

Docket: 2004-4656(IT)G

BETWEEN:

JEFFREY S. CHARENDOFF,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on March 22, 2005, at Toronto, Ontario

Before: The Honourable Justice Michael J. Bonner

Appearances:

Counsel for the Appellant: John H. Loukidelis

Counsel for the Respondent: Sherry Darvish

JUDGMENT

The appeals are dismissed with costs.

Signed at Toronto, Ontario, this 28th day of April 2005.

"Michael J. Bonner"

Bonner J.

Citation: 2005TCC300
Date: 20050428
Docket: 2004-4656(IT)G

BETWEEN:

JEFFREY S. CHARENDOFF,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bonner, J.

[1] This is an application by the Respondent for an order quashing appeals from assessments under the *Income Tax Act* (the "Act") for the 1991, 1992, 1995 and 1996 taxation years and from a determination of a loss for the 1994 year.

[2] The application is made on the basis that the appeals were instituted too late, that is to say, after the expiry of "... 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed" being the period laid down in s. 169(1) of the *Act*.

[3] The material filed in support of the motion establishes that the Minister confirmed the assessments for 1991 and 1992 and the determination¹ for 1994 and that he mailed notices of the confirmations for 1991 and 1992 on 23/10/01 and for 1994 on 5/12/01

[4] The material also establishes that the Minister reassessed under ss. 165(3) of the *Act* for the 1995 and 1996 taxation years and mailed notices of the reassessments on 31/12/01.

¹ The statutory provisions for objecting to and appealing from assessments apply *mutatis mutandis* to determinations and re-determinations of losses by virtue of s. 152(1.2) of the *Act*.

[5] All five of the 90-day periods now in question expired on or before March 31, 2002. The appeals were instituted on December 9, 2004. Absent some flaw in the mailing of the confirmations and the reassessments the appeals were instituted not only after the expiry of the normal s. 169 appeal period but also after the expiry of the ss. 167(5) deadline for applications to extend time for instituting appeals.

[6] The Appellant's argument is that the notices of the confirmations and reassessments should not have been addressed to him c/o the firm of chartered accountants who acted for him; that the accountants did not advise him or forward the notices to him and that in consequence he and the solicitors who he had retained to appeal from the assessments were unaware that the time for appeal had even started to run.

[7] Thus the question which must be addressed is whether the Minister fulfilled the obligation imposed on him by s. 165(3) of the *Act* when he sent the notices of the confirmations and the reassessments addressed to the Appellant c/o his accountants at the business address of the accountants.

[8] First I will note that s. 165 obliges the Minister to "notify the taxpayer in writing". S. 169 contemplates that the notice may be sent to the taxpayer by mail. Here, unless the mailing of notices addressed to the Appellant c/o his accountants can be regarded as non compliance with the statute, time started to run under s. 169 upon mailing of the notices. Nothing in s. 169 requires that the notice be received by the taxpayer².

[9] In light of statutory language which puts emphasis on the mailing of the requisite notice to the taxpayer and the obvious need of the taxpayer to know both the Minister's response to the objection and the fact that time is running against him or her, I take the statute to require that the Minister use a mailing address which, having regard to the information made known to the Minister, is likely to produce the desired result, i.e., notice to the taxpayer of the material sent.

[10] Here the Minister has chosen to use just such an address. The time period during which the notices were sent ran from October 23 to December 31 of 2001. For a considerable period of time leading up to the mailing of the confirmations and reassessments the Appellant used his accountants' business address as his own for purposes of his dealings with the Revenue. In May of 2000 the Appellant filed a tax return for 1999 in which he gave his address as c/o his accountants, Solursh Feldman

² *Schafer v. Queen*, 2000 F.C.J. No. 1480.

and Partners. His return for the first of the taxation years now in issue also gives the Appellant's address as c/o those accountants. In November of 2001, correspondence and phone communications with regard to the Appellant's tax affairs took place between those accountants and Revenue appeals officials. In March of 2002 the same accountants wrote to the Minister's Fairness Committee regarding the Appellant's tax affairs for 1991 to 1998. Thus the material filed supports a finding that Revenue officials might reasonably have concluded on a review of the Appellant's file that material sent to the Appellant c/o his accountants was being sent to him at the place selected by him for communication with him.

[11] The appeals raise the question whether the Appellant is entitled to deductions in respect of a non-capital loss incurred in 1991 by a limited partnership known as Mainstream Productions. The Appellant's Notices of Objection for the 1991 and 1992 taxation years both deal with that subject matter. The objections were dated in 1994, indicate that they are from the Appellant and give his home address. They also give the name and address of two authorized representatives, neither of whom is associated with the Solursh Feldman firm of accountants. Given the lapse of time and the consistent use by the Appellant of the offices of the Solursh Feldman firm as his mailing address I do not think that the Minister can be criticized for failing to mail the confirmations and reassessments to the representatives named in the Notices of Objection. The only Notices of Objection produced are dated in August of 1994, 7 years before the Minister confirmed the assessments. Neither objection contains an express request to the Minister to send all notices of tax matters or events which might be affected by the Appellant's claim for a partnership loss to named representatives.

[12] In my view the Minister properly notified the Appellant.

[13] The appeals will be dismissed with costs.

Signed at Toronto, Ontario, this 28th day of April 2005.

"Michael J. Bonner"

Bonner J.

CITATION: 2005TCC300

COURT FILE NO.: 2004-4656(IT)G

STYLE OF CAUSE: JEFFREY S. CHARENDOFF AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 22, 2005

REASONS FOR JUDGEMENT BY: The Honourable Justice Michael J. Bonner

DATE OF JUDGMENT: April 28, 2005

APPEARANCES:

Counsel for the Appellant: John H. Loukidelis

Counsel for the Respondent: Sherry Darvish

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