

Docket: 2010-3969(IT)APP

BETWEEN:

ROBERT ROLAND,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on April 1, 2011 at Toronto, Ontario

Before: The Honourable Justice L.M. Little

Appearances:

Counsel for the Applicant: Michael Morgan
Counsel for the Respondent: Sina Akbari
Samantha Hurst

ORDER

The application for an extension of time to file a Notice of Appeal for the 2003 and 2004 taxation years is dismissed, without costs, in accordance with the attached Reasons for Order.

Signed at Vancouver, British Columbia, this 6th day of April 2011.

“L.M. Little”

Little J.

Citation: 2011 TCC 202
Date: April 6, 2011
Docket: 2010-3969(IT)APP

BETWEEN:

ROBERT ROLAND,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Little J.

[1] The Minister of National Revenue (the “Minister”) reassessed the Applicant for the 2003 and 2004 taxation years by Notices of Reassessment dated March 29, 2007.

[2] The Applicant purported to object to the said Reassessments by Notices of Objection dated October 1, 2007 and received by the Canada Revenue Agency (the “CRA”) on October 18, 2007.

[3] By letter dated November 8, 2007, the Minister notified the Applicant that the Notices of Objection for the 2003 and 2004 taxation years were received beyond the 90 day limitation period and, therefore, the Notices would not be accepted under the *Income Tax Act* (the “Act”).

[4] However, in the letter to the Applicant dated November 8, 2007, the Minister stated that the Applicant could apply for an extension of time within which to file Notices of Objection for the 2003 and 2004 taxation years.

[5] On September 11, 2008, the Minister received a request from the Applicant to extend the time within which Notices of Objection for the 2003 and 2004 taxation years might be filed.

[6] By letter dated October 3, 2008, the Minister notified the Applicant that the request to extend the time to file Notices of Objection for the 2003 and 2004 taxation years would not be granted because the Applicant did not meet the one year plus 90 day deadline contained in the *Act*.

[7] The Minister concluded that the deadline for filing an Application to extend the time within which to file Notices of Objection for the 2003 and 2004 taxation years was one year plus 90 days from March 29, 2007, i.e., on or before June 27, 2008. In this situation, the Application to extend the time for Notices of Objection was filed on September 11, 2008, i.e., some two and one-half months late.

[8] An Application to extend the time within which to file a Notice of Appeal with the Tax Court for the 2003 and 2004 taxation years was filed with the Tax Court on December 23, 2010.

ISSUE

[9] Should the Application to extend the time to file a Notice of Appeal be granted?

ANALYSIS

[10] Paragraph 166.1(7)(a) of the *Act* specifies that an Application to extend the time within which to file a Notice of Objection is one year plus 90 days after the date that the Reassessments were issued.

[11] In this situation, the Applicant clearly missed the one year plus 90 day extension period for filing Notices of Objection.

[12] The *Act* specifies that the filing of a Notice of Objection is a condition precedent to instituting an appeal to the Tax Court. I refer to the decision of the Federal Court of Appeal in *Bormann v The Queen*, 2006 FCA 83, 2006 D.T.C. 6147. In that case, Sexton J. said, at paragraphs 3 to 5:

[3] Section 169(1) of the *Income Tax Act* obliges a taxpayer to serve [a] Notice of Objection in order to appeal an assessment. In other words, service of a Notice is a condition precedent to the institution of an appeal.

[4] As mentioned, the appellant did not serve a Notice of Objection nor is there evidence that the appellant made an application to the Ministry to extend the time to file a Notice of Objection.

[5] Once it is clear that no application for an extension of time was made, the law is clear that there is no jurisdiction in the Tax Court to further extend the time for equitable reasons.

[13] I do not have the authority to extend the time within which to file Notices of Objection.

[14] I must, therefore, dismiss the Application to extend the time to file a Notice of Appeal.

[15] The Application is dismissed, without costs.

Signed at Vancouver, British Columbia, this 6th day of April 2011.

“L.M. Little”

Little J.

CITATION: 2011 TCC 202

COURT FILE NO.: 2010-3969(IT)APP

STYLE OF CAUSE: ROBERT ROLAND AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 1, 2011

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

DATE OF ORDER: April 6, 2011

APPEARANCES:

Counsel for the Applicant: Michael Morgan
Counsel for the Respondent: Sina Akbari
Samantha Hurst

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