

Docket: 2016-3784(IT)I

BETWEEN:

MARY ELIZABETH TENCH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard and decision delivered orally from the bench on September
4, 2018, at Halifax, Nova Scotia

Before: The Honourable Justice B. Russell

Appearances:

For the Appellant:

The Appellant herself

Counsel for the Respondent:

Meaghan Mahadeo

Ian Wilenius

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* for the Appellant's 2011, 2013 and 2014 taxation years is allowed, without costs, and the assessments are referred back to the Minister of National Revenue for reconsideration and reassessment to the extent of recognizing a Canada Employment Credit, as conceded by the Respondent, for each of those taxation years.

The appeal from the assessment made under the *Income Tax Act* for the Appellant's 2012 taxation year is quashed.

Signed at Ottawa, Canada, this 28th day of September 2018.

“B. Russell”

Russell J.

Citation: 2018TCC192
Date: 20180928
Docket: 2016-3784(IT)I

BETWEEN:

MARY ELIZABETH TENCH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Russell J.

[1] This appeal is by Ms. Tench, the Appellant, as to her 2011, 2012, 2013 and 2014 taxation year assessments made pursuant to subsection 152(7) of the *Income Tax Act (Canada)* (Act).

[2] With respect to the 2012 taxation year, it appears no notice of objection was validly served per section 165 of the Act, nor any application for extension of time to serve a notice of objection was filed within the relevant period, as required by section 166.1 of the Act. Therefore, I quash the purported appeal of the 2012 taxation year as this Court is without jurisdiction to consider an appeal where no notice of objection has been served.

[3] Ms. Tench's evidence with respect to the other years was that she did not file any returns for her 2011, 2013 and 2014 taxation years apart from a return filed for the 2014 taxation year after the date of initial assessment. Ms. Tench had significant employment income for each of these taxation years. But she testified that she thought her substantial charitable contributions and university tuition and education credits of her child (and perhaps other matters) entitled her to deductions sufficient to have put her in a non-taxable situation, and thus she did not need to file any returns.

[4] At the hearing she led no evidence as to such deductions other than stating them. There was no documentation to back them up.

[5] Further, she agreed with all of the Respondent's pleaded assumptions in the Reply indicating assessed income for each of the years 2011, 2013 and 2014 of between \$65,540 and \$75,411.

[6] I add that apparently at home her husband, since diagnosed with an illness, had in those years advised and encouraged Ms. Tench regarding her non-filing of income tax returns.

[7] The Respondent conceded a Canada Employment Credit for each of these three taxation years, each in the estimated amount of \$1,100.

[8] On the basis Ms. Tench has brought no evidence to challenge the assumptions underlying the assessments for the three said taxation years and indeed is agreeing with these assumptions, I find that the appealed assessments for 2011, 2013 and 2014 are valid, subject in each such taxation year to the Crown's concession of the Canada Employment Credit.

[9] However, in my denying Ms. Tench's appeal except for the Respondent's concession of a Canada Employment Credit for each of the various years, I would not wish Ms. Tench to lose the benefit of any deductions she might be entitled to in respect of any or all of those taxation years. I noted to Ms. Tench in giving my oral judgment that an individual may make an application to the Minister of National Revenue (Minister) pursuant to subsection 152(4.2) of the Act for reassessment of any taxation years less than 10 years prior. The application could include documentation supporting claims for any deductions or tax credits; for example charitable donation receipts. Consideration of such applications is entirely within the discretion of the Minister.

[10] In the specific circumstances of this case I would hope that the Minister would not deny any subsection 152(4.2) application brought by Ms. Tench respecting any of the taxation years addressed in this appeal simply because they have now been adjudicated by this Court. I note again that this appeal did not address any matter as to deductions. Ms. Tench, however, did state in the course of the hearing that she had charitable tax receipts and perhaps other types of deductions for these taxation years that had not to date been claimed.

[11] In rendering my September 4, 2018 oral decision I indicated that my judgment in this informal procedure matter would be suspended for 30 days to permit time for any subsection 152(4.2) application. Upon further reflection I do

not think that is necessary, nor is the jurisdiction for suspending an informal procedure judgment assured.

[12] In conclusion, the appeal of the 2012 taxation year is quashed and the appeal of the 2011, 2013 and 2014 taxation years is allowed to the extent of recognizing a Canada Employment Credit, as conceded by the Respondent, for each of those taxation years; the whole without costs.

Signed at Ottawa, Canada, this 28th of September 2018.

Russell J.

CITATION: 2018TCC192
COURT FILE NO.: 2016-3784(IT)I
STYLE OF CAUSE: MARY ELIZABETH TENCH AND THE QUEEN
PLACE OF HEARING: Halifax, Nova Scotia
DATE OF HEARING: September 4, 2018
REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell
DATE OF JUDGMENT: September 28, 2018

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Meaghan Mahadeo
Ian Wilenius

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada