

Docket: 2023-512(IT)G

BETWEEN:

CHARLES SHAKER,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Motion heard virtually January 23 and February 13, 2026.

Before: The Honourable Justice Edward (Ted) Cook

Appearances:

Counsel for the Appellant: Jeff D. Pniowsky
Matthew Dalloo

Counsel for the Respondent: Michael Reimer
Julien Bedard

ORDER

In accordance with the attached reasons, the Respondent's motion under paragraph 53(3)(b) of the *Tax Court of Canada Rules (General Procedure)* to quash the appeals is dismissed, with costs in any event of the cause.

Signed on this 9th day of April 2026.

“Ted Cook”

Cook J.

Citation: 2026 TCC 63
Date: 20260409
Docket: 2023-512(IT)G

BETWEEN:

CHARLES SHAKER

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR ORDER

Cook J.

Introduction

[1] The Respondent brings a motion under paragraph 53(3)(b) of the *Tax Court of Canada Rules (General Procedure)* (“Rules”) to quash the appeals of the reassessments of Mr. Shaker’s 2008 and 2009 taxation years on the basis that Mr. Shaker has not satisfied a condition precedent for instituting the appeals.

[2] The Respondent submits Mr. Shaker did not file notices of objection – or apply to the Minister of National Revenue (“Minister”) for an extension of time within which to file notices of objection – on or before the deadlines in the *Income Tax Act* (“Act”). Consequently, he did not file valid notices of objection, which is a condition precedent under subsection 169(1) of Act for instituting the appeals.

[3] This motion turns on whether the Minister mailed the notices of reassessment (“Notices”) for the 2008 and 2009 taxation years to the right address. The relevant events are as follows:

- **February 26, 2013** – The Federal Court issued a compliance order requiring Mr. Shaker to file income-tax returns for the 2008 and 2009 taxation years.

- **June 25, 2013** – The Canada Revenue Agency (“CRA”) received Mr. Shaker’s 2008 and 2009 income-tax returns. The mailing address in the returns was a Hertsmere Road street address, London, UK (“First Address”). The CRA researched the First Address as part of its audit of Mr. Shaker and found out that it was an apartment in a high-rise building.
- **June 2015** – As part of determining Mr. Shaker’s tax residency, the CRA obtained his most recent passport application from Citizenship and Immigration Canada. The application was dated April 22, 2013 and it listed his address as the Hertsmere Road street address with a unit number, London, and included the postal code (“Second Address”).
- **July 3, 2015** – The CRA sent a proposal letter to the Second Address, copying Mr. Shaker’s authorized representative. Later that month, the representative requested an extension of time to respond to the proposal.
- **August 10, 2015** – Thorsteinssons LLP advised the CRA that it would work on the response to the proposal letter.
- **August 28, 2015** – CRA computer-system records indicate that on this date the First Address was entered as Mr. Shaker’s mailing address, effective March 31, 2015.
- **November 18, 2015** – The CRA sent a letter (“First Residency Letter”) to the Second Address, copying Thorsteinssons LLP, requesting information relevant to determining Mr. Shaker’s tax residency. The requested information was not provided to the CRA.
- **March 10, 2016** – The CRA sent a letter (“Second Residency Letter”) to the Second Address, copying Thorsteinssons LLP, requesting information relevant to determining Mr. Shaker’s tax residency. The requested information was not provided to the CRA.
- **March 21, 2016** – The CRA received a letter from Drache Aptowitz LLP stating that it was working on Mr. Shaker’s file and that it was preparing answers to both the proposal letter and the residency questionnaire. The letter

included an authorization making the firm Mr. Shaker's authorized representative and cancelling all prior authorizations.

- **April 20, 2016** – Drache Aptowitz LLP provided a response to the CRA's proposal letter.
- **August 24, 2016** – The CRA sent a third letter ("Third Residency Letter") to the Second Address, copying Drache Aptowitz LLP, requesting information relevant to determining Mr. Shaker's tax residency.
- **October 7, 2016** – Drache Apowitz LLP advised the CRA by facsimile that Mr. Shaker had not received the Third Residency Letter until the firm forwarded it to him. As a result, Drache Apowitz LLP requested additional time to respond to it.
- Ms. Keller, a CRA auditor, stated in her affidavit that the Third Residency Letter was returned to the CRA unopened. Mr. Shaker's affidavit states he received the Third Residency. Mr. Shaker was able to produce a copy of the Third Residency Letter, which was discovered by one of his employees while cleaning out a storage area shortly before this motion was heard.
- **November 2 and 12, 2016** – The CRA left telephone messages with Drache Apowitz LLP indicating that if the CRA did not receive the requested information soon, it might seek a compliance order.
- **November 21, 2016** – Drache Apowitz LLP advised the CRA by telephone that Mr. Shaker had not provided any of the requested information to the firm.
- **March 17, 2017** – The CRA sent a facsimile to Drache Apowitz LLP. It stated that the CRA had completed its final audit letter for Mr. Shaker's 2008 and 2009 taxation years, and that because the audit letter discussed other entities it would be sent to Mr. Shaker directly. The facsimile requested that it be forwarded to Mr. Shaker and that Mr. Shaker reply to the CRA with an address to which the CRA could send the final audit letter.
- Ms. Keller's affidavit states a lawyer from Drache Aptowitz LLP called her and told her the request was highly unusual. He said he would try to contact

Mr. Shaker, but Mr. Shaker had not replied to him recently and that “for all I know, he has fallen off the face of the Earth.” Mr. Shaker did not provide an updated address to the CRA and the final audit letter was not sent.

- **March 31, 2017** – The Notices were mailed to Mr. Shaker at the First Address. The Notices were not mailed to either the Second Address or Drache Apowitz LLP. Drache Apowitz LLP was not notified that the Notices had been sent.
- **July 15, 2022** – Mr. Shaker was served copies of the Notices in the course of his application to the Federal Court for a judicial review.
- **September 14, 2022** – Mr. Shaker filed notices of objection for the reassessments of his 2008 and 2009 taxation years.

[4] Mr. Shaker provided a mailing address – the First Address – in his 2008 and 2009 income-tax returns. The First Address, however, was incomplete. It lacked both postal code and unit number. The CRA obtained a complete mailing address for that property – the Second Address – from Mr. Shaker’s passport application.

[5] In 2015 and 2016, the CRA sent several letters to Mr. Shaker at the Second Address and copied them to Mr. Shaker’s authorized representative. Three of the letters requested residency determination information. The requested information was not provided. The CRA had reason to believe that the Third Residency Letter was not received by Mr. Shaker.

[6] On March 17, 2017, the CRA faxed Mr. Shaker’s authorized representative asking for Mr. Shaker to provide an updated mailing address to which the final audit letter could be sent. Mr. Shaker was made aware of the facsimile and he decided not to respond to it. On March 31, 2017, the Minister mailed the Notices to Mr. Shaker at the First Address. Neither copies of the Notices, nor notifications with respect to the Notices, were sent to either the Second Address or Mr. Shaker’s authorized representative.

[7] The parties agree that the Notices mailed in March 2017 were mailed to the First Address. I am satisfied that standard CRA mailing procedures were followed and that the Notices were mailed using the First Address.

[8] The parties also agree that the First Address was an undeliverable address and that, as a result, the Notices were not delivered to Mr. Shaker. Consequently, these reasons do not need to attempt to delve into the intricacies of the British postal system.

[9] The Minister submits that, on March 31, 2017, the Notices were mailed to Mr. Shaker's address of record. Pursuant to subsection 165(1) of the Act, Mr. Shaker had until June 29, 2017 to file notices of objection. Pursuant to subsection 166.1(7) of the Act, Mr. Shaker also had until June 29, 2018 to apply to the Minister for an extension of time to object. He did neither.

[10] Mr. Shaker argues that he did not receive the Notices because the Minister mailed them to the wrong address. He only received the Notices in July 2022 when he was served the Crown's affidavit in relation to a Federal Court proceeding. Mr. Shaker then filed notices of objections before the deadline set out in subsection 165(1).

