

Citation: 2012 TCC 292
Date: 20120809
Docket: 2012-776(IT)APP

BETWEEN:

JANICE HEWSTAN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Edited from the transcript of Reasons for Judgment delivered orally from the Bench on June 4, 2012 at Vancouver, British Columbia)

Campbell J.

[1] I am going to give my reasons now as to why I cannot allow the application for the extension of time to file the notice of objection.

[2] I think there was an admission by the Applicant that she recognizes she is out of time, both with the 90 day period which expired and the one year. I will run through the dates quickly because counsel has reviewed those. The 90 days expired September 9th, 2009. There was no notice of objection filed within those 90 days. There's a further one-year time limit set out in the *Income Tax Act* (the "Act"), which would have taken you, Ms. Hewstan, to September 9th, 2010. And that is the year in which taxpayers have to bring an application to extend that initial 90 day time to file the notice of objection.

[3] Clearly because the application was filed in early 2012, February 17th, I believe it was, clearly we are out of time in respect of the 90 day time limit and the one-year time limit, which gives taxpayers a total, really, of one year and 90 days. We are well beyond the time limits that are set out in the *Act*. Those statutory provisions do not give the Court much leeway in terms of extending those for taxpayers. I have no jurisdiction to grant leave for an extension of time unless it

comes within the confines and the parameters of those sections, and clearly that has not occurred in this case. We are well outside the time limits.

[4] Now, you referred me to paragraph 150(1)(d) and that paragraph, I agree with counsel, clearly does not apply here. It has to do with legal representatives for taxpayers filing on their behalf, and that did not occur here. You did not have a guardian or a legal representative. You have been filing on your own behalf both your returns and these applications.

[5] You referred me to the case of Justice Hershfield's (*Gyimah v The Queen*, 2011 D.T.C. 1014, 2010 TCC 621) and I had not read it but I did take a recess and I reviewed it since I had not seen it before. I also gave counsel the opportunity to review it as well. That case is certainly distinguishable from yours. There are a number of reasons, which were set out by counsel as to why that case is not just a little different but very different from the case that is in front of me. Primarily from my reading of it, and I think counsel would agree, there were a lot of problems and confusion in the evidence, apparently, in front of Justice Hershfield in terms of conflicting addresses for the taxpayer, mail-outs, mailing problems and receipt of a first Notice of Assessment by the taxpayer. Because of the confusion and the conflicts in that case Justice Hershfield gave the benefit of the doubt to that taxpayer in those circumstances. There were legal representatives involved in the case as well.

[6] Those circumstances make the factual situation in that case very different from what it is here. I do not have any evidence. I have heard from you and heard from Counsel, looked at the affidavit that he relied on, and by your own admission there is no question that when the Notices of Assessment were sent and, when they were received, that you have been looking after filing your own returns and your own applications and whatnot. In fact, apparently from the evidence here, you were able to do so successfully for the 2006 taxation year for which I think you received the credit in that year. So, Justice Hershfield's case is distinguishable and, I cannot apply it here at all.

[7] If we look at the case at tab 3, which is the Federal Court of Appeal (*Chaya v The Queen*, 2004 D.T.C. 6676, 2004 FCA 327), Justice Rothstein I believe decided that case. It may not be fair in the circumstances but if you look at what the Federal Court of Appeal has said, which are where my decisions go, even though the law is unfair I do not have the jurisdiction to change it. We are not a Court of equity we are a Court of statute. We are created by statute, and even though there maybe some unfairness to what I am deciding I do not have any power to step outside those parameters, Ms. Hewstan, of the year and 90 day limitations.

[8] There are no exceptional circumstances that have been shown to me so, unfortunately, I have to follow the case law, the decisions of our Court and the Federal Court of Appeal, and there is an abundant amount of case law that will not allow me the luxury of going outside and doing something which I think you feel would be fair to you.

[9] As counsel has explained to you and I have reiterated, section 150 simply does not apply here. Unfortunately the case before Justice Hershfield, which you provided to me is distinguishable on a number of grounds and a number of very important grounds, meaning the facts there are different. Consequently, I cannot use the case to grant you your extension, Ms. Hewstan.

[10] Unfortunately the application, which you brought forward today, cannot be allowed and must be dismissed, Ms. Hewstan.

Signed at Summerside, Prince Edward Island, this 9th day of August 2012.

"Diane Campbell"

Campbell J.