

Docket: 2014-426(IT)APP

BETWEEN:

LAURENA POOT,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent;

Docket: 2014-723(IT)APP

AND BETWEEN:

JEROME POOT,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Applications heard on September 15, 2014 at Calgary, Alberta

Before: The Honourable Justice Judith Woods

Appearances:

Agent for the Applicants: Aryn Vassanji
Counsel for the Respondent: Paige MacPherson

ORDER

UPON applications by Laurena Poot and Jerome Poot under the *Income Tax Act* for the following relief:

[...] to review the decision of the Chief of Appeals and direct the Canada Revenue Agency to (i) allow the Notice of Objection and (ii) review the tax-payer relief request for interest and penalties;

IT IS ORDERED that the applications are hereby dismissed.

Signed at Toronto, Ontario this 30th day of September 2014.

“J.M. Woods”

Woods J.

Citation: 2014 TCC 295
Date: 20140930
Docket: 2014-426(IT)APP

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Respondent.

REASONS FOR ORDER

Woods J.

Introduction

[1] Laurena Poot and Jerome Poot have applied to this Court for relief from decisions of the Minister of National Revenue dated November 4, 2013 that denied an extension of time to file notices of objection under the *Income Tax Act* for the 2000 taxation year (Notices of Appeal, paragraph (b)).

[2] The relief that is being sought is set out in paragraph (g) of the Notices of Appeal as follows:

[...] to review the decision of the Chief of Appeals and direct the Canada Revenue Agency to (i) allow the Notice of Objection and (ii) review the tax-payer relief request for interest and penalties;

[3] The only issue that is appropriate for this Court to consider is whether an extension of time should be granted to file notices of objection to reassessments for the 2000 taxation year. The Court may grant this relief pursuant to subsection 166.2(1) of the *Income Tax Act*, provided that certain legislative requirements have been satisfied.

[4] As noted above, the applicants seek other forms of relief. This relief cannot be granted because the Court lacks jurisdiction over these matters. In particular, the Court has no authority to direct the Canada Revenue Agency to allow a notice of objection unless a proper appeal to this Court has been instituted, and the Court has no authority to allow a taxpayer relief request for a waiver of interest and penalties. The Federal Court, and not the Tax Court, generally has jurisdiction over taxpayer relief requests.

Discussion

[5] Since the relief requested by the applicants cannot be granted, it is appropriate to consider whether the Court should grant an order extending the time to file notices of objection to reassessments. The legislative requirements that must be satisfied are set out in s. 166.2(5) of the *Act*, which is reproduced below.

166.2(5) When application to be granted - No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by this Act for serving such a notice or making such a request, as the case may be, the taxpayer

A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a bona fide intention to object to the assessment or make the request,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application, and

(iii) the application was made under subsection 166.1(1) as soon as circumstances permitted.

[6] The submissions made on behalf of the applicants focus on paragraph (b) of the provision above. In particular, it is submitted that the applicants had a *bona fide* intention to object, that it would be just and equitable to grant the application, and that there are reasonable grounds for the appeals.

[7] The problem that I have with this submission is that it is not sufficient for the applicants to satisfy the requirements in paragraph (b) alone. They must also satisfy the requirement in paragraph (a). The legislation makes this clear by inserting the word “and” between the two paragraphs.

[8] In this case, the agent for the applicants appears to acknowledge that the requirement in s. 166.2(5)(a) has not been satisfied.

[9] Paragraph 166.2(5)(a) requires that an application be made to the Minister for an extension of time within a deadline, which in this case is October 4, 2008. Unfortunately for the applicants, there is no evidence that this was done.

[10] Although the applicants and their accountant engaged in correspondence with the Canada Revenue Agency (CRA) before the October 4, 2008 deadline, none of the correspondence can reasonably be viewed as applications to extend time, or as notices of objection.

[11] The first correspondence consists of undated letters sent by the applicants’ accountant, Barry Mitchell (Ex. A-2 and A-3). They were received by the CRA on January 16, 2007 (Ex. R-1).

[12] These letters purport to be notices of objection to “pending” reassessments. Mr. Mitchell was not able to testify as to the circumstances of the letters since he unfortunately became very ill during this time and subsequently died.

[13] The CRA’s response to these letters makes it clear that they were in response to CRA “proposal letters”. The CRA informed the applicants that the information

provided was not a satisfactory response to the proposal letters and that reassessments would be issued in due course. The applicants were also informed as to the requirement to file notices of objection if they wished to object to the reassessments.

[14] In these circumstances, the letters written by Mr. Mitchell cannot reasonably be interpreted as notices of objection to reassessments. I agree with the submissions of counsel for the respondent that the case of *Persaud v The Queen*, 2013 TCC 405, is distinguishable on its facts.

[15] A subsequent letter was sent by Mr. Poot and addressed to “to whom it may concern”. The letter was dated November 3, 2007 and requested a waiver of interest and penalties.

[16] This letter does not purport to be a notice of objection and it would not be appropriate to consider that it is. Based on the letter and the testimony of Mr. Poot, it appears that the letter was intended to be an application for taxpayer relief for a waiver of interest and penalties on equitable grounds. This is not a notice of objection.

[17] I have concluded that the applicants have not satisfied the requirement set out in s. 166.2(5)(a) and therefore the applications must be dismissed.

Signed at Toronto, Ontario this 30th day of September 2014.

“J.M. Woods”

Woods J.

CITATION: 2014 TCC 295

COURT FILE NOs.: 2014-426(IT)APP
2014-723(IT)APP

STYLES OF CAUSE: LAURENA POOT v HER MAJESTY THE
QUEEN
JEROME POOT v HER MAJESTY THE
QUEEN

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: September 15, 2014

REASONS FOR ORDER BY: The Honourable Justice Judith Woods

DATE OF ORDER: September 30, 2014

APPEARANCES:

Agent for the Applicants: Aryn Vassanji
Counsel for the Respondent: Paige MacPherson

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm: n/a

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario