

Docket: 2012-1677(IT)APP

BETWEEN:

LILY TCHENG,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Application heard on common evidence with the applications of
Wei Ming Yee, 2012-1679(IT)APP, and of Lily Tcheng, liquidator
of the Tsou Kang Tcheng succession, 2012-1680(IT)APP,
on July 19, 2012, at Montréal, Quebec

Before: The Honourable Justice Lucie Lamarre

Appearances:

Agent for the applicant:

Li Han Tcheng

Counsel for the respondent:

Anne Poirier

Amélia Fink

ORDER

Whereas the application for an order extending the time in which appeals from assessments made under the *Income Tax Act (ITA)* for the 2000, 2001, 2002, 2003, 2004, 2005 and 2008 taxation years may be filed;

And upon the submissions of the parties;

The application for an extension of time in which to file notices of appeal from assessments made under the ITA for the 2000, 2001, 2002, 2003, 2004, 2005, and 2008 taxation years is dismissed.

Signed at Ottawa, Canada, this 26th day of July 2012.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of September 2012
Margarita Gorbounova, Translator

Citation: 2012 TCC 276
Date: 20120726
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BETWEEN:

LILY TCHENG,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

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REASONS FOR ORDER

Lamarre, J.

[1] On April 24, 2012, the applicant filed an application for an extension of time to file a notice of appeal from the most recent assessments made by the Minister of National Revenue (**Minister**) for the 2000, 2001, 2002, 2003, 2004, 2005 and 2008 taxation years.

[2] The most recent assessments for the 2000, 2001 and 2002 taxation years dated April 7, 2008, have already been appealed, and the appeals were dismissed by Justice Archambault of this Court on January 26, 2011.

[3] With regard to 2003, 2004 and 2005, the most recent assessments dated May 21, 2009, and to 2008, the most recent assessment dated December 14, 2009, were confirmed by the CRA on February 4, 2011. In accordance with subsection 165(1) of the *Income Tax Act* (**ITA**), the applicant had 90 days to file notices of appeal, that is, until May 5, 2011. She filed her notices of appeal only on April 24, 2012, that is, roughly a year after the expiration of the time limit otherwise prescribed for filing notices of appeal.

[4] The conditions to be granted an extension of time are listed in subsection 167(5) of the ITA and read as follows:

167. (5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a bona fide intention to appeal,

(ii) given the reasons set out in the application and the circumstances of the case, it would be just and equitable to grant the application,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

[5] The agent for the applicant, Li Han Tchong, the applicant's brother, explained that he had delayed filing that application because he had first consulted with his M.P. and then lodged a complaint with the Ombudsman. He said that he was embarrassed to file an application with our Court. His M.P. allegedly replied to him in August 2011. The Ombudsman has not followed up yet. Li Han Tchong had already applied for an extension of time for the applicant before our Court in the past, and he knew the rules that apply (see chronology for the 2001 to 2002 objection years, Exhibit I-2, tab 1). I am of the view that the reasons he provided cannot explain the entire delay to file the notices of appeal. Among other things, he did not file the application as soon as circumstances permitted.

[6] The application for an extension of time is therefore dismissed.

[7] In addition, regarding the applications for relief filed by the applicant under subsections 152(4.2) and 220(3.1) of the ITA, I refer to the reasons I provided in her parents' files (dockets 2012-1679(IT)APP and 2012-1680(IT)APP). Our Court has no

jurisdiction to hear an appeal from an assessment made following a decision rendered under those provisions.

[8] The application is therefore dismissed.

Signed at Ottawa, Canada, this 26th day of July 2012.

"Lucie Lamarre"

Lamarre J.

Translation certified true
on this 6th day of September 2012
Margarita Gorbounova, Translator

CITATION: 2012 TCC 276
COURT FILE NO.: 2012-1677(IT)APP
STYLE OF CAUSE: LILY TCHENG v. THE QUEEN
PLACE OF HEARING: Montréal, Quebec
DATE OF HEARING: July 19, 2012
REASONS FOR ORDER BY: The Honourable Justice Lucie Lamarre
DATE OF HEARING: July 26, 2012

APPEARANCES:

Agent for the applicant: Li Han Tcheng
Counsel for the respondent: Anne Poirier
Amélia Fink

COUNSEL OF RECORD:

For the applicant:

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Firm:

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