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-`1Docket: 2024-1229(IT)G

BETWEEN:

MOHAMED SIAM,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard on October 30, 2024, at Montréal, Québec

Before: The Honourable Justice Jean Marc Gagnon

Appearances:

Counsel for the Appellant:	Michael N. Bergman Law student Bianca Santangelo
Counsel for the Respondent:	Arnaud Prud'Homme

JUDGMENT

UPON reading the Respondent's motion pursuant to paragraph 53(3)(b) and section 65 of the *Tax Court of Canada Rules (General Procedure)* seeking an order to:

(i) quash the appeal on the grounds that a condition precedent to instituting an appeal under subsection 169(1) of the *Income Tax Act* had not been met;

(ii) or in the alternative, an extension of time to file the Reply to the Notice of Appeal pursuant to paragraph 44(1)(b) of the *Tax Court of Canada Rules (General Procedure)* no later than 60 days from the date of the order denying this motion; and

(iii) awarding costs of this motion.

AND UPON hearing the evidence and submissions of the parties;

AND UPON reading Respondent counsel's written submissions dated October 30, 2024;

NOW THEREFORE in accordance with the attached reasons:

1. The Respondent's motion is granted.

2. The Appellant's appeal filed with the Court on May 17, 2024, under the *Income Tax Act*, in respect of his 2016 taxation year is quashed.

3. Each party shall bear their own costs.

Signed this 8th day of May 2025.

"J.M. Gagnon"

Gagnon J.

Citation: 2025 TCC 69
Date: 20250508
Docket: 2024-1229(IT)G

BETWEEN:

MOHAMED SIAM,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Gagnon J.

I. Introduction

[1] The Appellant, Mr. Mohamed Siam, instituted an appeal on May 17, 2024, under the *Income Tax Act*[1] and the *Tax Court of Canada Rules (General Procedure)*[2] in respect of a reassessment made for his 2016 taxation year and confirmed by notice of reassessment dated August 18, 2023 (2023 Reassessment). The issue in this appeal concerns the results of an arbitrary assessment by the Canada Revenue Agency (CRA).

[2] The Respondent brought a motion before this Court pursuant to paragraph 53(3)(b) and section 65 of the General Rules seeking an order quashing the appeal, with costs.

[3] In support of the motion, the Respondent relies on the following statements of facts:

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[1] RSC 1985, c 1 (5th Supp) [ITA or Act].
[2] SOR/90-688a [General Rules].

1. The Appellant did not file an income tax return for his 2016 taxation year within the prescribed time, pursuant to paragraph 150(1)(d) ITA.
2. On April 19, 2018, the Minister of National Revenue (Minister) issued the Notice of Assessment based on the available information pursuant to subsection 152(7) ITA (Assessment/Notice of Assessment).
3. On October 31, 2019, the Minister issued a notice of reassessment for the Appellant's 2016 taxation year (2019 Reassessment). The Minister changed the Appellant's non-refundable tax credit for tuition and education (Non-Refundable Credit) from $0 to $21,590 which resulted in a reduction of his federal total tax amount.
4. Pursuant to subsection 152(3.1) ITA, the normal reassessment period for the Appellant's 2016 taxation year ended on April 19, 2021.
5. On September 20, 2022, the Minister received the Appellant's income tax return for the 2016 taxation year.
6. On August 18, 2023, the Minister issued the 2023 Reassessment. The Minister increased the Appellant's Non-Refundable Credit from $21,590 to $28,314, which reduced the taxpayer's federal total tax amount.
7. On November 14, 2023, the Appellant filed a notice of objection against the 2023 Reassessment.
8. On May 17, 2024, before any decision by the Minister regarding the Appellant's objection, the Appellant filed a notice of appeal for his 2016 taxation year.

II. Position of the parties

[4] The grounds for the Respondent's motion are that the Appellant had not served on the Minister a valid notice of objection against the 2023 Reassessment pursuant to subsection 165(1) ITA which is required by subsection 169(1) ITA.

[5] The Respondent is of the view that the only valid basis for the Minister to issue the 2023 Reassessment was by virtue of subsection 152(4.2) ITA. Considering that the conditions of subsection 152(4.2) were met to authorize the issuance of the 2023 Reassessment, subsection 165(1.2) ITA applies and precludes the Appellant from being allowed to file a valid notice of objection against the 2023 Reassessment. Therefore, the absence of a valid notice of objection against the 2023 Reassessment results in the Court having no jurisdiction to hear this appeal.

