actually didn't know that I had to report it." After the matter relating to the rebates became an issue with the CRA, the appellant spoke to an accountant and tried to adjust her income tax return for the 2018 taxation year.

[66] At the conclusion of the respondent's cross-examination, I asked the appellant to clarify whether she had received a copy of the statement of adjustments. The appellant said that at some point she had received the document and became aware that the rebate was applied, but that she did not bring the document to Court.

[67] Samir Thaker also testified as a witness called by the appellant. Mr. Thaker is the appellant's spouse. They were married in September 2016. Mr. Thacker testified that the appellant first received the statement of adjustments in 2023 after the CRA had reached out to the appellant.

[68] I asked Mr. Thaker whether he was involved in the matter in 2016 when the agreement to purchase the property was entered into, or later in 2018 when the transaction closed. Mr. Thaker said that he only learned about this transaction in 2023. Mr. Thaker explained that he and the appellant were married in September 2016, and he thought the appellant had signed the purchase and sale agreement a few months before the marriage.

[69] The respondent did not cross-examine Mr. Thaker.

[70] I find it difficult to accept the evidence that Mr. Thaker did not know about the appellant's purchase and sale of the property at 57 Tabaret Crescent. As implausible as that seems, his knowledge about this matter is so limited that I do not consider his evidence reliable.

[71] During closing argument, the appellant acknowledged that she did have additional documents relating to the purchase of the property, however these were not present with her in court. The respondent opposed adjourning this matter in order to permit the appellant to produce additional documents for the reason that the appellant had selectively picked documents to bring to Court despite the respondent's written request that the appellant bring all of the documents relating to the purchase and sale of the property, including the statement of adjustments.

[72] After my decision in this appeal was under reserve, and in particular on March 5, 2025, the appellant delivered additional documents to the Registry. At my direction, the Registry sought the respondent's position on whether: (i) I should examine the new documents; (ii) the additional documents should become exhibits in the appeal; and (iii) the respondent would want the hearing reopened for further cross-examination if the additional documents were made exhibits and entered into evidence.

[73] By letter dated March 12, 2025, counsel for the respondent advised that the respondent did not object to the Court examining the additional documents but took the position that the documents should not be entered as exhibits in the appeal. Moreover, the respondent would not seek to have the hearing reopened for further examination or argument unless the appellant were permitted to provide additional testimony or submissions.

[74] I examined the additional documents after receiving the letter from counsel for the respondent dated March 12, 2025.

[75] The additional documents comprise an amended statement of adjustments as of October 23, 2018 (which relates to the October 2018 sale of the property at 57 Tabaret Crescent), a trust ledger dated October 25, 2018, from the SherGill Law Firm (also relating to the sale of the property in October 2018), and a Scotiabank mortgage statement issued on October 19, 2018 (relating to the payout of the mortgage).

[76] None of the additional documents are relevant to a material fact in issue. Key is that the appellant has still not produced the statement of adjustments relating to the closing of the purchase of the property at 57 Tabaret Crescent in July 2018. The statement of adjustments would have laid bare that the application for the GST/HST new housing rebates was completed and submitted to the builder as part of the transaction and that the builder credited the amount of $22,455.37 toward the amount payable to the builder on the closing in July 2018. The appellant's delivery of the additional documents on March 5, 2025, is a continuation of her selectively cherry-picking documents.

[77] I accept that the signature on the rebate application form is not the appellant's signature. However, I do not accept the appellant's evidence that the application was submitted to the builder as part of the closing of the purchase in July 2018 without her knowledge or consent. And I would not make a finding that Mr. Kumar and the SherGill Law Firm acted without the appellant's consent in circumstances where neither Mr. Kumar nor the solicitor were called as witnesses. They had no opportunity to respond to the appellant's allegation.

[78] The circumstances relating to the closing of the purchase in July 2018 are more likely such that the appellant deferred to Mr. Kumar since he was experienced in real estate transactions and the appellant was not. And so, I find that the appellant deferred to Mr. Kumar and she was made the claimant on the GST/HST new housing rebates application during the closing of the transaction in July 2018.

[79] Moreover, it seems likely that the builder would have required a statutory declaration from the appellant relating to the application for the GST/HST new housing rebates. As noted earlier, builders rely on such declarations to mitigate the risk of joint and several liability under s. 254(6) of the ETA (see also the parallel rule in s. 256.21(5) of the ETA).

[80] The appellant admitted that she obtained other documents from the SherGill Law Firm but was content to only produce documents that pointed toward Mr. Kumar enjoying 50% of the value of the rebates.

[81] In addition, the fact that the appellant did not report the disposition of the property for a profit in her income tax return filed for the 2018 taxation year is consistent with a pattern of conduct of seeking to have the transaction go undetected.

[82] I find that the appellant, together with Mr. Kumar, claimed the GST/HST new housing rebates because it was advantageous to do so at that time. It reduced their outlay on the closing of the purchase in July 2018 by $22,455.37. And this would have been apparent at that time.

[83] I also note that the appellant entered into evidence a copy of an email that she sent to Mr. Kumar on March 18, 2023 (Exhibit A-4). The email does portray that the appellant may not have entirely understood the requirements for eligibility for the GST/HST new housing rebates when the application was submitted. However, nothing in the email suggests that the appellant believed that the application for the rebates was made without her knowledge or consent. Instead, it seems the appellant developed this narrative when it turned out that Mr. Kumar would not willingly reimburse her for one-half of the amount assessed. And her overall objective in dealing with the CRA after she became aware of the assessment was to have the CRA pursue Mr. Kumar for 50% of the liability.

[84] In any event, the issue before the Court is whether the appellant is liable for overpayments of rebates under s. 264(1) of the ETA. As explained below, the appellant is liable for an overpayment of the GST/HST new housing rebates.

[85] The appellant was a “recipient” of a “supply of property” when she entered into the agreement of purchase and sale with the builder (see s. 123(1) of the ETA and the definition of “recipient” and s. 133 of the ETA). As such, the appellant was liable for the tax imposed under ss. 165(1) and 165(2) of the ETA on the taxable supply at the rate of 5% and 8%, respectively, on the value of the consideration for the supply.

[86] By being made the claimant in the application for the GST/HST new housing rebates, in a purchase undertaken with Mr. Kumar, amounts were paid to or applied to the liability of the appellant as rebates under ss. 254(2) and 256.21(1) of the ETA, as prescribed under the Regulations, and the appellant was not entitled to the rebates. As such, in accordance with s. 264(1) of the ETA, the appellant is liable to pay to the Receiver General an amount equal to the rebates, on the day the amounts were applied to the liability of the appellant on the closing of the purchase.

[87] While the appellant may feel aggrieved that she is liable for 100% of the overpayments in circumstances where Mr. Kumar also benefited, that is a civil matter that concerns the appellant and Mr. Kumar. Stated another way, if Mr. Kumar does not compensate the appellant, the appellant's recourse is to consider a civil proceeding against Mr. Kumar. The viability of bringing such a proceeding is not a matter for this Court to determine. The applicable legislation does not allow this Court to split the amount 50/50 between the appellant and Mr. Kumar.

[88] Moreover, since commencing her appeal, the appellant has referred to her arrangement with Mr. Kumar as being a 50/50 partnership. Although the respondent did not advance this argument, I note that a partnership is treated as a person under the ETA (see the definition of "person" in s. 123(1) of the ETA). And the members of a partnership are also jointly and severally liable for the payment of all amounts that become payable by a partnership under Part IX of the ETA, including under s. 264(1) (see s. 272.1(5) of the ETA).

[89] If the appellant and Mr. Kumar were carrying on a business as partners in a partnership, the partnership would not have been eligible for the GST/HST new housing rebates since the rebates are only available to an individual. Moreover, if the so-called partnership had successfully applied for the rebate and submitted it to the builder, the appellant would have been jointly and severally liable for the overpayment under s. 264(1) of the ETA. I point this out not because it was the basis of the Minister's assessment, but to make clear that the appellant's partnership argument does not lead to the outcome that she desires.

[90] In conclusion, the appellant is liable under s. 264(1) of the ETA for the overpayments of the GST/HST new housing rebates.

IV. Analysis of the Second Issue: Is the Appellant Liable for Interest?

[91] The appellant says that she should not be charged interest because the Minister's notice of assessment was sent to the address at 57 Tabaret Crescent, rather than the mailing address that the CRA used for her personal income tax matters under the ITA. This, the appellant argues, resulted in an unfair and unjustified accrual of interest. I will deal with the question of whether the appellant is liable for interest here and leave the matter of the CRA sending the notice of assessment to the address at 57 Tabaret Crescent as part of the third issue.

[92] As stated, s. 264(1) of the ETA, provides that a person liable for an overpayment of a rebate shall pay to the Receiver General an amount equal to the

rebate or excess, as the case may be, on the day the amount is paid to, or applied to the liability of, the person as a rebate. This provision establishes the appellant's liability for the overpaid GST/HST new housing rebates.

[93] In accordance with s. 280(1) of the ETA, if a person fails to pay an amount to the Receiver General when required under Part IX of the ETA, the person shall pay interest at the prescribed rate on the amount. This provision makes the appellant liable to pay interest at the prescribed rate on her liability for the overpayments under s. 264(1) of the ETA.

[94] This Court has no jurisdiction to grant relief from interest as a matter of fairness. If the appellant believes that she ought to be entitled to interest relief, the appellant may wish to inform herself about the possibility of making an application to the Minister for the waiver of interest, if she has not already done so. I express no view on the merits of such an application.

[95] I next turn to the appellant's statute-barred argument.

V. Analysis of the Third Issue: Is the Assessment Statute-Barred?

[96] This issue was raised for the first time during closing argument. The appellant says that the CRA sent the assessment to an incorrect address on January 15, 2020, and by the time the CRA sent her a copy of the notice of assessment on February 28, 2023, the assessment was made beyond the statutory limitation period and, as such, the assessment is statute-barred. This statute-barred argument was not pleaded in the appellant's notice of appeal, although I acknowledge that the appellant did raise the issue of whether the CRA sent the notice to the correct address in the context of her argument that charging interest was unfair and unjustified.

[97] Due to the absence of notice, the respondent has not pleaded to the limitation period in the reply. Moreover, counsel for the respondent proceeded first in closing argument. In reply submissions, counsel for the respondent pointed out that the appellant had not specifically raised the statute-barred issue in her notice of appeal.

[98] In any event, key to the appellant's argument is that the CRA should have sent the notice of assessment to her Bourne Crescent Address, which is the mailing address that she used for the purpose of filing her income tax returns under the ITA and the mailing address used by the CRA when sending her notices under the ITA. There is no dispute that the CRA sent the notice of assessment to the address at 57 Tabaret Crescent in Oshawa, Ontario on January 15, 2020.

[99] For the reasons set out below, I have concluded that the assessment was not statute-barred.

[100] The starting point for this issue is in s. 298(2) of the ETA, which provides that an assessment under s. 297(2.1) for an overpayment of a rebate shall not be made more than four years after the day the application for the rebate was filed.

[101] However, under s. 298(4) of the ETA, an assessment in respect of any matter may be made at any time where the person to be assessed has, in respect of the matter, made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default or committed fraud, in part, in making or filing an application for a rebate under Division VI.

[102] In this case, there is no dispute that the rebate application was filed by the builder some time between August 23, 2018, and August 30, 2018. In particular, the respondent's reply indicates that the application was filed on August 23, 2018. However, the date stamp on the rebate application bears the date of August 30, 2018 (see Exhibit R-1). I will use the earlier date of August 23, 2018, because it results in the earliest date for determining the four-year limitation period under s. 298(2). Thus, and subject to the exceptions in s. 298(2), the Minister had until August 23, 2022, to assess the appellant under s. 264(1) of the ETA for the overpayments of the GST/HST new housing rebates.

[103] I also accept that the appellant did not receive a copy of the notice of assessment dated January 15, 2020, until it was sent by the CRA on February 28, 2023, to her Bourne Crescent Address.

[104] Subsection 334(1) of the ETA provides that anything sent by first-class mail, or its equivalent, is deemed received by the person to whom it was sent on the day that it was mailed.

[105] In this case, it is not the mailing of the notice of assessment that is in doubt, but rather whether the address to which it was sent is the correct address. For the presumption in s. 334(1) to apply, the address used by the CRA must be the correct one. A notice of assessment sent to an incorrect address is not deemed to have been received: *Kirschke v. The Queen*, 2019 TCC 68 at paras 27–28, citing *Scott v. MNR*, 60 DTC 1273, 1960 CanLII 742 (Ex Ct); and see Canada *v. 236130 British Columbia Ltd*, 2006 FCA 352 at paras. 20–22.

