

Docket: 2013-3748(IT)APP

BETWEEN:

MICHAEL FURLONG,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on February 24, 2014 at Toronto, Ontario

By: The Honourable Justice Judith M. Woods

Appearances:

Agent for the Applicant: Gary Furlong

Counsel for the Respondent: Lindsay Beelen

ORDER

Upon application for an Order allowing an appeal to be instituted under the *Income Tax Act* for the 2007, 2008 and 2009 taxation years, the application is dismissed. Each party shall bear their own costs.

Signed at Ottawa, Ontario this 5th day of March 2014.

“J. M. Woods”

Woods J.

Citation: 2014 TCC 69
Date: 20140305
Docket: 2013-3748(IT)APP

BETWEEN:

MICHAEL FURLONG,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Woods J.

[1] Michael Furlong is attempting to correct a mistake that he believes he made by failing to claim a deduction for interest in the proper taxation years. The relevant period is the 2007, 2008 and 2009 taxation years.

[2] When Mr. Furlong first discovered the mistake, he filed a form, T1 Adjustment Request, which asked the Canada Revenue Agency (CRA) to allow the deductions.

[3] Mr. Furlong believed that one CRA official appeared to be in agreement with the request, but that an official who took over the file was not satisfied that the deductions were proper. The interest deduction was ultimately denied on the basis that the borrowed money was not used for the purpose of earning income.

[4] Mr. Furlong fervently believes that the deductions are proper and, moreover, he believes that adequate support for the deductions was provided to the CRA. Mr. Furlong also believes that the CRA did not give due consideration to his submissions, especially since the CRA did not provide a second level of review even though Mr. Furlong made it clear that he disagreed with their decision.

[5] Mr. Furlong has applied to this Court to seek an extension of time to institute an appeal with respect to this matter. In the alternative, he asks that the CRA be required to give a second level review of the T1 adjustment request.

Review of T1 Adjustment Request

[6] I will first deal with the alternative submission which requests a second level review. Unfortunately for Mr. Furlong, this relief is not something that this Court has the authority to provide.

[7] At the hearing, I explained to Mr. Furlong and his son Gary Furlong, who represented him at the hearing, that the Tax Court of Canada shares jurisdiction over income tax matters with the Federal Court. In general, the jurisdiction of the Tax Court of Canada is limited to reviewing assessments in order to determine whether they are accurate. The jurisdiction does not extend to reviewing a decision of the CRA to deny a T1 Adjustment Request.

[8] Although this alternative relief cannot be granted, I would note that Mr. Furlong's submissions concerning the lack of proper review were compelling. At my request, counsel for the respondent agreed to communicate Mr. Furlong's request for a second level review to the CRA for their consideration.

Extension of time to appeal

[9] I now turn to Mr. Furlong's request for an extension of time to institute an appeal.

[10] The respondent opposes this request on the ground that Mr. Furlong is precluded from instituting an appeal from the assessments for the 2007, 2008 and 2009 taxation years because Mr. Furlong failed to file valid notices of objection with respect to these assessments.

[11] Mr. Furlong does not dispute that notices of objection to the assessments were not filed in time.

[12] In these circumstances, it is not appropriate to grant an application to extend time to appeal from the relevant assessments.

[13] The relevant legislative provision, s. 167(5)(b)(ii) of the *Act*, requires that an applicant demonstrate that it is just and equitable to grant the application given the

reasons set out in the application and the circumstances of the case. This requirement has not been satisfied.

[14] If Mr. Furlong's application is granted, it would simply prolong an appeal that is doomed to failure. An application to extend time cannot remedy the fundamental problem with the notice of appeal which is that proper notices of objection to the relevant assessments were not filed. This requirement is mandated by subsection 169(1) of the *Act*.

[15] If an extension of time is granted, the respondent would no doubt then apply to this Court to have the notice of appeal quashed for failure to comply with a preliminary step. The Court would be required to grant such an application.

[16] Gary Furlong, the appellant's representative, acknowledges that these requirements are not satisfied. He suggests, though, that Parliament must have intended for taxpayers to be able to appeal from denials of T1 adjustment requests if the request is made within the statutory period for reassessing. It is only common sense that a right of appeal would be given, it is submitted.

[17] This argument appears to be reasonable and logical, but the scheme of the *Act* does not permit such an appeal to this Court. I express no view as to whether a remedy may be available in the Federal Court.

