

BETWEEN:

MOHAMMED SHOR UDDIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on September 17, 2009 at Toronto, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant: Apolinar Clavero

Counsel for the Respondent: Iris Kingston

JUDGMENT

The appeal with respect to an assessment made under the *Income Tax Act* for the 2005 taxation year is dismissed.

Each party shall bear their own costs.

Signed at Toronto, Ontario this 17th day of September 2009.

“J. M. Woods”

Woods J.

Citation: 2009 TCC 471
Date: 20090917
Docket: 2008-3755(IT)I

BETWEEN:

MOHAMMED SHOR UDDIN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, Mohammed Shor Uddin, appeals in respect of an assessment made under the *Income Tax Act* for the 2005 taxation year.

[2] In his notice of appeal, the appellant provided the following reason for appealing:

Canada Revenue Agency failed to respond to the true meaning of the objection.

[3] In the notice of objection, the facts and reasons for objecting were stated as follows:

Because the re-assessment is not constitutional; therefore, this should be vacated.

[4] At the opening of the hearing, the agent for the appellant explained that the appellant was not challenging the reassessment on technical grounds. Rather, it was submitted that the audit process which led to the reassessment breached the appellant's constitutional rights.

[5] Unfortunately for the appellant, even if the audit process was flawed, this is not a basis by which the assessment can be vacated by this Court.

[6] The applicable principle was described in *Main Rehabilitation Co. Ltd. v. The Queen*, 2004 FCA 403, 2004 DTC 6763, as follows:

[6] In any event, it is also plain and obvious that the Tax Court does not have the jurisdiction to set aside an assessment on the basis of an abuse of process at common law or in breach of section 7 of the Charter.

[7] As the Tax Court Judge properly notes in her reasons, although the Tax Court has authority to stay proceedings that are an abuse of its own process (see for instance *Yacyshyn v. Canada*, 1999 DTC 5133 (F.C.A.)), Courts have consistently held that the actions of the CCRA cannot be taken into account in an appeal against assessments.

[8] This is because what is in issue in an appeal pursuant to section 169 is the validity of the assessment and not the process by which it is established (see for instance the *Queen v. the Consumers' Gas Company Ltd.* 87 DTC 5008 (F.C.A.) at p. 5012). Put another way, the question is not whether the CCRA officials exercised their powers properly, but whether the amounts assessed can be shown to be properly owing under the Act (*Ludco Enterprises Ltd. v. R.* [1996] 3 C.T.C. 74 (F.C.A.) at p. 84).

[7] For these reasons, the appeal will be dismissed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 17th day of September 2009.

“J. M. Woods”

Woods J.

CITATION: 2009 TCC 471

COURT FILE NO.: 2008-3755(IT)I

STYLE OF CAUSE: MOHAMMED SHOR UDDIN and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: September 17, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice J. M. Woods

DATE OF JUDGMENT: September 17, 2009

APPEARANCES:

Agent for the Appellant: Apolinar Clavero

Counsel for the Respondent: Iris Kingston

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada