

Docket: 2003-2062(IT)I

BETWEEN:

SHAWN L. IVENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on November 27 and 28, 2003, at Vancouver, British Columbia.

Before: The Honourable Alban Garon, Chief Justice

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Gavin Laird

ORDER

Upon motion made by the counsel for the Respondent for an Order quashing the appeal from the income tax reassessment for the 1998 taxation year;

And upon hearing what was alleged by the parties;

The motion is granted.

The purported appeal from the income tax reassessment for the 1998 taxation year is quashed in accordance with the Reasons for Order.

Signed at Ottawa, Canada, this 5th day of December 2003.

"Alban Garon"

Garon, C.J.

Citation:2003TCC910
Date:20031205
Docket: 2003-2062(IT)I

BETWEEN:

SHAWN L. IVENS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

GARON, C.J.

[1] This is a motion made by the Respondent for an Order quashing the appeal from the income tax reassessment for the 1998 taxation year.

[2] The ground for the motion, as stated in the Notice of Motion dated September 19, 2003, is that a condition precedent to instituting a valid appeal has not been met because:

1. The Appellant did not serve a Notice of Objection to the 1998 notice of reassessment dated June 1, 2001, within the time allowed by subsection 165(1) of the *Income Tax Act*; and

2. The Appellant did not appeal directly to the Tax Court of Canada regarding the reassessment issued on June 1, 2001, pursuant to subsection 165(7) of the *Income Tax Act*, within the time allowed by subsection 169(1) of the *Income Tax Act*.

[3] The salient facts concerning this motion, which are set out in the Affidavit of Mr. A.K.W. Chan, attached to the Notice of Motion dated September 19, 2003, could be summarized as follows:

1. On March 8, 2001, the Minister of National Revenue initially assessed the Appellant to include in the Appellant's income employment income of \$17,875.00 and social assistance payments in the amount of \$621.00.
2. By a letter dated April 5, 2001, the Appellant objected to the above assessment.
3. On June 1, 2001, the Minister of National Revenue reassessed the Appellant for the 1998 taxation year to allow interest paid in the amount of \$150.00 on his student loans and provincial sales tax credit in the amount of \$50.00.
4. By a letter dated July 31, 2001, the Minister of National Revenue advised the Appellant that if he disagreed with the reassessment dated June 1, 2001, he must either
 - a) file an objection, or
 - b) appeal directly to the Tax Court of Canada within 90 days of the mailing of the latest reassessment.
5. On September 3, 2002, the Appellant objected to the reassessment dated June 1, 2001 for the 1998 taxation year.
6. On March 24, 2003, the Appellant filed a Notice of Appeal where reference is made to the 1998 and 1999 taxation years.

Analysis

[4] I shall now consider the application to the facts of this case of the provisions of the *Income Tax Act* regarding the time frame within which a Notice of Objection must be served on the Minister of National Revenue and a Notice of Appeal must be filed with the Tax Court of Canada.

Notice of Objection

[5] Subsection 165(1) of the *Income Tax Act* provides that in the case of an individual the Notice of Objection must be served on the Minister "on or before the later of

- i) the day that is one year after the taxpayer's filing-due date for the year, and
- ii) the day that is 90 days after the day of mailing of the notice of assessment."

[6] The phrase "filing-due date", which is defined in subsection 248(1) of the *Income Tax Act*, generally refers in the case of an individual to a period ending on April 30th of the year immediately following the year for which the return of income is to be filed. I am referring below to the period for serving a Notice of Objection as the normal period.

[7] Therefore, in the present case, the Appellant's filing-due date for the return for the 1998 return of income was April 30, 1999. Accordingly, one year after the taxpayer's filing-due date was April 30, 2000. The other date referred to in subsection 165(1) of the *Income Tax Act* is 90 days after the mailing of the Notice of Assessment, which in this case is dated June 1, 2001, was August 30, 2001.

[8] From the above, it follows that the Notice of Objection, which was served on September 3, 2002, was served more than a year after the later of the two days mentioned in subsection 165(1) of the *Act*, the later of the two days being August 30, 2001.

[9] However, section 166.1 of the *Income Tax Act* provides that if a Notice of Objection had not been filed within the required time, an application may be made to the Minister of National Revenue for an extension of time and the Minister of National Revenue could extend the time if conditions specified in subsection 166.1(7) of the *Income Tax Act* are met. One of the conditions is that the application must be made within one year after the expiration of the normal period for filing a Notice of Objection, that means within one year after August 30, 2001, which is no later than August 30, 2002. Here, the Appellant served his Notice of Objection on September 3, 2002, that is, more than a year after the expiration of the normal period for serving a Notice of Objection. Therefore, no extension of time could be granted by the Minister of National Revenue.

[10] An extension of time could also be granted by the Tax Court of Canada. However, the application is also to be made within one year after the expiration of the normal period for serving a Notice of Objection as set out in subsection 166.2(5) of the *Income Tax Act*.

[11] Therefore, no extension of time for serving a Notice of Objection could be granted in the present case by the Court or by the Minister of National Revenue in respect of the 1998 taxation year, because the application for extension of time was made too late, that is, more than a year after the expiration of the normal period for serving a Notice of Objection on the Minister of National Revenue.

Notice of Appeal

[12] Following the receipt of the Notice of Reassessment dated June 1, 2001, the Appellant also had the option of appealing directly to the Tax Court of Canada from the reassessment in question, without serving a second Notice of Objection in respect of the 1998 taxation year. This is authorized by subsection 165(7) of the *Income Tax Act*.

[13] Subsection 169(1) of the *Income Tax Act*, provides that no appeal may be instituted after the expiration of 90 days from the day the Notice of Reassessment has been mailed to the taxpayer. Section 167 of the *Income Tax Act*, provides that if an appeal has not been instituted by the taxpayer within the required time, which I describe as the "normal time" for appealing, the taxpayer may make an application to this Court for an extension of time, as provided by subsection 167(1) of the *Income Tax Act*.

[14] The application for an extension of time for appealing an assessment could be granted by the Court, if certain requirements are met. One of the requirements is that the application must be made within one year after the expiration of the normal time.

[15] In this case, the reassessment was issued on June 1, 2001 and the appeal was instituted on March 24, 2003.

[16] The normal time for appealing would have been 90 days after the reassessment of June 1, 2001. This means that the appeal had to be filed before August 31, 2001 and the application for extension of time could not be made after August 30, 2002. That means the appeal was instituted more than seven months

after the utmost limit within which an extension of time for appealing could be made.

[17] From the above, it follows that the Appellant was out of time in serving a Notice of Objection to the reassessment issued on June 1, 2001 in respect of the 1998 taxation year and in instituting his appeal from the same reassessment. He was also out of time for making an application for extension of time for serving a Notice of Objection or appealing to this Court in respect of the reassessment of June 1, 2001.

[18] Therefore, the motion is granted and the purported appeal from the income tax reassessment for the 1998 taxation year is quashed.

Signed at Ottawa, Canada, this 5th day of December 2003.

"Alban Garon"

Garon, C.J.

COURT FILE NO.: 2003-2062(IT)I

STYLE OF CAUSE: Shawn L. Ivens and
Her Majesty the Queen

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: November 27 and 28, 2003

REASONS FOR ORDER BY: The Honourable Alban Garon
Chief Justice

DATE OF ORDER: December 5, 2003

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Gavin Laird

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada