

Docket: 2007-1687(GST)APP

BETWEEN:

COLLINGWATER INVESTMENTS INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 13, 2007 at Toronto, Ontario

Before: The Honourable Justice Valerie A. Miller

Appearances:

For the Applicant: Tim French
Counsel for the Respondent: Kate Leslie

JUDGMENT

The application for an Order extending the time within which the Applicant may file with the Tax Court of Canada a Notice of Appeal in respect of the Notice of Decision dated February 10, 2006 for its reporting period commencing December 1, 1998 and ending November 30, 1999 is dismissed.

Signed at Vancouver, British Columbia this 7th day of September, 2007.

“V.A. Miller”

V.A. Miller, J.

Citation: 2007TCC539
Date: 20070907
Docket: 2007-1687(GST)APP

BETWEEN:

COLLINGWATER INVESTMENTS INC.,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller, J.

FACTS

[1] By Notice of Assessment dated February 23, 2005, the Minister of National Revenue (“Minister”) assessed the Applicant for the period commencing December 1, 1998 and ending November 30, 1999.

[2] The Applicant objected to the assessment by Notice of Objection dated April 23, 2005 and received by the Canada Revenue Agency (“CRA”) on May 17, 2005.

[3] The Minister confirmed the assessment by Notice of Decision dated February 10, 2006.

[4] The Applicant, through its accountant Mr. French, sent a proposed Notice of Appeal, which was received by the Tax Court of Canada on May 8, 2006. By letter dated May 12, 2006, Mr. French was advised that the appeal was not a proper General Appeal and, further that an accountant could not represent a taxpayer before the Court under the *Tax Court of Canada Rules (General Procedure)*. Mr. French

was asked to prepare a proper Notice of Appeal and it was suggested that he forward an application for an extension of time to file the Notice of Appeal.

[5] The only response received from Mr. French was in a letter dated April 4, 2007. It stated:

The facts of the dispute are outlined as per the attached letters.

The appeal should be allowed in accordance with the fairness provisions and due to the fact of the miscommunication of facts and information by Revenue Canada representatives.

If you have any questions regarding this matter please do not hesitate to contact me.

[6] The attached letters were the same letters that were included in the proposed Notice of Appeal. The hearing was attended by Robert Smith, President of Collingwater Investments Inc. and he was assisted by Mr. French. Mr. French confirmed that the Applicant intended to appeal pursuant to the *General Procedure*.

[7] The Respondent opposed this application for an extension of time on the basis that there were not reasonable grounds for the appeal within the meaning of subparagraph 305(5)(b)(iv) of the *Excise Tax Act* (“Act”).

ISSUE

[8] Should the Applicant be granted an extension of time to file a Notice of Appeal?

ANALYSIS

[9] Section 305 of Part IX of the *Act* reads as follows:

305. (1) Where no appeal to the Tax Court under section 306 has been instituted within the time limited by that provision for doing so, a person may make an application to the Tax Court for an order extending the time within which an appeal may be instituted, and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

(2) An application made under subsection (1) shall set out the reasons why the appeal to the Tax Court was not instituted within the time otherwise limited by this Part for doing so.

(3) An application made under subsection (1) shall be made by filing in the Registry of the Tax Court, in accordance with the provisions of the *Tax Court of Canada Act*, three copies of the application accompanied by three copies of the notice of appeal.

(4) After receiving an application made under this section, the Tax Court shall send a copy of the application to the office of the Deputy Attorney General of Canada.

(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for appealing; and

(b) the person demonstrates that

(i) within the time otherwise limited by this Part for appealing,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person had a bona fide intention to appeal,

(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,

(iii) the application was made as soon as circumstances permitted it to be made, and

(iv) there are reasonable grounds for appealing from the assessment.

[10] This section stipulates how an application for an extension of time is to be made, the contents of the application and the conditions the Applicant must satisfy before an Order can be made. I have concluded that the application filed by the Applicant is inadequate. It does not comply with subsection 305(3).

[11] As well, neither the application filed by the Applicant nor the testimony at the hearing, demonstrated that there are reasonable grounds for appealing from the assessment in accordance with subparagraph 305(5)(b)(iv). The only grounds of appeal raised by the Applicant were estoppel and the fairness provisions. Neither of these are reasonable grounds for appealing from the assessment.