[6] The Respondent is also of the view that the available recourse to the Appellant is to request a secondary review by the Minister of the Minister's decision with

respect to the Appellant's 2016 income tax return. This could ultimately lead to a judicial review at the Federal Court.

[7] On the other hand, the Appellant is of the view that the 2023 Reassessment is valid because the 2023 Reassessment was issued within the Appellant's normal reassessment period in respect of his 2016 taxation year. The normal reassessment period did not start on the date of the Notice of Assessment, but at a later date such that the three years period referred to in paragraph 152(3.1)(b) ITA ended after August 18, 2023, the date of the 2023 Reassessment.

[8] The Court understands the position of the Appellant, that he was made aware of the 2023 Reassessment some time after the notice's issuing date. The Appellant does not specifically argue that the Notice of Assessment was never mailed. Alternatively, the Appellant argues that the Notice of Assessment was mailed to the wrong address.

[9] The Appellant is arguing that: because the 2023 Reassessment was issued within the Appellant's normal reassessment time period, a valid notice of objection was filed by the Appellant, and a valid notice of appeal is before the Court. Thus, taking the position that the Court does have jurisdiction to hear this appeal, the Respondent's motion should be dismissed.

[10] Appellant's counsel also argued that Mr. Siam was told by someone at CRA that a new file would be opened with a new file number and that he would still be able to object the 2023 Reassessment.

III. Discussion

[11] Mr. Siam did not attend the hearing. No witness was heard at the hearing. The sole evidence relied upon was submitted by each party: an affidavit of Mohamed Siam (Appellant's Affidavit) and an affidavit of Enold Bouquette, litigation officer at the CRA.

[12] The parties do not disagree with respect to the strict legal validity of the 2023 Reassessment. The Court will not reconsider that status, although each party relies on different provisions of the Act for its enforceability. In order to support the 2023 Reassessment's legal validity: the Appellant relies on subsection 152(4) ITA and the Respondent relies on subsection 152(4.2) ITA (Applicable Enforceability Provision). The Court notes that the evidence at the hearing supports that the conditions of subsection 152(4.2) have been met: subject to determine whether the

2023 Reassessment was issued after the end of the normal reassessment period for the Appellant's 2016 taxation year. Such determination will then confirm which of the two provisions above is the Applicable Enforceability Provision. This is the only opposition raised by the Appellant.

[13] In order to succeed against the Respondent's motion, the Appellant must demonstrate that the evidence supports that the Minister made the 2023 Reassessment within the normal reassessment period of the Appellant's 2016 taxation year and not after the allotted time frame. If the Appellant does not succeed on this point, the Respondent's motion must be granted. The Court is of the view that the Act, based on case law, is clear that subsection 165(1.2) ITA prevents taxpayers from objecting to reassessments issued under subsection 152(4.2) ITA.[3] The Court does not have jurisdiction to hear an appeal without a valid notice of objection.

[14] Under subsection 152(4) ITA, as a general rule, the Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year. Here, the relevant word is reassessment. The relevant part of subsection 152(4) reads as follows:

> Assessment and reassessment
>
> (4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if […]

[15] Subsection 152(3.1) ITA defines normal reassessment period as follows:

> Definition of normal reassessment period
>
> (3.1) For the purposes of subsections (4), (4.01), (4.2), (4.3), (4.31), (5) and (9), the normal reassessment period for a taxpayer in respect of a taxation year is
>
> (a) […]; and
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> (b) in any other case, the period that ends three years after the earlier of the day of sending of a notice of an original assessment under this Part in respect of the taxpayer for the year and the day of sending of

[3] See *Letendre v The Queen*, 2011 TCC 577; *Reyes v The King*, 2023 TCC 31; *Groulx v R*, 2009 FCA 10.

> an original notification that no tax is payable by the taxpayer for the year.

[16] In light of this wording, the following question arises: what is the Appellant's normal reassessment period in respect of his 2016 taxation year? Considering that one key factor in particular in the Appellant's case would be the important question: what is the date or the day the Notice of Assessment was sent by the Minister? For the Appellant to succeed, the normal reassessment period in the present case cannot start sooner than August 18, 2020 referred herein as the 2023 Reassessment date.

[17] The reference to the date of sending the notice of assessment under Part I in paragraph 152(3.1)(b) ITA has been interpreted as a reference to mailing.[4]

[18] In the *Mpamugo* decision Justice Graham sets out the test to apply when a taxpayer asserts that a notice of assessment was never sent by the Minister of National Revenue:[5]

(a) Step 1: The taxpayer must assert that the Notice of Assessment was not mailed.[6] A taxpayer normally does so in one of two ways. The taxpayer may assert that he or she did not receive the Notice of Assessment and thus believes that it was not mailed. Alternatively, the taxpayer may assert that the Notice was mailed to the wrong address through no fault of the taxpayer and was thus, in effect, not mailed.

(b) Step 2: If the taxpayer asserts that the Notice of Assessment was not mailed, the Minister must introduce sufficient evidence to prove, on a balance of probabilities, that the Notice of Assessment was indeed mailed or, if the taxpayer has asserted that it was mailed to the wrong address, that it was mailed to the address that the CRA properly had on file.[7]

(c) Step 3: If the Minister is able to prove that the Notice of Assessment was indeed mailed, then the mailing is presumed to have occurred on the date set out on the Notice (subsection 244(14)). This is a rebuttable presumption.[8] The taxpayer may introduce evidence to prove that it was actually mailed on a different date. The deadline for filing

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[4] See *Aztec Industries Inc. v The Queen*, 1995 CarswellNat 278 at para 11 (FCA) [*Aztec*]: "Subsection 165(1), supra, makes it plain that it is the mailing of the notice of assessment which starts the clock ticking against the taxpayer." Also see subsection 152(2) ITA that states "After examination of a return, the Minister shall send a notice of assessment to the person by whom the return was filed."

[5] *Mpamugo v R*, 2016 TCC 215 [*Mpamugo*]. Counsel for the Appellant referred the Court to this test. Justice Graham applied the same test to GST assessments in *DaSilva v The Queen*, 2018 TCC 74, and to notices of confirmation in *Boroumend v The Queen*, 2016 TCC 256, aff'd on appeal (2017 FCA 245).

[6] *Aztec*; *Schafer v R*, (FCA) 2000 CarswellNat 1948 [*Schafer*].

[7] *Schafer* (FCA); *Scott v MNR* (1960) [1961] Ex.C.R. 120; 236130 *British Columbia Ltd. v The Queen*, 2006 FCA 352; *Bowen v The Queen* 1991 CarswellNat 5202 CTC 266 (FCA).

[8] *McGowan v The Queen*, (FCA) 1995 CarswellNat 381 in *obiter* at para 19 [*McGowan*].

a Notice of Objection is calculated from the mailing date established by this step (subsection 165(1)). The "normal reassessment period" for a tax year also commences from the mailing date established by this step (subsection 152(3.1)).

(d) Step 4: Once the mailing date is established (either through the presumption or through proof of a different date), the assessment is deemed to have been made on that date (subsection 244(15)) and the Notice of Assessment is deemed to have been received on that date (subsection 248(7)). These deeming provisions are not rebuttable.[9] The date on which an assessment is made is used to determine whether a reassessment was made outside of the "normal reassessment period" of a tax year (subsection 152(4)). Step 4 is not strictly relevant for the purposes of determining the deadline for filing a Notice of Objection. That determination is made in Step 3. Step 4 simply makes it clear that the fact that a taxpayer did not actually receive the Notice of Assessment is irrelevant.

[Emphasis added.]

[19] The *Mpamugo* decision was appealed to the Federal Court of Appeal.[10] The Court of Appeal upheld the above noted steps, however held that the Minister would only be required to prove mailing if the taxpayer's allegation that the assessment was not mailed was credible:

> I agree with the Crown that it would not be an error for a Tax Court judge to initially assess the credibility of a taxpayer who alleges that he or she did not receive a notice of reassessment (and therefore bring into question whether it was sent). If a Tax Court judge were to determine that the taxpayer was not credible in saying that a notice of reassessment was not received, it would seem to me that this would mean that the Tax Court judge would directly or indirectly be finding that the notice of reassessment was received by the taxpayer. If it was received it must have been sent. If that is the finding there would not be any need for any further proof that the notice of reassessment was sent. Of course, any finding of credibility could only be made after all of the evidence has been heard.

[20] The first step of the test (Step 1) is for the Appellant to assert that he did not receive the Notice of Assessment and that he believes that it was not mailed (Part I of Step 1). Alternatively, the Appellant asserts that the Notice of Assessment was mailed to the wrong address, through no error on his part, and therefore it was not mailed or received (Part II of Step 1). If the Appellant's submission is not credible then the Appellant's argument in this motion must be dismissed.

[21] In respect of Part I of Step 1, the Appellant's position is not entirely clear. At the hearing, the Appellant did not rely on the fact that the Notice of Assessment was never mailed at any given time. The Appellant argued that he did not receive the

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[9] *Schafer* (FCA).
[10] *Mpamugo v Canada*, 2017 FCA 136 at para 12.

Notice of Assessment on or about April 19, 2018. The Appellant claims that he was made aware of the Notice of Assessment at a later date. The Notice of Assessment was received at a later date and therefore, for the purposes of Part I of Step 1, it was mailed at that point.

[22] The evidence introduced at the hearing by the Appellant must be scrutinized in order to assess whether the assertion of the Appellant is credible. Such credibility can only be measured and assessed through the Appellant's Affidavit.

[23] Before referring to the Appellant's Affidavit, the Court notes that each of the documents filed by the parties at the hearing: the Notice of Assessment, the 2019 Reassessment, the 2023 Reassessment, and statement details letters display the same postal address of the Appellant. These documents cover over a five-year period from April 19, 2018 (date of the Notice of Assessment) to August 25, 2023 (date of a statement of account). In addressing Part I of Step 1, the Court notes that the Appellant, when disclosing his position, did not refer to all of these documents as being affected by the same treatment as for the Notice of Assessment. For the sole purpose of the test, he did not have to do so. However, the Court will consider, at a minimum, that not all documents mailed to the same postal address would have been subject to the same outcome.

[24] The Appellant's Affidavit contains 8 pages and 9 Exhibits from A to I, for a total of 64 pages. Several topics are referred to in the Appellant's Affidavit. More specifically, a few paragraphs in the Appellant's Affidavit relate directly or indirectly to the correspondence from the CRA to the Appellant, including the Notice of Assessment, the Appellant's level of awareness of the Notice of Assessment, and the Appellant's postal address as it relates to correspondence between the CRA and the Appellant.

[25] At the hearing, the Appellant did not direct the Court to any specific extracts of relevant paragraphs contained in the Appellant's Affidavit with respect to the normal reassessment period. Except the Appellant did direct the Court to general references contained in paragraphs 6, 22, 23 and 31. The Court has reproduced the following paragraphs from the Appellant's Affidavit which relate to the Appellant's position:

> 4. I left Canada on or around January 1st, 2009 and took up residence in Doha, Qatar until January 8th, 2020. I have resided in Istanbul, Turkey since January 1st, 2020. I have not returned to Canada since, except for a handful of short-term visits lasting no longer than a month.

5. I visited Canada in July 2009 to attend my Masters graduation and register my marriage.

6. During August 2013, I came to Canada to renew my passport, which was my last visit to Canada.

[…]

15. In 2019, I opened a Bank of Montreal ("**BMO**") account as a non-resident of Canada for tax purposes. [...].

16. The BMO Account has been garnished by the Canada Revenue Agency ("**CRA**") since 2022 in the amount of $4,637.82 CAD.

[…]

22. On December 7, 2021, I received an email from my mother, Soad El Habash, informing me that the CRA had issued a Notice of Assessment for the 2016 fiscal year (the "**Notice**"). Attached and marked as **Exhibit "D"** to this affidavit is a copy of the email I received from my mother. The Notice stated that I owed $85,503.68, based on a taxable income of $296,009 and associated penalties. The Notice also indicated that, contrary to my previous understanding, the issue with my earlier tax filings, which had been handled by Mr. Hélou, remained unresolved.

23. I understand that the Notice was sent to 22B-1200 Boulevard de Maisonneuve O, Montreal, QC, H3A 0A1, despite the fact that I did not reside at that address. During a visit to Canada, my mother was handed the documents either by my sister-in-law, who resides in the same building, or by the tenant of apartment 22B.

24. In October 2022, Mr. Hélou contacted my mother to inform her that he had reached out to the CRA agent handling my file. He requested that my mother obtain clarification from me regarding certain details related to Bitcoin-related equity trades conducted in 2016. Attached and marked as **Exhibit "E"** to this affidavit is a copy of an email from Mr. Hélou to my mother in October, 2022.

[…]

31. Ms. Daigle later informed me during a subsequent call that the circumstances warranted reopening the case under a new case number, and she had obtained approval from her superior to proceed. She explained that a reassessment would be conducted and advised me to ensure I had a reliable method of receiving the notice in a timely manner, given my residency outside of Canada, as I would have 90 days to file an objection. Ms. Daigle confirmed that I would have the right to object to the new notice of assessment once it was issued. Attached and marked as **Exhibit "G"** to this affidavit is a copy of the said Notice of Objection.

[26] Considering the Appellant's intention he may have sought to reflect in the preceding extract, the following paragraphs from the Appellant's Affidavit shed uncertainty on that intention:

17. In 2012, I retained an accountant by the name of Mr. Camille Hélou, of DHA Inc., Chartered Professional Accountants. I first retained Mr. Hélou in late 2012 for a duration of three years. I retained him again in late 2016 and again in early 2019.

18. In or about 2019, I became aware through my Mr. Hélou that there was an issue with my pre-2019 tax filings.

19. On February 2, 2019, I reauthorized Mr. Hélou to act as my representative and resolve the earlier tax return issues. Attached and marked as **Exhibit "C"** to this affidavit is a copy of an email with DHA 2019 Authorization.

20. Mr. Hélou explained to me that the taxation issue arose from a misunderstanding and assured me that he possessed all the necessary documentation to resolve the matter, as he had been responsible for filing my taxes since 2010, including in 2016. He further explained that all amounts were reported as "NIL" due to my status as a non-resident of both Quebec and Canada during the relevant period.

21. After this exchange with Mr. Hélou, I had understood that the issue had been resolved.

[…]

25. Between late 2021 and early 2022, and again from late 2022 to January 2023, I provided all the requested information to Mr. Hélou via email. I informed him that no capital gains had been realized. Furthermore, I clarified that the Bitcoin transactions referenced by the CRA agent were not related to shares bought and sold directly through Bitcoin, but rather through the Bitcoin Investment Trust (ticker symbol "**GBTC**"). Attached and marked as **Exhibit "F"** to this affidavit is a copy of an email thread between Mr. Hélou and myself related to this investment.

26. I clarified to Mr. Hélou that no income was realized, nor were any capital gains made, and that the CRA appeared to be double counting the buy and sell transactions without properly offsetting them. Mr. Hélou concurred with my assessment, as evidenced in our email correspondence (Exhibit E). In that same email thread, I also expressed my surprise and frustration to Mr. Hélou, noting that he had previously led me to believe the issue had been resolved, and that the documentation he referred to (via fax) had confirmed same.

27. In the summer of 2023, after losing confidence that Mr. Hélou would handle the matter properly, I contacted the CRA directly. I had several discussions with Ms. Annick Daigle, during which I explained that the CRA's demands were unjustified, particularly given that I have been a non-resident of Canada for tax purposes since 2009. I further pointed out that the assessment failed to account for my cumulative student tax credits from my time at McGill University.

28. I explained to Ms. Daigle that I had not realized any capital gains or withdrawn any amounts from the TD brokerage account after leaving Canada, and that I ultimately traded the account down to a zero balance.

> 29. I further explained to Ms. Daigle that the CRA had erroneously added the sale transactions to the buy transactions, thereby inflating the calculations. I clarified that these transactions should be offset against each other, rather than combined.
>
> 30. I stated to Ms. Daigle that I had bought and sold, among other securities, GBTC shares through TD Waterhouse, but did not purchase Bitcoin directly from TD Waterhouse. Additionally, I clarified that all of these securities are U.S. securities and not Canadian securities.
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> […]
>
> 32. On August 18, 2023, a Notice of Reassessment was issued, followed by a statement of account dated August 25, 2023, indicating that I owe $93,699.37. Attached and marked as **Exhibit "H"** to this affidavit is a copy of the Statement of Account dated 25 August 2023, and attached and marked as **Exhibit "I"** to this affidavit is a copy of the Notice of Reassessment dated 18 August 2023.
>
> […]

[27] Under Part I of Step 1, the Appellant is essentially of the view that the Notice of Assessment was mailed on a later date, in which case the Appellant is essentially challenging the rebuttable presumption in subsection 244(14) ITA. If the Appellant is not successful then the Notice of Assessment is deemed to be mailed on the date of the notice. The Act does not require the notice to be received by the taxpayer in order to be valid rather the notice only has to be mailed or sent by the Minister to be valid.[11]

[28] It is worth noting that the Appellant did not specifically argue that the Notice of Assessment was never mailed. Upon review of sections of the Appellant's Affidavit relating to Part I of Step 1 shows that the Appellant was informed of the Notice of Assessment mailed by the CRA. The Appellant's Affidavit contains no specific and clear date confirming his knowledge of the notice. However, it does contain references to the content of the Notice of Assessment. In paragraph 22 of the Appellant's Affidavit, reproduced above in paragraph 25 of these Reasons, the Appellant references an email dated December 7, 2021 that he received from his mother. The Appellant then goes on to describe the content of the Notice of Assessment in his Affidavit.

[29] However, in paragraph 22 of the Appellant's Affidavit, the Appellant does not confirm that this is the first time he learnt about the existence of the Notice of Assessment dated April 19, 2018. Moreover, the content of Exhibit D of the

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[11] *Schafer* at para 12; *Pietrovito v R*, 2017 TCC 119 at para 76; *Grunwald v R*, 2005 FCA 421 at para 22; *McClelland v R*, 2004 FCA 315 at para 4; *Rossi v R*, 2015 FCA 267 at para 7.

Appellant's Affidavit does not relate to paragraph 22, as it is an email chain dated October 2022. It would appear that the content of Exhibit D and Exhibit E have been interchanged. The actual content of Exhibit E refers to an email dated December 7, 2021 that was sent by the Appellant's mother to the Appellant and the Appellant's Canadian accountant (Mr. Hélou, is referred to in several paragraphs of the Appellant's Affidavit) that was acting for the Appellant with the CRA. The email is brief, it contains only two sentences and refers to two letters from the CRA. The email does not refer to any details that were discussed between the Appellant's mother and Mr. Hélou. The Court notes that the two letters referred to and attached in the email are not identified or described in the email and are not included in the Appellant's Affidavit. At the hearing of this motion no one testified to clarify and dispel any doubts or ambiguities regarding Exhibit E of the Appellant's Affidavit.

[30] The Appellant's statement in paragraph 22 about the content of the Notice of Assessment is not corroborated or substantiated by the email dated December 7, 2021. The Court also points out that the Appellant's Affidavit confirms that, as of that date, the Appellant had already retained the services of Mr. Hélou. The Appellant was represented by a professional for his tax issues with the CRA since February 2019 and almost three years (34 months) had passed before the Appellant received the December 7, 2021 email. This is a considerable amount of time to not be informed by his Canadian professional tax advisor that a notice of assessment had been issued in your name by the CRA. In any event, from reading paragraph 22 of the Appellant's Affidavit, the Court is not convinced there could be a reasonable indication from the Appellant's explanation that he had not an awareness of the existence of the Notice of Assessment prior to December 7, 2021.

[31] In paragraph 18 of the Appellant's Affidavit, the Appellant confirms he was made aware of issues with his pre-2019 tax filings when Mr. Hélou advised him sometime in 2019. Considering the weight that the Appellant lays on the December 7, 2021 email to set the time of knowledge of the Notice of Assessment, the Court believes that when the Appellant's tax situation was discussed between Mr. Hélou and the Appellant in 2019, it was more likely that the Appellant had known about the Notice of Assessment. No explanation was provided by the Appellant's Affidavit of how Mr. Hélou could have briefed the Appellant in 2019 on tax issues that only the Notice of Assessment dated April 19, 2018 had brought. The 2019 Reassessment was issued later that same year in October 2019 to replace the Notice of Assessment and modified the Appellant's Non-Refundable Credit for tuition fees from $0 originally assessed in 2018 to $21,590. This scenario is supported by the Appellant's Affidavit which cannot be ignored. The prospective

supplemental exchange of information that occurred between the Appellant, the Appellant's mother and Mr. Hélou does not change the Court's analysis.

[32] The Court also notes that in the email chain contained in Exhibit F of the Appellant's Affidavit is an email dated January 21, 2022 from the Appellant to Mr. Hélou which states "What you have detailed is related to a 2011-2016 pending matter that was supposedly settled as you mentioned and advised in your emails 3 years ago." The reference to "3 years ago" in that discussion would have taken place in early 2019. This statement adds to the circumstances described above and to the unlikely scenario that the December 7, 2021 date may be the moment the Appellant learned about the Notice of Assessment. On the contrary, it supports the position exposed in paragraph 31 of these Reasons that the Appellant and Mr. Hélou discussed the situation of the 2016 taxation year at least as early as in 2019.

[33] In *Carvalho*[12], the taxpayer submitted an application for an extension of time to object to an assessment more than one year after the expiration of time to object. The taxpayer argued that he never received the assessment. Justice Tardif wrote:

> 8. The second scenario is that the material sent was addressed to the wrong place, or addressed incorrectly. That scenario is the most reasonable, and in fact it is possible that the various items mailed, including the notice of assessment, were addressed to a place where the Appellant did not live. Were the person or persons who received the item or items mailed friends or family of the Appellant, and did they deliver the notices to him or inform him of the content? Those are all questions to which it is not essential to have an answer or answers. In our tax system, where the rule is self-assessment, it is essential, for the smooth operation of a system of this nature, that the taxpayer or taxpayers ensure that their correct address is known to the tax authorities at all times, failing which they must accept responsibility for the consequences of non-communication or incorrect communication.
>
> 9. In the case at bar, there was not just one item mailed, but several. I strongly doubt that the Appellant did not receive any of them. If that is so, he alone is responsible for the situation.
>
> […]
>
> 11. None of the […] scenarios can be used by the Appellant to avoid the obligation he had to leave an address where any notice or correspondence that the Respondent might wish to send him could be sent.
>
> 12. In this regard, not only did the Appellant do absolutely nothing to show that he had such an address at the relevant time, but quite the opposite: his testimony was

[12] *Carvalho v The Queen*, 2007 TCC 709 [*Carvalho*].

> confused, evasive and incoherent, and he systematically refused to provide details in response to the questions put to him in that regard.
>
> […]
>
> 14. Not only did he [the taxpayer] refuse to confirm certain facts with respect to a possible address or addresses, but he deliberately tried to suggest that he had no real address, and if he did have one, he did not remember it.
>
> 15. Moreover, I find the Appellant's testimony to be without credibility, for the following reasons:
>
> although he could have provided exact dates, he did not do so;
>
> although he could have called people to support or verify some of his statements, he did not do so; and
>
> his testimony was confused and incoherent.
>
> […]
>
> 19. On a balance of probabilities, it seemed more probable to me that the mail was in fact addressed and sent to the Appellant at the addresses provided, which, moreover, were to all appearances valid.

[34] The foregoing leaves the Court with serious uncertainty surrounding the Appellant's position expressed in the Appellant's Affidavit. After thoughtful consideration of the facts presented in the Appellant's Affidavit, the clear and strong possibility is that the Appellant was made aware of the existence of the Notice of Assessment before August 18, 2020. The content of the Appellant's Affidavit raises too many uncertainties to support the Appellant's position. The Court is of the view that the Appellant's assertion in support of Part I of Step 1 is not credible and therefore the Appellant's position under Part I of Step 1 is unsustainable.

[35] Paragraph 23 of the Appellant's Affidavit, reproduced at paragraph 25 of these Reasons, is the sole reference to the assertion that the Notice of Assessment was sent to a wrong address (Part II of Step 1). The Appellant does not confirm that 22B-1200 Boulevard de Maisonneuve O, Montreal, QC, H3A 0A1 is the wrong address. In fact, the Appellant provides no explanation as to: (i) why that mailing address was provided to the CRA or on the contrary, that that specific mailing address was never used by the Appellant, or (ii) if that specific address had at any point in time had any connection whatsoever with the Appellant or if it was the address provided to the CRA, or (iii) if the Appellant had tried to change it, or (iv) if at any point in time he had attempted to notify the CRA of a change of address. The Appellant's statement in paragraph 23: "[…] despite the fact that I did not reside at that address." is not clear. The Appellant's statement does not answer the question: When did you reside at that address? For example: in 2024?, 2018?, 2019? or never? In addition, the Court

wonders to what extent did people known to the Appellant, with his consent, were in a position to receive correspondence on behalf of the Appellant. These questions are not asked to increase the Appellant's burden but rather to understand and clarify why the address is a wrong address and what, if anything, was done to correct it. For the Appellant to succeed in this motion, he must show that he is not found responsible for having kept the wrong contact address on file with the CRA. No persuasive evidence regarding the Appellant's residential address could be argued because no acceptable explanation was provided in the Appellant's Affidavit or was provided at the hearing.

[36] The Appellant must bear the consequences of the ambiguity contained in paragraph 23 of the Appellant's Affidavit. It is not up to the Court to clarify the Appellant's intention one way or the other. This situation leaves the Court rather uncertain and unclear as to what links the Appellant may have had, or still has, with the address used by the CRA. The absence of any action or of any information described in the Appellant's Affidavit by the Appellant about a change of address when it was a wrong address is cause for concern and could reasonably mean that the address proved to be acceptable to the Appellant, then and now. This is especially true where all correspondence (notices, statements, letters) from the CRA were always sent to this same address for many years without any evidence of any action or of any willingness to fix the problem, if any.

[37] Under theses circumstances, it is difficult to consider that the CRA sent the Notice of Assessment to a wrong address through no fault of the Appellant. Clearly, the Appellant's Affidavit supports that the Appellant was able over time to get access to the correspondence sent to this address. The absence of essential explanations supporting that it was a wrong address are missing from the Appellant's Affidavit. Also not present are any concrete explanations illustrating whether the Appellant did everything he could to avoid the usage of an incorrect address. These missing elements of information and disclosure could have aided the Appellant by providing the Court with a credible position that the Notice of Assessment was sent to a wrong address through no fault of the Appellant.

[38] The sole evidence introduced on the face of the Appellant's Affidavit did not support the Appellant's position that the wrong address was not the fault of the Appellant. Nor did the Appellant's Affidavit provide clarity of any measures or actions taken by the Appellant before and after the Notice of Assessment was issued. For purposes of the test to be applicable, the Court must be able to conclude that the Notice of Assessment was mailed to a wrong address. Unfortunately, this is not the case here.

[39] The Court faces a situation similar to the *Carvalho* decision when assessing the Appellant's credibility: the absence of exact details, the absence of supporting witness(es), a failure to verify some of the Appellant's statements, confusion and absence of clarity in the Appellant's Affidavit. On the balance of probabilities, it seemed more probable that the postal address used by the CRA all this time to mail correspondence to the Appellant was acceptable to the Appellant. In any event the address used was certainly not the wrong mailing address for which the Appellant can claim no responsibility for. As a result of the foregoing, Part II of Step 1 of the test failed.

[40] The Appellant's counsel referred the Court to the fact that the Appellant had spoken to someone at the CRA who told him that a new file would be opened with a new file number, and that he would still be able to object. The Appellant's Affidavit refers to this person as being Ms. Annick Daigle. Unfortunately, the Court cannot give much weight to this argument. A Federal Court decision referring to a Supreme Court of Canada decision and followed since, confirms that whatever the Minister's officers or employees may say is their interpretation of the law, does not change what the law is.[13]

[41] In *Moulton*[14], Associate Chief Justice Bowman (as he then was) wrote:

> The appellant argues with great conviction that he should be entitled to rely on advice given by the CCRA and relied upon by him in good faith. I agree that the result may seem a little shocking to taxpayers who seek guidance from government officials whom they expect to be able to give correct advice. Unfortunately such officials are not infallible and the court cannot be bound by erroneous departmental interpretations. Any other conclusion would lead to inconsistency and confusion. The only response I can make to what the appellant undoubtedly sees as an unsatisfactory state of affairs is what I said in *S. Goldstein v. Canada*, 1995 CanLII 19002 (TCC), [1995] 2 C.T.C. 2036 at pp. 2045-6.

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[13] See *Minister of National Revenue v Inland Industries Limited*, 1971 CanLII 192 (SCC) and *Stickel v MNR*, 1972 CanLII 2106 (FC). Also see the Supreme Court of Canada decisions in *Harel v The Deputy Minister of Revenue of the Province of Quebec*, 1977 CanLII 10 (SCC) and *Nowegijick v The Queen*, 1983 CanLII 18 (SCC). See also, *Morissette c Canada*, 2019 CCI 103, *Satinder v Canada*, 2002 FCA 491, *Ludmer v Canada*, 1994 CanLII 3547 (FCA), *Kennedy v Canada*, [2001] TCJ No 486, *Estate of Dora Greenstone v The Minister of National Revenue*, 91 DTC 969 and *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2011 SCC 53.

[14] *Moulton v The Queen*, 2002 CanLII 798 at para 11 (TCC) [*Moulton*]. Also, *Goldstein (S) v R*, 1995 CanLII 19002 (TCC); *Waldron v The Queen*, 1999 CanLII 287 (TCC); *Casey v R.*, 1999 CanLII 36639 (TCC).

[42] Therefore, the Court will not pursue this argument in any further detail, since it cannot succeed.

IV. Decision

[43] The evidence introduced by the Appellant did not convince the Court. The lack of precision, lack of essential details and the existence of uncertainties unfortunately resulted in the grounds for findings to be detrimental to the Appellant and fatal to the Appellant's credibility of allegations under both Part I and Part II of Step 1. The Court is of the view that all the conditions for retaining the Respondent's position are met under subsection 152(4.2) ITA. Such situation triggers the application of subsection 165(1.2) ITA and denies the right for the Appellant to file a valid notice of objection against the 2023 Reassessment. And the absence of a valid notice of objection prevents the completion of the conditional precedent for instituting an appeal before the Court. Therefore, this appeal has not been validly instituted before the Court, and this Court has no jurisdiction to hear the appeal.

[44] Considering the foregoing, the Court concludes that the Respondent's motion shall be granted and the appeal with respect to the 2016 taxation year before this Court shall be quashed. Each party shall bear their own costs.

Signed this 8th day of May 2025.

"J.M. Gagnon"

Gagnon J.

CITATION:	2025 TCC 69
COURT FILE NO.:	2024-1229(IT)G
STYLE OF CAUSE:	MOHAMED SIAM AND HIS MAJESTY THE KING
PLACE OF HEARING:	Montréal, Québec
DATE OF HEARING:	October 30, 2024
REASONS FOR JUDGMENT BY:	The Honourable Justice Jean Marc Gagnon
DATE OF JUDGMENT:	May 8, 2025

APPEARANCES:

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