

Docket: 2004-1828(IT)I

BETWEEN:

COLIN DUXBURY,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on January 21, 2005 at Nanaimo, British Columbia

Before: The Honourable Justice L.M. Little

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Nadine Taylor Pickering

ORDER

Upon motion made by counsel for the Respondent for an Order quashing the appeal for the 2001 taxation year;

And upon reading the Affidavit of Stacey Michael Repas filed;

The appeal from the assessment made under the *Income Tax Act* for the 2001 taxation year is quashed in accordance with the attached Reasons for Order.

Signed at Vancouver, British Columbia, this 1st day of April 2005.

"L.M. Little"

Little J.

Citation: 2005TCC229
Date: 20050404
Docket: 2004-1828(IT)I

BETWEEN:

COLIN DUXBURY,

Appellant,

And

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Little J.

A. FACTS:

[1] The Appellant's 2001 taxation year was assessed by the Minister of National Revenue (the "Minister") on June 13, 2002.

[2] The Appellant filed a Notice of Objection to the Assessment.

[3] On July 14, 2003 the Minister issued a Notification of Confirmation of the Assessment.

[4] The Appellant did not file a Notice of Appeal to the Court until February 19, 2004.

[5] The Minister concluded that the Notice of Appeal that was filed by the Appellant for the 2001 taxation year on February 19, 2004 was invalid because it was filed one year and seven months after the Notification of Confirmation was issued.

[6] On December 13, 2004 counsel for the Respondent filed a Notice of Motion for an Order quashing the appeal for the 2001 taxation year.

[7] The Respondent's Notice of Motion was heard by the Court in Nanaimo, British Columbia on Friday, January 21, 2005.

[8] The grounds for the Motion are:

1. More than 90 days have elapsed since the Minister of National Revenue (the "Minister") confirmed the Appellant's 2001 taxation year by Notification of Confirmation dated July 14, 2003, and therefore the appeal with respect to the 2001 taxation year does not conform to the statutory requirements of section 169(1) of the *Income Tax Act* (the "Act"); and
2. The Appellant did not apply for an extension of time within which to file a Notice of Appeal for the 2001 taxation year and therefore has not conformed with the statutory requirements of subsections 167(1) and 167(5) of the *Act*.

[9] A decision on the Respondent's Notice of Motion was reserved pending the receipt by the Court of documents which the Appellant maintained during the hearing would support his position.

[10] On January 25, 2005 the Appellant provided the Court with a copy of a letter from the Canada Revenue Agency (CRA) dated February 24, 2003.

[11] The letter from the CRA dated February 24, 2003 was written prior to the Confirmation of the Assessment and has no bearing on the points raised in the Notice of Motion filed by counsel for the Respondent.

[12] The Appellant also provided the Court with a copy of a letter from the Tax Court dated December 3, 2004. This letter was sent to the Appellant after the mandatory deadline contained in the *Act* had passed (see paragraph 17 below).

[13] On March 14, 2005 the Appellant provided the Court with a copy of a letter from the CRA dated February 4, 2003. This letter states that the Notice of Objection for the 2001 taxation year was filed on time.

[14] It should be noted that the issue before the Court was not whether the Notice of Objection for the 2001 taxation year was filed on time but whether the Appellant's Notice of Appeal for the 2001 taxation year was filed on time.

[15] Section 169 of the *Act* provides that a Notice of Appeal must be filed within 90 days of the date of the Notification of Confirmation.

[16] The Notification of Confirmation of the 2001 taxation year was dated July 14, 2003. It therefore follows that the Appellant should have filed a Notice of Appeal with the Tax Court before October 13, 2003. The Appellant did not meet this deadline and, in fact, did not file a Notice of Appeal with the Court until February 18, 2004.

[17] Pursuant to subsection 167(1) of the *Act*, the Appellant could have made an application for an extension of time to file an appeal provided that he met all of the requirements listed in that subsection. The Appellant had to make his request within one year after the expiration of time limited by section 169. Therefore, the Appellant had to make his request for an extension of time to the Tax Court of Canada by October 13, 2004. As of the date of the hearing on January 21, 2005, the Appellant had not provided the Court with submissions on the requirements set out in subsection 167(1).

[18] It is clear that the Appellant has not complied with the deadlines and requirements set out in section 169 and subsection 167(1) of the *Act*. The Motion of counsel for the Respondent is granted and the appeal is quashed.

Signed at Vancouver, British Columbia, this 1st day of April 2005.

"L.M. Little"

Little J.

CITATION: 2005TCC229

COURT FILE NO.: 2004-1828(IT)I

STYLE OF CAUSE: Colin Duxbury and
Her Majesty the Queen

PLACE OF HEARING: Nanaimo, British Columbia

DATE OF HEARING: January 21, 2005

REASONS FOR ORDER BY: The Honourable Justice L.M. Little

DATE OF ORDER: April 1, 2005

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Nadine Taylor Pickering

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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