

BETWEEN:

TREVOR (ED) I. HUGHES,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on February 24, 2015 at Ottawa, Canada

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

For the Applicant: The Applicant himself

Counsel for the Respondent: Tokunbo C. Omisade

ORDER

UPON application for an order extending the time within which notices of objection may be filed relating to the assessments issued under the *Excise Tax Act*, RSC, 1985, c. E-15 on August 13, 2002 for the reporting period January 1, 1999 to May 31, 2002, and on July 8, 2004 for the reporting period June 1, 2002 to August 31, 2002;

AND UPON reading the materials files and hearing from the Applicant and counsel for the Respondent;

FOR THE REASONS ATTACHED, THIS COURT ORDERS that the application is dismissed.

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Signed at Edmonton, Alberta, this 10th day of March 2015.

“R. S. Boccock”

Boccock J.

Citation: 2015 TCC 59

Date: 20150310

Docket: 2014-2304(GST)APP

BETWEEN:

TREVOR (ED) I. HUGHES,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Bocock J.

[1] Mr. Hughes applies to extend the period to file notices of objection for assessments issued by the Minister under the *Excise Tax Act*, RSC, 1985, c. E-15 (the “*ETA*”). The two assessments were issued on August 13, 2002 in respect of the reporting period January 1, 1999 to May 31, 2002, and on July 8, 2004 in respect of the reporting period June 1, 2002 to August 31, 2002. Mr. Hughes filed his notices of objection and application to extend time, some 9 years later on May 28, 2013 with the Canada Revenue Agency (“CRA”) and, subsequently, with the Tax Court of Canada on May 30, 2013. The Minister refused to accept the notices of objection and to grant the application on the basis they were not filed within the time described in the *ETA*.

[2] The following excerpted provisions from the *ETA* reference the statutory framework for considering the application to extend:

Objection to assessment

301. (1.1) Any person who has been assessed and who objects to the assessment may, within ninety days after the day notice of the assessment is sent to the person, file with the Minister a notice of objection in the prescribed form and manner setting out the reasons for the objection and all relevant facts.

...

Extension of time by Minister

303. (1) Where no objection to an assessment is filed under section 301, or no request has been made under subsection 274(6), within the time limit otherwise provided, a person may make an application to the Minister to extend the time for filing a notice of objection or a request and the Minister may grant the application.

...

When order to be made

303. (7) No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Part for objecting or making a request under subsection 274(6), as the case may be; and

(b) the person demonstrates that

(i) within the time otherwise limited by this Part for objecting,

(A) the person was unable to act or to give a mandate to act in the person's name, or

(B) the person had a bona fide intention to object to the assessment or make the request,

(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, and

(iii) the application was made as soon as circumstances permitted it to be made.

[3] Where the Minister denies the application, or fails to respond, a taxpayer may, under parallel provisions, apply to the Tax Court to file or object on similar terms: section 304 of the *ETA*.

[4] Mr. Hughes explained his failure to file a notice of objection prior to May 28, 2013. He indicates that he was in constant communication with the officials during the 2002 period and that many "appeals" were in fact made to, in his words, "the Ministry of Finance". Mr. Hughes provides no evidence of a written notice of objection, nor does he say he did not receive the Notices of Assessment received on August 13, 2002 and July 8, 2004, respectively. Mr. Hughes states that the Minister failed to return Mr. Hughes' original

documents related to the period 2002 - 2003. Mr. Hughes does not state how or why that retained information would prove that his notice of objection had been filed prior to the date of acknowledged receipt.

[5] Counsel for the Respondent takes the position that the statutory provisions of sections 301(1), 303(1), 303(7), 304(1), and 304(5) of the *ETA* are absolute and cannot be waived. Counsel agreed there must be some evidence that the notice of reassessment was sent and that no notice of objection or extension request was received within time under the *ETA*.

[6] In examining the jurisprudence relevant to time to object or to request an extension, the case of *Canada v. Carlson*, 2002 FCA 145 (“*Carlson*”) at paragraphs 13 and 14 provides as follows:

As this Court has held on numerous occasions, when a taxpayer is unable to meet the deadline prescribed by the Act, even by reason of a failure of the postal system, neither the Minister nor the TCC can come to his help. (See *Schafer v. Her Majesty the Queen*, [2000] FCJ 1480 (FCA); *The Attorney General of Canada v. John F. Bowen*, [1992] 1 FC 311 (FCA)). Hence, if a postal failure cannot save a taxpayer, he will not be saved by his failure to grasp the significance of a notice of assessment served on him.

As there is no dispute that notice of assessment no. 7272 was sent by registered mail to the respondent on August 17, 1993, and that the respondent received it within a few days, his notice of objection was clearly served out of time. Since the respondent did not apply for an extension of time before the end of November 1994, neither the Minister nor the TCC Judge could grant him the extension he was seeking.

[7] The unchallenged facts within the Respondent’s filed affidavit show that the CRA sent the notices of assessment on the dates indicated. Moreover, Mr. Hughes does not dispute that the notices of assessment had been sent on the dates indicated by the Minister in the Amended Reply, the supporting affidavit, or in the application. Mr. Hughes does not dispute that he had received the notices of assessment shortly after those particular dates. Instead, he contends he submitted many “appeals” in response. No evidence was produced to suggest this and, as stated, the CRA has no record of these.

[8] While the jurisprudence within *Carlson* references the *Income Tax Act*, jurisprudence of this Court and the Federal Court of Appeal has developed which concludes that the same rules apply to the *ETA*. Evidence that the notice of assessment was sent is sufficient. Similarly, the misunderstanding of the import of

a notice of assessment, its potential non-receipt by mail interruption, or the delay through inadvertence on the part of a taxpayer to file an objection does not extend the time: *Chomatas v. Her Majesty The Queen*, 2013 TCC 319 at paragraph 10; *Grunwald v. Her Majesty The Queen*, 2005 FCA 421 at paragraphs 43 and 44; and, *Sahibi v. Her Majesty The Queen*, 2014 TCC 79 at paragraphs 25 and 26.

[9] Cumulatively, such legal authorities, the evidence provided by the Respondent that the notices of assessment were sent and the absence of any evidence as to why Mr. Hughes may not have received the notices (i.e. an incorrect address) are conclusive. Therefore, this Court lacks any jurisdiction under section 304 of the *ETA* to grant the application for an extension of time to file notices of objection in respect of the assessments because Mr. Hughes is deemed to have received the notices of assessment in 2002 and 2004. Accordingly, this application brought in 2013 is dismissed.

Signed at Edmonton, Alberta, this 10th day of March 2015.

“R. S. Boccock”

Boccock J.

CITATION: 2015 TCC 59

COURT FILE NO.: 2014-2304(GST)APP

STYLE OF CAUSE: TREVOR (ED) I. HUGHES AND THE QUEEN

PLACE OF HEARING: Ottawa, Canada

DATE OF HEARING: February 24, 2015

REASONS FOR ORDER BY: The Honourable Mr. Justice Randall S. Boccock

DATE OF ORDER: March 10, 2015

APPEARANCES:

For the Applicant: The Applicant himself
Counsel for the Respondent: Tokunbo C. Omisade

COUNSEL OF RECORD:

For the Applicant:

Name: N/A

Firm:

For the Respondent: William F. Pentney
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