[18] In general, taxpayers who wish to have income tax assessments reviewed by this Court need to follow the strict deadlines that are legislated for filing notices of objection and notices of appeal. This was not done in this case. These limitation periods may appear to be too short, but they are the deadlines that Parliament has imposed.

[19] Gary Furlong further submits that this Court has jurisdiction over this matter because the CRA's denial of the T1 Adjustment Request is a determination which may be appealed. This argument is based on subsections 152(4.3) and 165(1.1) of the *Act*.

[20] In particular, Mr. Furlong submits that the denial of the T1 Adjustment Request is a determination referred to in subsection 152(4.3) of the *Act*. He further submits that subsection 165(1.1) of the *Act* gives this Court jurisdiction to hear appeals with respect to such determinations. These provisions are reproduced below.

152.(4.3) Consequential assessment - Notwithstanding subsections (4), (4.1) and (5), if the result of an assessment or a decision on an appeal is to change a particular balance of a taxpayer for a particular taxation year, the Minister may, or if the taxpayer so requests in writing, shall, before the later of the expiration of the normal reassessment period in respect of a subsequent taxation year and the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the particular year, reassess the tax, interest or penalties payable by the taxpayer, redetermine an amount deemed to have been paid or to have been an overpayment by the taxpayer or modify the amount of a refund or other amount payable to the taxpayer, under this Part in respect of the subsequent taxation year, but only to the extent that the reassessment, redetermination or modification can reasonably be considered to relate to the change in the particular balance of the taxpayer for the particular year.
(Emphasis added)

165.(1.1) Limitation of right to object to assessments or determinations - Notwithstanding subsection 165(1), where at any time the Minister assesses tax, interest, penalties or other amounts payable under this Part by, or makes a determination in respect of, a taxpayer

(a) under subsection 67.5(2) or 152(1.8), subparagraph 152(4)(b)(i) or subsection 152(4.3) or (6), 161.1(7), 164(4.1), 220(3.4) or 245(8) or in accordance with an order of a court vacating, varying or restoring an assessment or referring the assessment back to the Minister for reconsideration and reassessment,

(b) under subsection 165(3) where the underlying objection relates to an assessment or a determination made under any of the provisions or circumstances referred to in paragraph 165(1.1)(a), or

(c) under a provision of an Act of Parliament requiring an assessment to be made that, but for that provision, would not be made because of subsections 152(4) to 152(5),

the taxpayer may object to the assessment or determination within 90 days after the day of sending of the notice of assessment or determination, but only to the extent that the reasons for the objection can reasonably be regarded

(d) where the assessment or determination was made under subsection 152(1.8), as relating to any matter or conclusion specified in paragraph 152(1.8)(a), 152(1.8)(b) or 152(1.8)(c), and

(e) in any other case, as relating to any matter that gave rise to the assessment or determination and that was not conclusively determined by the court, and this subsection shall not be read or construed as limiting the right of the taxpayer to object to an assessment or a determination issued or made before that time.

(Emphasis added)

[21] The problem that I have with this argument is that a determination regarding a T1 Adjustment Request is not a determination contemplated by subsection 152(4.3) of the *Act*.

[22] This provision is designed to require the Minister to issue consequential reassessments to conform with changes that are made in an “assessment” or in a “decision on an appeal.”

[23] In the circumstances of this case, Mr. Furlong does not seek conformity with an “assessment” or a “decision on an appeal.” Accordingly, subsection 152(4.3) has no application.

[24] Gary Furlong also referred me to comments by judges of this Court to the effect that it is preferable for appeals be heard on their merits rather than being decided on procedural grounds.

[25] I agree with this sentiment, but provided that the relief sought is not prohibited by the *Act*. Unfortunately for Mr. Furlong, the relief that he seeks is clearly prohibited.

[26] The application will be dismissed.

Signed at Ottawa, Ontario this 5th day of March 2014.

“J. M. Woods”

Woods J.

CITATION: 2014 TCC 69

COURT FILE NO.: 2013-3748(IT)APP

STYLE OF CAUSE: MICHAEL FURLONG and
HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: February 24, 2014

REASONS FOR ORDER BY: The Honourable Justice J.M. Woods

DATE OF ORDER: March 5, 2014

APPEARANCES:

Agent for the Applicant: Gary Furlong

Counsel for the Respondent: Lindsay Beelen

COUNSEL OF RECORD:

For the Applicant:

Name: n/a

Firm:

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Ontario