Issues

[11] Using the test in *Mpamugo v The Queen*, 2016 TCC 215, aff'd 2017 FCA 136, the first issue in this motion is whether it was Mr. Shaker's "fault" that the Notices were mailed to the First Address. The second is whether the First Address was the mailing address that the CRA "properly had on file".

Analysis

Overview

[12] *Mpamugo* at para 6 provides a 4-step test for determining if the Minister has mailed a notice of assessment. Steps 1 and 2 are relevant for this motion:

The Tax Court of Canada and Federal Court of Appeal have had many opportunities to consider what happens when a taxpayer alleges that the Minister did not mail a Notice of Assessment. Those cases have arisen in the context of determining whether a taxpayer filed a Notice of Objection on time or determining whether a tax year is beyond the normal reassessment period. The following is a summary of the steps that have emerged from those cases:

a) Step 1 : The taxpayer must assert that the Notice of Assessment was not mailed. 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.**

...

[footnotes omitted and emphasis added]

[13] As the *Mpamugo* test applies in this case, Step 1 requires Mr. Shaker to credibly assert that the Notices were mailed to the wrong address through no fault of his own. Step 2 requires the Minister to introduce sufficient evidence to prove the Notices were mailed to the address that the CRA properly had on file.

[14] For the reasons explained below, I find that the Notices were mailed to the wrong address (i.e., the First Address) through no fault of Mr. Shaker and that the Notices were not mailed to the address that the CRA properly had on file. Therefore, the Respondent's motion will be dismissed.

Parties' Submissions

[15] The Respondent submits the Notices were mailed to the address the CRA had on record and if that was the wrong address, it was Mr. Shaker's fault. Mr. Shaker provided the First Address with his 2008 and 2009 income-tax returns. He never provided another mailing address.

[16] The Respondent accepts the First Address was undeliverable, but submits taxpayers are obliged to keep their address up to date with the CRA. Mr. Shaker did not do so. No other, or updated, address was provided by him. The only obligation on the Minister was to send the Notices to the address Mr. Shaker had provided.

[17] In addition, each of the three residency letters asked Mr. Shaker for updated contact information, which Mr. Shaker declined to provide. Finally, the facsimile to Mr. Shaker's authorized representative asked for an address to which the CRA's final audit letter could be sent. Again, Mr. Shaker declined to provide an updated address.

[18] The Respondent argues Mr. Shaker must bear the consequences of failing to provide the CRA with his full mailing address. Given Mr. Shaker's refusal to provide information, the CRA had no choice but to send the Notices to the First Address. The CRA should not be punished for going beyond its statutory obligations and seeking out the Second Address from Mr. Shaker's passport application.

[19] Mr. Shaker submits the First Address and the Second Address are addresses for the same property. It is just that the Second Address is the more complete civic address. It is also the address that is clearly deliverable. Once the Second Address became known to the CRA, it could not become unknown to the CRA.

[20] Mr. Shaker also submits the Second Address was the address the CRA used leading up to the issuance of the Notices and has subsequently used. More broadly, Mr. Shaker submits the Minister did everything possible to ensure that he was not provided with the Notices, including:

- not sending the Notices, or notification of the Notices, to an authorized representative;
- refraining from disclosing the address issue in a subsequent *ex parte* collection/enforcement action; and
- serving Mr. Shaker with the Notices only after Mr. Shaker took action in Federal Court.

[21] Several of Mr. Shaker's submissions go beyond the question before me and relate to his overarching view that the Minister sought to ensure the Notices were not sent to him. I will deal with Mr. Shaker's submissions only to the extent that they are relevant to this motion. Actions the CRA might, or might not, have taken in subsequent legal proceedings are not relevant to my determination whether the Minister mailed the Notices to the right address in March 2017.

