Docket: 2012-1247(IT)APP

BETWEEN:

JUSTIN HANSEN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application for Extension of Time heard on common evidence with the application of Justin Hansen *2012-1248(GST)APP* on July 13, 2012 at Vancouver, British Columbia

Before: The Honourable Justice J.E. Hershfield

Appearances:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Mika Banerd (Student-at-Law) Holly Popenia

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ORDER

Having heard the parties with respect to an application by the Applicant for an Order extending the time within which a Notice of Objection from the reassessments made under the *Income Tax Act* for the 2006, 2007 and 2008 taxation years may be served;

And having read the materials filed;

IT IS ORDERED THAT:

The application is dismissed, without costs, for the reasons set out in the attached Reasons for Order.

Signed at Ottawa, Canada this 3rd day of May 2013.

"J.E. Hershfield"

Hershfield J.

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Counsel for the Respondent:	Mika Banerd (Student-at-Law) Holly Popenia

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ORDER

Having heard the parties with respect to an application by the Applicant for an Order extending the time within which a Notice of Objection may be served in respect of the assessment made under the *Excise Tax Act*, for the GST reporting period from January 1, 2006 to December 31, 2008.

And having read the materials filed;

IT IS ORDERED THAT:

The application is dismissed, without costs, for the reasons set out in the attached Reasons for Order.

Signed at Ottawa, Canada this 3rd day of May 2013.

"J.E. Hershfield"

Hershfield J.

Citation: 2013 TCC 142
Date: 20130503
Dockets: 2012-1247(IT)APP
2012-1248(GST)APP

BETWEEN:

JUSTIN HANSEN,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Hershfield J.

[1] The Applicant was assessed under the *Income Tax Act* (the "*Act*") as having unreported income for his 2006, 2007 and 2008 taxation years. Such assessment also generated assessments ("GST") under the *Excise Tax Act* (the "*ETA*") on the theory that the income was from the supply of taxable supplies in respect of which GST was to be collected and remitted.

[2] The Respondent submits that the applications are, pursuant to the express terms of the *Act* and the *ETA*, statute barred and must be dismissed on that basis.

[3] I will not recite the applicable sections of the applicable statutory provisions. The relevant provisions of the *Act* were carefully reviewed in Court at the hearing and the Applicant followed along acknowledging his understanding that there were absolute filing deadlines that had to be adhered to in order to permit me any leeway to grant the applications.

[4] The Applicant did not dispute the time-lines that were sworn to in the affidavits of the officers of the Canada Revenue Agency (the "CRA"). Those affidavits were taken as exhibits. As well, an aid to the court time-line chart, reflecting the relevant dates for each of the *Act* and the *ETA* as sworn to in the affidavits, was presented and reviewed with the Applicant during the hearing.

[5] I am satisfied that the Applicant knowingly conceded that his applications in both cases were past the statutory deadlines and that accordingly I had no jurisdiction to allow them.

[6] Nonetheless, he felt aggrieved; perhaps rightfully so.

[7] I believe that had a timely objection been filed, the assessments would likely have been reduced, perhaps substantially. Assessments that review deposits and assume they are income are like net worth assessments. It is a process that wields a blunt instrument at the taxpayer creating presumptive damage from which a full recovery for all but the most meticulous record keepers is difficult at best.

[8] I also believe his story needs to be told. It is one that regrettably we hear all too frequently.

[9] The Applicant said he and his wife talked to the auditor in charge of their case. On their last visit he told the auditor he had no confidence in her abilities and wanted to talk to her supervisor. He thought he was to go in for another meeting with her supervisor. He believed that they were supposed to call him before they did an assessment. However, that did not happen. He just received the assessment without any further chance to prove that the assessment was ridiculous. He was being assessed for "a hundred grand"[1] and yet he did not make enough money to support his family without borrowing money from his father.

[10] I should mention here, as well, that the Applicant's wife was at the hearing. She made un-sworn remarks to corroborate her husband's story. Although she was never sworn-in, I want to make it clear that I have little doubt that his story is true. Further, Respondent's counsel never objected to any aspect of their "complaint" whether given as sworn testimony or not. In an informal procedure case dealing with a self-represented party, I applaud such tolerance.

[11] In any event, the Applicant's complaint is not only that he was deprived of a fair hearing before the assessment, but more specifically, he complains that the assessment was prematurely assessed in impossibly high amounts. It took what he called "pay-day loans" to buy groceries and added the loan amounts to his income. Presumably he was suggesting that his pay went to repay his loans so the loans should not be added to his income. The auditor, who the Applicant felt to be

[1] It appears that the three year total owing with interest and penalties stands at some $180,000.

incompetent, apparently did not feel that there were adequate records to prevent the bank deposits, said to be pay-day loans, from being assessed as income. That process, as asserted by the Applicant, resulted in the auditor coming up with ridiculous gross income amounts.