[106] Fundamental to the appellant's argument is that the address used by the CRA to send notices under the ETA must be the same as the address used by the CRA to send notices under the ITA. But this does not automatically follow since the ETA and ITA are separate statutes. This Court made the same point in *Newell v. The Queen*, 2010 TCC 196 at para. 40, in an appeal under the informal procedure.

[107] For example, an individual who carries on a business as a sole proprietor may file income tax returns and receive notices from the CRA under the ITA at a personal residential address but, at the same time, use a different business address to file returns and receive notices under the ETA.

[108] The circumstances here are also different than those in *Kirschke.*

[109] In *Kirschke*, Justice Monaghan (then of this Court and now Monaghan J.A.), considered whether notices of reassessment under the ETA were not mailed to the correct mailing address in the context of an application for an extension of time to object to reassessments made under the ETA. In that case, Ms. Kirschke had carried on a restaurant business as a sole proprietor, was a registrant under the ETA and was required to collect HST.

[110] Ms. Kirschke ceased operating the restaurant business but decided to not close the HST account with the CRA because she thought that she might restart the business in a different location. There was evidence that Ms. Kirschke had been told by the CRA that her HST account was linked to her social insurance number and her profile with the CRA. Ms. Kirschke filed nil HST returns for each of the 2010 to 2014 annual reporting periods, but did not file a HST return for the 2015 reporting period.

[111] In early 2015, Ms. Kirschke moved to a new address, and she advised the CRA of her new address by filing her income tax return for the 2014 taxation year using the new address. She did not separately notify the CRA of the new address for HST purposes, as she had been told that both her accounts were linked to her profile. And Ms. Kirschke was not aware that she had to separately update her address for HST purposes. The CRA records relating to Ms. Kirschke's income tax account showed the new address effective in 2015, but the HST address was not updated until 2018. In 2016, the CRA issued reassessments under the ETA in respect of Ms. Kirschke's 2010 to 2014 reporting periods and mailed the notices to the old address. Ms. Kirschke learned of the additional reassessments when she received CRA collection letters in 2018.

[112] Monaghan J. found that it was reasonable for Ms. Kirschke to have assumed that, once she had updated her address with the CRA for income tax purposes, the update would apply to all accounts linked to her profile. This was because there was credible evidence that Ms. Kirschke had conversations with a CRA representative that assured her that her income tax and HST accounts were linked. And so, Monaghan J. found that the reassessments that were mailed to the old address were not mailed to a correct mailing address. In the end, however, Monaghan J. concluded that Ms. Kirschke had received actual notice later such that the notice of objection was filed in time (see *Kirschke* at paras. 35–36).

[113] Here, I accept that the CRA used the correct mailing address by sending the notice of assessment to 57 Tabaret Crescent. This was the address stated as the mailing address for the appellant as the claimant in the application for the GST/HST new housing rebates (for a similar finding, see *Afkari* at paras 10–11 and 23–24). My finding here is also based on my factual findings on the first issue considered earlier.

[114] Recognizing that the ITA and ETA are separate statutes, it was reasonable here for the CRA, when mailing the notice of assessment under the ETA, to not use the appellant's mailing address associated with her social insurance number for the purposes of the ITA.

[115] Indeed, where a claimant applies for the GST/HST new housing rebates, it would raise a red flag if the application was made on the basis that the new house was purchased as the applicant's (or a relation's) primary place of residence, on the one hand, and then use a different mailing address in the application, on the other hand. Moreover, the occupancy requirements in s. 254(2) further support the reasonableness of expecting the address of the subject property to be a claimant's mailing address, unless stated otherwise on the application.

[116] Unlike in *Kirschke*, there are no circumstances here that would make it reasonable for the appellant to believe that her address for purposes of the ITA was linked to the address to be used by the CRA for the purposes of the GST/HST new housing rebates. Accordingly, I conclude that the CRA used the correct address when the notice of assessment was sent to the appellant on January 15, 2020, at the address at 57 Tabaret Crescent, with the result that the Minister's assessment was not statute-barred.

[117] I recognize that my conclusion creates a possible gap in the logic of how this matter came before this Court.

[118] If the notice of assessment was sent to the correct mailing address on January 15, 2020, the 90-day deadline for objecting to the assessment under s. 301 of the ETA would have expired before the appellant filed an objection on April 6, 2023. The CRA Appeals Division initially advised the appellant by letter dated May 29, 2023, that her objection was late and that an extension of time could not be granted under s. 303(7) of the ETA because a request for an extension of time had to be made before April 14, 2021 (see extract of the letter from the CRA dated May 29, 2023, at Exhibit A-5).

[119] However, by letter dated May 31, 2023, the CRA Appeals Division told the appellant to disregard the letter of May 29, 2023, and advised that, upon further review, her objection dated April 6, 2023, was considered valid (see extract of the letter from the CRA dated May 31, 2023, at Exhibit A-5).

[120] It would thus seem that the CRA Appeals Division may have accepted that the notice of assessment dated January 15, 2020, was not sent to the correct address and that the appellant had actual notice at some point in early 2023 after the CRA Collections Division sent her a copy of the notice of assessment at her Bourne Crescent Address, with the further result that the 90-day deadline for objecting had not commenced until the appellant had actual notice.

[121] There is no need for me to adjudicate whether the appellant's notice of objection was filed in time.

[122] However, if I have erred in my conclusion that the notice of assessment dated January 15, 2020, was sent to the correct address at 57 Tabaret Crescent, the exceptions in s. 298(4) of the ETA are relevant.

[123] In particular, s. 298(4) provides, in part, that an assessment in respect of any matter may be made at any time where the person assessed has, in respect of that matter, made a misrepresentation that is attributable to the person's neglect, carelessness or wilful default.

[124] I would find that a misrepresentation was made in the application for the GST/HST new housing rebates because (based on the evidence before the Court) at the time the appellant and Mr. Kumar became liable under the agreement of purchase and sale, the appellant and Mr. Kumar were not acquiring the new home for use as their primary place of residence or that of a relation. Instead, the appellant and Mr. Kumar acquired the home as an investment property that would be resold. As such, an incorrect statement was made in the application when the question "Did you

purchase the house for use as your, or your relation's, primary place of residence?" was answered affirmatively.

[125] I would also have no difficulty in finding that the misrepresentation was attributable to neglect (see generally *Canada v. Paletta*, 2022 FCA 86 at paras. 64–65). This is because, earlier in these reasons, I did not accept the appellant's evidence that the GST/HST new housing rebates application was made without her knowledge and consent. The appellant, perhaps somewhat naively and possibly inexperienced in real estate transactions, cannot avoid being found to have been neglectful or careless merely by relying upon an experienced co-purchaser.

[126] Moreover, I have serious concerns about the appellant not being forthcoming with the documents that would have shown that the amount of the rebates was credited by the builder against the amount owning on the closing of the purchase in July 2018.

[127] Added to this is the reality that if the appellant had produced a copy of the statement of adjustments relating to the purchase of the property at 57 Tabaret Crescent — i.e., the same statement of adjustments that she described in her conversations with the builder's representative in 2023 and with the CRA, the same statement of adjustments that was requested by counsel for the respondent in advance of the hearing, and the same statement of adjustments that was the subject of much discussion throughout the hearing — the appellant's narrative that she was defrauded by Mr. Kumar would begin to unravel.

[128] For completeness, I also note that in the written hand-up that was submitted in closing argument, and which relates to the statute-barred issue, the appellant referred to the three-year normal reassessment period for reassessing a taxpayer under the ITA. Nonetheless, I can discern the substance of her statute-barred argument and have simply considered the applicable statutory scheme under the ETA.

VI. Conclusion

[129] Based on the forgoing, I have concluded that the appellant is liable for overpayments under s. 264(1) of the ETA, the appellant is liable for interest in accordance with s. 280(1) of the ETA and the assessment was not statute-barred.

[130] Accordingly, the appellant's appeal will be dismissed, without costs.

Signed this 25th day of March 2025.

"Perry Derksen"

Derksen J.

CITATION:	2025 TCC 49
COURT FILE NO.:	2024-1175(GST)I
STYLE OF CAUSE:	ANEETA RAM v. HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	February 27, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice Perry Derksen
DATE OF JUDGMENT:	March 25, 2025

APPEARANCES:

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