[12] In its application, the Applicant is in essence saying that the Minister is estopped from assessing in a certain manner as his representatives gave incorrect information. The issue of estoppel was discussed by Bowman, J. (as he then was) in *Goldstein v. Canada*, [1985] 2 C.T.C. 2036. He stated at paragraphs 21 to 23:

21 There is much authority relating to the question of estoppel in tax matters and no useful purpose would be served by yet another review of the cases. I shall endeavour however to set out the principles as I understand them, at least to the extent that they are relevant. Estoppels come in various forms -- estoppel *in pais*, estoppel by record and estoppel by deed. In some cases reference is made to a concept of "equitable estoppel", a phrase which may or may not be accurate. (See *Canadian Pacific Railway Co. v. The King*, [1931] A.C. 414 at page 429. Cf. *Central London Property Trust Ltd. v. High Trees House Ltd.*, [1947] 1 K.B. 130.) It is sufficient to say that the only type of estoppel with which we are concerned here is estoppel *in pais*. In *Canadian Superior Oil Ltd. v. Paddon-Hughes Development Co.*, [1970] S.C.R. 932 at pages 939-40 Martland J. set out the factors giving rise to an estoppel as follows:

The essential factors giving rise to an estoppel are I think:

(1) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation is made.

(2) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation is made.

(3) Detriment to such person as a consequence of the act or omission.

22 Estoppel is no longer merely a rule of evidence. It is a rule of substantive law. Lord Denning calls it "a principle of justice and of equity". (See *Moorgate Mercantile Co. v. Twitchings*, [13] 1 Q.B. 225, at page 241.)

23 It is sometimes said that estoppel does not lie against the Crown. The statement is not accurate and seems to stem from a misapplication of the term estoppel. The principle of estoppel binds the Crown, as do other principles of law. Estoppel *in pais*, as it applies to the Crown, involves representations of fact made by officials of the Crown and relied and acted on by the subject to his or her detriment. The doctrine has no application where a particular interpretation of a statute has been communicated to a subject by an official of the government, relied upon by that subject to his or her detriment and then withdrawn or changed by the government. In such a case a taxpayer sometimes seeks to invoke the doctrine of estoppel. It is inappropriate to do so not because such representations give rise to an estoppel that does not bind the Crown, but rather, because no estoppel can arise where such representations are not in accordance with the law. Although estoppel is now a principle of substantive law it had its origins in the law of evidence and as such relates to representations of fact. It has no role to play where questions of interpretation of the law are involved, because estoppels cannot override the law.

[13] The ground of appeal based on estoppel must fail as an assessment must be made pursuant to the provisions of the Act and it is not open to a taxpayer to set up an estoppel to prevent the operation of the statute.

[14] The Applicant has also asked that the appeal (application) be allowed in accordance with the fairness provisions. Section 281.1 is commonly referred to as the fairness provisions. Section 281.1 reads:

281.1 (1) The Minister may waive or cancel interest payable by a person under section 280.

(2) The Minister may waive or cancel penalties payable by a person under section 280.

[15] Section 281.1 of the Act confers on the Minister the discretion to waive or cancel penalties. The Tax Court of Canada does not have the jurisdiction to review the Minister's exercise of discretion.

[16] This is a situation where the documents filed with the Court and the representations made by the Applicant's representative were inadequate. The following statement made by Dussault, T.C.J., in *Ferrara v. R.*, [2002] T.C.J. No. 60 at paragraphs 9 and 10 is appropriate in this case:

[9] When persons present themselves as accountants and claim to represent taxpayers before the Tax Court of Canada, something that is allowed under the statutory provisions governing the informal procedure, they must agree to fulfill the obligations of that mandate with a minimum of professionalism and competence; otherwise they are liable to action by taxpayers who may be deprived of their rights.

[10] In this case, I consider that the notice of appeal does not meet the minimum standards that would make it possible to state that there are reasonable grounds for the appeal. The application for an extension of time does not remedy this situation.

[17] The application for an extension of time is dismissed.

Signed at Vancouver, British Columbia this 7th day of September, 2007.

“V.A. Miller”

V.A. Miller, J.

CITATION: 2007TCC539
COURT FILE NO.: 2007-1687(GST)APP
STYLE OF CAUSE: Collingwater Investments Inc. v. The Queen
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: August 13, 2007
REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller
DATE OF JUDGMENT: September 7, 2007

APPEARANCES:

Agent for the Applicant: Tim French
Counsel for the Respondent: Kate Leslie

COUNSEL OF RECORD:

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