[12] On the other hand, he acknowledged that even if he did owe something it was not anywhere near the amount assessed and it did not take into account the expense deductions he would have been allowed as a subcontractor.

[13] I will now consider the time frame after the issuance of the assessments.

[14] The Applicant raised two points relating to this time frame. First, he said he called the CRA and said he wanted to file a complaint against the auditor. It seems nothing happened as a result of that call.

[15] Some time later he said he got a statement of account that reduced the amount owing due to the assessments in dispute. He felt satisfied then that he would have a chance to straighten this out without a need to object.

[16] However, the date of that statement reveals that it followed his late filed objections. What the Applicant did not realize was that the filing of the objections automatically generated the reduction in the balance owing on the preliminary assumption that it was a valid objection. On review, the Minister determined that they were statute barred and therefore the assessments were not capable of being in dispute so the statements were revised again to show the balances owed as a result of the assessments.

[17] Clearly, the Applicant and his family are in financial straits as a result of these assessments. Collection activity has already caused holdbacks of portions of the family's child tax benefits.

[18] Believing the assessments were almost certainly high, I did what I have come to do recently in sympathetic cases where access to justice seems to have been denied by application of strict statutory deadlines; namely, I asked Respondent's counsel to ask the Minister to exercise the discretionary powers she has, particularly under the *Act* – powers that I am not given. Not surprisingly, but regrettably, this request was rejected. I will not re-iterate my concerns that as a matter of legal construction of the *Act* such rejection may not accord with Parliament's purpose for giving her such powers. I have made that concern known

in another case. In *Poulin v. The Queen*[2] I suggested that the sequence of events contemplated by the *Act* had to be that the Minister's discretionary powers needed to be exercised before a final determination was made by this Court. This sequence avoids the possibility of a Court order effectively frustrating the Minister's discretionary powers going forward. If this Court says it is too late to apply for an extension, can the Minister defy the Court order? On the other hand, I have no problem in suggesting that the Minister can still relieve interest and penalties as they are expressly provided for in subsection 220(3.1) of the *Act* and subsections 281.1(1) and (2) of the *ETA*. That is, the application of those provisions would not seem to me to contradict a Court order denying leave to proceed with an objection *per se*.

[19] Regardless, while I am sympathetic, this is not a case that gives me any basis for allowing the applications. This Court has no jurisdiction to weigh matters that preceded the assessments. While I am confident that the vast majority of CRA auditors are competent, experience suggests some will get overly sceptical from time to time. However, we must trust that they will always take a realistic approach to these types of "blunt instrument" assessments. While I lack jurisdiction to deal with such matters, I have to say that I would condemn an auditor who ignored a taxpayer's request for a meeting. The same would apply to a process that does not follow-up on a complaint. Admittedly, the Respondent in this case was not in a position at the hearing to respond to such issues raised by the Applicant. Regardless, neither of these condemnations would assist the Applicant before this Court.

[20] The best place for the Applicant to look for assistance might be with the collections people at the CRA. Tax debts can be settled. Perhaps the circumstances here warrant a settlement. Alternatively, he may still seek a fairness review, at least in respect of interest and penalties although my understanding is that the basis for granting such relief is so pigeon-holed and regulated that simple, general, concepts of "fairness" have regrettably lost a place in the system. The reality, however, is that the machine that drives the country's economy must be efficient and effective without being encumbered by endless windows of opportunity for review or appeal. Taxpayers, then, must be presumed to know how to deal with disputed assessments within the time allowed by Parliament whether same is thought to be ungenerous or not. Ignorance of such strict deadlines has never been a safe-harbour in our system.

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[2] 2013 TCC 104.

[21] In any event, I can only consider matters that happened after the assessments. The undisputed evidence is that the Applicant did not serve a notice of objection to any of the subject assessments within the time frames allowed under either the *Act* or the *ETA*.

[22] Accordingly, the applications, under both the *Act* and the *ETA*, for all years, are dismissed without costs.

Signed at Ottawa, Canada this 3rd day of May 2013.

"J.E. Hershfield"

Hershfield J.

CITATION:	2013 TCC 142
COURT FILE NOS.:	2012-1247(IT)APP; 2012-1248(GST)APP
STYLE OF CAUSE:	JUSTIN HANSEN AND THE QUEEN
PLACE OF HEARING:	Vancouver, British Columbia
DATE OF HEARING:	July 13, 2012
REASONS FOR ORDER BY:	The Honourable Justice J.E. Hershfield
DATE OF ORDER:	May 3, 2013

APPEARANCES:

For the Applicant:	The Applicant himself
Counsel for the Respondent:	Mika Banerd (Student-at-Law) Holly Popenia

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