

Docket: 2010-3310(IT)APP

BETWEEN:

VIJAY MEHTA,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on December 16, 2010 at Toronto, Ontario

Before: The Honourable Justice Valerie Miller

Appearances:

For the Applicant: The Applicant himself
Counsel for the Respondent: Sandra K.S. Tsui

ORDER

The application for an Order of this Court to extend the time in which to file a Notice of Appeal for the 2005 and 2006 taxation years is allowed.

This Court orders that the time within which an appeal may be instituted is extended to the date of this Order and the Notice of Appeal, received with the application, is deemed to be filed on the date of this Order.

Signed at Ottawa, Canada, this 21st day of January 2010.

“V.A. Miller”

V.A. Miller J.

Citation : 2011TCC38
Date: 20110121
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BETWEEN:

VIJAY MEHTA,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

V.A. Miller J.

[1] This is an application for extension of time to file a Notice of Appeal. Mr. Mehta wants to appeal assessments which were issued under the *Income Tax Act* (the “Act”) for the 2005 and 2006 taxation years.

[2] Mr. Mehta was originally assessed for the 2005 and 2006 taxation years on March 27, 2006 and October 1, 2007 respectively. Both of these years were reassessed by notices dated October 2, 2008. Mr. Mehta objected to the reassessments by notices of objection dated October 27, 2008 and received by the Canada Revenue Agency (CRA) on November 20, 2008. The reassessments were confirmed by notice dated November 9, 2009 and sent by registered mail on November 10, 2009. The time period for filing a notice of appeal expired on February 8, 2010.

[3] According to the Notice of Confirmation, the following expenses were disallowed:

	2005	2006
Rental expenses	\$ 7,501	\$ 5,312
Business expenses		\$67,032
Child care expenses		\$ 6,050

[4] An application for extension of time to appeal will be granted if Mr. Mehta satisfies the requirements given in subsection 167(5) of the *Act*. In accordance with section 169 of the *Act*, the application must be made within one year of February 8, 2010. Mr. Mehta must demonstrate that within the time from November 10, 2009 to February 8, 2010, he was unable to act or to instruct another to act in his name, or that he had a *bona fide* intention to appeal. He must also demonstrate that it would be just and equitable to grant the application; that the application was made as soon as circumstances permitted; and, that there are reasonable grounds for the appeal.

[5] I have reviewed all of the evidence presented at the hearing of this application and I have concluded that Mr. Mehta has satisfied all of the requirements of subsection 167(5) of the *Act*. His application for extension of time was received by the court on October 21, 2010 which was well within the time allowed by the *Act*. Mr. Mehta stated that he intended to appeal the reassessments of his 2005 and 2006 taxation years and he had engaged Mr. Abid Okadia to represent him. Mr. Mehta was surprised when he was told by Greg Reid, a collections officer with the CRA, that his 2005 and 2006 taxation years had not been appealed.

[6] The application for extension of time was made as soon as circumstances permitted. According to Mr. Mehta, he learned on March 25, 2010 that his 2005 and 2006 taxation years had not been appealed to this court. He attempted to file this application in September, 2010, but he had the incorrect address. He successfully filed the application on October 21, 2010. I do not find that this time period shows unreasonable delay¹. There are reasonable grounds for the appeal as Mr. Mehta's 2005 and 2006 taxation years were reassessed to disallow numerous expenses which he had claimed.

[7] The Respondent filed three affidavits with the court to support its position that this application for extension of time should not be granted. I have inferred from Mr. Mehta's evidence and the affidavits of Greg Reid and Sarah Silva, an Appeals Officer with CRA, that Mr. Mehta was duped by his representative. Mr. Okadia told Mr. Mehta that he had met with the CRA officials when he had not; he told Mr. Mehta that he had sent documents to the CRA when he had not.

[8] It was Mr. Mehta's evidence that he had given all of his documents to his representative. He further stated that he did not know what to do about his tax issue. I found Mr. Mehta to be credible.

[9] Hershfield J in *Meer v. Canada*² set out the considerations in making a determination whether it is 'just and equitable' to grant an extension of time. He stated:

[20] ... Counsel for the Respondent argued that the requirement that the granting of an extension be just and equitable in the circumstances was a separate test that must be met as a condition to granting the application. Such condition does appear in subsection 167(5) as a separate test. But the condition is derived from the reasons for and circumstances of the request. The reasons and circumstances here do not give rise to any asserted injustice. There has been no assertion here of foul play, dishonesty or prejudice. I can find no cases, nor has the Respondent's counsel offered any cases, that would support the contention or give an illustration of a situation where all the other conditions for the granting of the application are met and it is still found not just and equitable to grant the application. The reassessment is not adversely affected by granting the application except that the reassessment can then be dealt with on its merits. In these circumstances it strikes me as inequitable not to apply the principle set down in *Seater v. R.*, [1997] 1 C.T.C. 2204 wherein Judge McArthur concludes that it is preferable to have a taxpayer's issues decided on their merits than having them dismissed for missed time limits in the *Act*.

[10] I have concluded that it is just and equitable to grant this application for extension of time. I have weighed the harm to Mr. Mehta of disallowing the application against the harm to the Respondent if the application were allowed³. It is clear that the harm to Mr. Mehta would be significant. I have considered the amounts that were disallowed and would be at issue in the appeal.

[11] For all of these reasons, the application for extension of time is allowed.

Signed at Ottawa, Canada, this 21st day of January 2010.

“V.A. Miller”

V.A. Miller J.

¹ *Fagbemi v. R.*, 2005 D.T.C. 995 (TCC) at paragraph 9

² [2001] T.C.J. No. 321

³ *Supra*, footnote 1 at paragraph 10

CITATION: 2011TCC38

COURT FILE NO.: 2010-3310(IT)APP

STYLE OF CAUSE: VIJAY MEHTA AND
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: December 16, 2010

REASONS FOR ORDER BY: The Honourable Justice Valerie Miller

DATE OF ORDER: January 21, 2010

APPEARANCES:

For the Applicant: The Applicant himself
Counsel for the Respondent: Sandra K.S. Tsui

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

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