[22] Mr. Shaker argues that in *Scott v MNR*, [1960] CTC 402, 60 DTC 1273 (Ex. Ct.) at para 27, it was established that a notice mailed to a wrong address in cases where the notice does not reach the taxpayer, is not effective: “an assessment is not made until the Minister has completed his statutory duties as an assessor by giving the prescribed notice.” The Court went on to state at para 28 that “Parliament never intended that such a notice could be given effectively by the ‘mailing’ of it to the taxpayer at some wrong or fictitious address[.]” Courts have reaffirmed these basic principles (*McIntyre v MNR*, [1993] 2 CTC 2244, 93 DTC 999, at paras 14 and 15).

[23] After the motion was heard, Mr. Shaker filed a letter with the Court to provide additional “critical” clarification. The Respondent filed a letter in response. The parties had a full opportunity to make their arguments at the hearing, and I have not used either letter in reaching my decision.

Step 1

[24] Step 1 of the *Mpamugo* test requires Mr. Shaker to credibly assert the Notices were mailed to the wrong address through no fault of his own. It is evident Mr. Shaker did not cooperate with the CRA. Mr. Shaker said he did not respond with the information requested in the residency letters because he was “not going to continue playing this game with her [the CRA auditor, Ms. Keller]”. As well, he chose not to respond to the request for an address to which to send the final audit letter because the CRA was “continuing the same old process of dragging me [Mr. Shaker] through an endless audit with endless questions that went around in circles.” In his view, the CRA had his correct address and was using it for correspondence with him.

[25] Faced with someone whom the CRA no doubt viewed as a non-cooperative taxpayer, the CRA decided to issue reassessments and it did so to the address that it had received from him. Mr. Shaker’s non-cooperation does not, however, amount to fault by him with respect to his mailing address. I accept that Mr. Shaker provided the First Address in his 2008 and 2009 income-tax returns and that he had an obligation to keep his mailing address current with the CRA.

[26] The difficulty is that the CRA obtained the Second Address in June 2015 and used it, in lieu of the First Address, for the relevant correspondence with Mr. Shaker until at least August 2016.

[27] The CRA computer-system entry shows the mailing address was updated to the First Address effective March 31, 2015. It appears the entry was made on August 28, 2015. The CRA's July 2015 proposal letter was mailed to the Second Address rather than the First Address. As well, the Second Address was simply a more complete version of the First Address.

[28] In the circumstances, I do not see how Mr. Shaker could have known that his mailing address of record was the First Address rather than the Second Address and that it needed to be updated. The CRA consistently used the Second Address, which would be the updated address Mr. Shaker needed to provide to the CRA.

[29] The Respondent submits the three residency letters asked for updated contact information. This is not an accurate characterization. The letters sought information to determine Mr. Shaker's residency for tax purposes. For example, the First Residency Letter asked for the following:

Please provide the address of any residences that you occupied, and/or were made available for your use, in the period indicated above [i.e., November 11, 2009 to November 18, 2015] both in Canada and abroad. Please indicate whether you leased or owned each residence. Please provide purchase and/or lease documentation, including proof of payment, to verify this information.

[30] The letter did not ask Mr. Shaker for updated contact information or indicate there was a deficiency in the mailing address that the CRA had on file. Instead, it asked for a history of his residences for the purpose of making a residency determination. The two are quite distinct.

[31] Both parties assign particular importance to the Third Residency Letter. Ms. Keller stated in her affidavit that the Third Residency Letter was returned to the CRA and that it was not received by Mr. Shaker. Consequently, the CRA chose not to send the Notices to the Second Address. The only other address the CRA had for Mr. Shaker was the First Address, which was the address Mr. Shaker provided in his 2008 and 2009 income-tax returns.

[32] Mr. Shaker's affidavit states he had received the Third Residency Letter. As noted above, Mr. Shaker was able to produce a copy of the Third Residency Letter. Mr. Shaker makes a great deal out of the conflict between the two affidavits and, in particular, the fact that the CRA apparently based its decision to use the First Address

on the return of the Third Residency Letter as undeliverable, which as it turns out was received by Mr. Shaker.

[33] The CRA had reason to believe the Third Residency Letter was not delivered to Mr. Shaker. On October 17, 2016, a facsimile from Drache Aptowitzer LLP advised the CRA that Mr. Shaker had not received the Third Residency Letter. By the same token, however, this facsimile would not be sufficient reason to treat the Second Address as a bad address. Mr. Shaker travelled in his work as a business consultant and it would be entirely possible that an individual letter might go astray.

[34] There was no indication from Mr. Shaker's representative that the Second Address was not the correct address, just that the letter had not been received by Mr. Shaker. The facsimile states "[w]hile the letter is addressed to Mr. Shaker he did not receive your letter until we forwarded a copy to him in mid-September."

[35] On March 17, 2017, the CRA faxed Mr. Shaker's authorized representative requesting an address to which the CRA's final audit letter could be sent. Mr. Shaker did not respond. The 2008 and 2009 reassessments were processed less than two weeks later. The Notices were mailed on March 31, 2017. I do not consider this rising to the level of fault on the part of Mr. Shaker given the amount of correspondence sent to the Second Address and the fact the Notices were processed less than two weeks after the CRA requested an address to which to send the final audit letter.

[36] In summary, the Second Address was a more complete version of the First Address. Mr. Shaker received CRA correspondence addressed to the Second Address in 2015 and 2016, and nothing Mr. Shaker received clearly indicated that his mailing address with the CRA needed to be updated. As such, I do not find Mr. Shaker at fault as contemplated by Step 1 of the *Mpamugo* test.

Step 2

[37] Turning now to Step 2, it requires the Minister to prove that the Notices were mailed to the address that the CRA properly had on file. Even though the First Address was provided by Mr. Shaker, I find that it was not the address the CRA properly had on file.

[38] The CRA generally takes the view, rightly, that it is a taxpayer's responsibility to ensure that their correct mailing address is known by the CRA at all times (see, for example, *Carvalho v The Queen*, 2007 TCC 709 at para 8 and *Doncaster v The Queen*, 2015 TCC 127 at para 59) and the CRA relies on correspondence sent to that address as complying with its obligations to notify a taxpayer.

[39] I accept the CRA considered itself to be in compliance with its obligations; but it is somewhat concerning that for correspondence with consequences for a taxpayer's appeal rights the CRA chose to resile from mailing to an address it had consistently used in favour of an incomplete version of the same address.

[40] It is evident that the CRA thought there was an issue with the First Address. The fact that an address might be problematic is not a bar to it being the address properly on file (see *Le sage au piano v The Queen*, 2014 TCC 319 at para 43). Taxpayers have an obligation to keep their proper address current with the CRA, and if they fail to do so, a mailing by the Minister to an address deficient on its face may still meet the Minister's obligations with respect to mailing.

[41] As such, I disagree with Mr. Shaker's argument that once the correct address became known to the CRA it could not become unknown and the CRA had an obligation to use it. If the CRA becomes aware that a taxpayer has a different address through other means (as was the case here), it does not seem to me that it automatically imposes an obligation on the CRA to begin using that other address.

[42] The situation at hand is certainly uncommon. The First Address and the Second Address were both addresses for the same property, with the notable difference that the Second Address was more clearly deliverable. The CRA used the Second Address, instead of the First Address, for its correspondence with Mr. Shaker prior to mailing the Notices. Effectively, the CRA and Mr. Shaker both acted on the basis that the Second Address, not the First Address, was the address properly on file. In my view, the March 17, 2017 facsimile and the issues regarding the Third Residency Letter do not displace that conclusion.

Conclusion

[43] The Respondent's motion is dismissed, with costs in any event of the cause.

Signed on this 9th day of April 2026.

“Ted Cook”

Cook J.

CITATION: 2026 TCC 63

COURT FILE NO.: 2023-512(IT)G

STYLE OF CAUSE: CHARLES SHAKER AND HIS
MAJESTY THE KING

MOTION HEARD: January 23 and February 13, 2026

REASONS FOR ORDER BY: The Honourable Justice Edward (Ted)
Cook

DATE OF ORDER: April 09, 2026

APPEARANCES:

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