

Docket: 2013-1067(IT)APP

BETWEEN:

KRISTIN J. STEIN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on October 11, 2013 at Windsor, Ontario

By: The Honourable Justice Judith M. Woods

Appearances:

For the Applicant: The Applicant herself

Counsel for the Respondent: Shane Aikat

ORDER

The application for an Order extending the time to institute an appeal to this Court with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

Signed at Toronto, Ontario this 30th day of October 2013.

“J. M. Woods”

Woods J.

Citation: 2013 TCC 345
Date: 20131030
Docket: 2013-1067(IT)APP

BETWEEN:

KRISTIN J. STEIN,
Applicant,
and
HER MAJESTY THE QUEEN,
Respondent.

REASONS FOR ORDER

Woods J.

[1] Kristin Stein has applied for an extension of time to institute an appeal to this Court with respect to an assessment made under the *Income Tax Act* for the 2008 taxation year.

Background

[2] Ms. Stein is employed by the Government of Canada as a claims adjudicator for employment insurance. She has been employed in this capacity since 2007.

[3] In 2008 the employer failed to take any source deductions from Ms. Stein's remuneration. She testified that she did not notice the error until she received a T4 slip for the year. Ms. Stein immediately took the issue up with her employer who informed her that a clerical error had been made.

[4] Ms. Stein's submits that she should not bear the tax that should have been withheld because it was her employer's error.

[5] In order to seek redress, Ms. Stein filed a notice of objection on September 22, 2009. The document was not entered into evidence by either party.

[6] The Canada Revenue Agency (CRA) took the position that this document was not a notice of objection because it dealt with source deductions rather than the amount of tax assessed. The letter further indicated that the document would be forwarded to the appropriate department for their review.

[7] Some time passed and Ms. Stein did not hear further. Eventually she called the CRA and was informed that they had neglected to forward the document to another department. The CRA advised Ms. Stein that her recourse would be to apply to the Tax Court of Canada, which she did with this application.

[8] In her notice of appeal, Ms. Stein asks that the amount owing be written off since she has not received fair treatment and has not been given sufficient information.

Positions of the parties

[9] The Crown filed an Amended Reply at the hearing that withdrew two arguments that had no chance of success. The Amended Reply made these two arguments.

- (a) The application for an extension of time is not validly before the Court because the appeal does not seek a reduction in the tax liability.
- (b) A precondition to the filing of an appeal has not been met because Ms. Stein did not file a valid notice of objection.

[10] In addition, counsel for the Crown raised additional arguments at the commencement of the hearing. These are set out below.

- (a) The notice of objection was filed outside the 90 day time limit.
- (b) The application is not valid because this Court has no jurisdiction over this appeal.
- (c) Ms. Stein has not demonstrated that there are reasonable grounds for the appeal as required by s. 167(5)(b)(iv) of the *Act*.

[11] Understandably, Ms. Stein took no position on the procedural arguments raised by the Crown. Her arguments were based on grounds of fairness.

Discussion

[12] I have difficulty with several of the arguments raised by the Crown, but I am of the view that this application to extend time should not be granted because Ms. Stein's appeal to this Court clearly will not succeed. There is no point in approving an application to extend time if the appeal is ultimately bound to fail.

[13] This Court's jurisdiction is limited to determining whether the Minister has correctly determined the amount of the tax payable by Ms. Stein. Writing off a tax debt is a different matter altogether which is not within this Court's mandate.

[14] Under the *Act*, a taxpayer who has earned income is liable to pay tax on that income. That liability is not negated simply because an employer failed to make the appropriate source deductions. This is fatal to Ms. Stein's appeal.

[15] In addition, it is well established that this Court cannot grant relief on grounds of equity or fairness. The fact that the employer made a mistake in handling the source deductions, and problems that Ms. Stein had with the CRA during the objection stage, are not grounds that this Court can take into account in considering an appeal from an assessment (*Chaya v The Queen*, 2004 FCA 327).

[16] Ms. Stein's circumstances are sympathetic, but the application will have to be dismissed.

Signed at Toronto, Ontario this 30th day of October 2013.

"J. M. Woods"

Woods J.

CITATION: 2013 TCC 345

COURT FILE NO.: 2013-1067(IT)APP

STYLE OF CAUSE: KRISTIN J. STEIN and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Windsor, Ontario

DATE OF HEARING: October 11, 2013

REASONS FOR ORDER BY: The Honourable Justice J.M. Woods

DATE OF ORDER: October 30, 2013

APPEARANCES:

For the Applicant: The Applicant herself

Counsel for the Respondent: Shane Aikat

COUNSEL OF RECORD:

For the Applicant:

Name: n/a

Firm:

For the Respondent: William F. Pentney
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Ottawa, Ontario