

Docket: 2011-1067(IT)APP

BETWEEN:

LI QUN GU,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on July 8, 2011, at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Applicant:

No Appearance

Counsel for the Respondent:

Cherylyn Dickson

ORDER

The application by the Applicant for an extension of the time within which a notice of objection may be served in relation to the reassessment issued under the *Income Tax Act* on September 21, 2009 for the Applicant's 2006 taxation year is dismissed, without costs.

Signed at Vancouver, British Columbia, this 25th day of August, 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC397
Date: 20110825
Docket: 2011-1067(IT)I

BETWEEN:

LI QUN GU,

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Respondent.

REASONS FOR ORDER

Webb, J.

[1] The Applicant's tax liability for 2006 was reassessed on April 27, 2009. On July 22, 2009 the Applicant served a notice of objection to this reassessment. On September 21, 2009 the Applicant was again reassessed in relation to her tax liability for 2006. On February 18, 2011 the Applicant served on the Minister an application for an extension of time within which a notice of objection may be served in relation the reassessment for 2006 that was issued on September 21, 2009. This request was denied and on April 8, 2011 the Applicant filed an appeal to this Court to request that her application be granted. The Applicant did not appear for the hearing of her application and on this basis alone her application should be dismissed. However, I will also refer to the relevant provisions of the *Income Tax Act* (the "Act").

[2] Section 166.2 of the *Act* provides in part as follows:

166.2 (1) A taxpayer who has made an application under subsection 166.1[(1)] may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision, but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

...

(5) No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and...

[3] The application under subsection 166.1(1) of the *Act* (which is referred to in paragraph 166.2(5)(a) above) is the application to the Minister to extend the time to serve a notice of objection. The time within which a notice of objection may be served (without an extension of time) is set out in subsection 165(1) of the *Act*. This subsection provides in part as follows:

165. (1) A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual ..., 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; and

(b) in any other case, on or before the day that is 90 days after the day of mailing of the notice of assessment.

[4] Since the Applicant was reassessed on September 21, 2009 it is clear that the application to the Minister was not made within one year after the expiration of the time otherwise provided for filing a notice of objection to this reassessment and therefore as a result of the provisions of paragraph 166.2(5)(a) of the *Act*, the Applicant's application to extend the time within which a notice of objection may be served in relation to the reassessment of her 2007 taxation year issued on September 21, 2009 cannot be granted.

[5] It should be noted that the subsequent reassessment of the Applicant's tax liability for 2006 on September 21, 2009, nullified the reassessment for that year that

had been issued on April 27, 2009¹. However, upon being reassessed on September 21, 2009 the Applicant could have filed an appeal directly to this Court as provided in subsection 165(7) of the *Act*. However, any such appeal would have had to have been filed within the time limit as set out in subsection 169(1) of the *Act* (90 days from the date of the reassessment) or, if the appeal was not filed within this 90 day period, an application to extend the time to appeal would have had to have been made within one year from the end of the expiration of this 90 day period.

[6] The application by the Applicant for an extension of the time within which a notice of objection may be served in relation to the reassessment issued under the *Act* on September 21, 2009 for the Applicant's 2006 taxation year is dismissed, without costs.

Signed at Vancouver, British Columbia, this 25th day of August 2011.

“Wyman W. Webb”

Webb, J.

¹ *Abrahams v. Minister of National Revenue*, [1967] 1 Ex.C.R. 333, [1966] C.T.C. 690; *Shair v. The Queen*, 2006 TCC 278, [2006] 4 C.T.C. 2074, 2006 DTC 2869.

CITATION: 2011TCC397

COURT FILE NO.: 2011-1067(IT)APP

STYLE OF CAUSE: LI QUN GU AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 8, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: August 25, 2011

APPEARANCES:

For the Applicant:	No Appearance
Counsel for the Respondent:	Cherylyn Dickson

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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