Docket: 2015-3908(IT)G

BETWEEN:

LAWRENCE MPAMUGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on May 27, 2016 and continued on June 27, 2016
at Toronto, Ontario

Before: The Honourable Justice David E. Graham

Appearances:

Counsel for the Appellant:	David Piccolo
Counsel for the Respondent:	Craig Maw Alisa Apostle

ORDER

The Crown's motion to quash the Appeal is allowed, with costs.

Signed at Ottawa, Canada, this 28th day of September 2016.

"David E. Graham"

Graham J.

Citation: 2016 TCC 215
Date: **20161020**
Docket: 2015-3908(IT)G

BETWEEN:

LAWRENCE MPAMUGO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED
REASONS FOR ORDER

Graham J.

[1] The Crown has brought a motion to **quash** an appeal filed by Lawrence Mpamugo in respect of his 1998 to 2002 tax years on the grounds that the preconditions for filing the appeal are not met. A taxpayer cannot appeal from a reassessment to the Tax Court of Canada unless the taxpayer has first filed a timely Notice of Objection with the Minister of National Revenue and the Minister has neither confirmed the reassessment, issued a new reassessment or failed to resolve the objection within 90 days. The Crown takes the position that Mr. Mpamugo has not filed timely Notices of Objection to any of the reassessments of the years in question.

[2] Mr. Mpamugo agrees that the Appeal should be quashed, but for a different reason. He takes the position that the Notices of Reassessment were never sent to him. Thus, he says that there was nothing to which he could object in the first place. He argues that, since he could not object, he cannot have met the precondition for filing a Notice of Appeal and thus the Appeal should be quashed.

I. Issues

[3] This Motion raises two key issues:

a) What test must be applied when a taxpayer alleges that a Notice of Assessment was never mailed to him or her? In particular, at what step in the test should the taxpayer's credibility be considered?

b) Applying that test to the evidence, should Mr. Mpamugo's appeal be quashed?

II. Background

[4] In 1998 and 1999, Mr. Mpamugo ran a college in Ontario through a company known as Marygold Technologies Incorporated. The college recruited a large number of "students" and assisted those individuals in falsely applying for student loans through the Ontario Student Assistance Program ("OSAP"). In 2004, Mr. Mpamugo was convicted of fraud in respect of those student loans[1]. In simple terms, the Court found that Mr. Mpamugo fraudulently obtained OSAP funding for students who did not actually attend the college. Mr. Mpamugo was also convicted of obstruction of justice for creating false documents after the fraud investigation had begun. Mr. Mpamugo was ultimately sentenced to six and a half years in jail and ordered to pay $5,700,000 in restitution payments[2].

[5] The Minister claims to have reassessed Mr. Mpamugo's 1998 to 2002 tax years. The alleged 1998 and 1999 reassessments together assess approximately $6.8M in additional income. The reassessments mostly appear to relate to income that the Minister alleges Mr. Mpamugo received from the fraud or from Marygold. The alleged 2000 to 2002 reassessments appear to have been for relatively small amounts. I say "appear" in the previous sentences because the Minister has not yet filed a Reply so I do not know the assumptions of fact on which the alleged

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1 The particulars of the fraud charges and the related obstruction of justice charges are set out in Reasons for Judgment found at 2004 CanLII 31794 (ON SC)

2 The particulars of his sentencing (including the restitution) are found at 2004 CarswellOnt 6685 (ON SC)

reassessments were based. Related assessments were issued to Mr. Mpamugo's wife, son and daughter under subsection 160(1).

III. Test to be used when a taxpayer alleges that a notice of assessment was never mailed

[6] The Tax Court of Canada and Federal Court of Appeal have had many opportunities to consider what happens when a taxpayer alleges that the Minister did not mail a Notice of Assessment. Those cases have arisen in the context of determining whether a taxpayer filed a Notice of Objection on time or determining whether a tax year is beyond the normal reassessment period. The following is a summary of the steps that have emerged from those cases:

a) Step 1: The taxpayer must assert that the Notice of Assessment was not mailed[3]. A taxpayer normally does so in one of two ways. The taxpayer may assert that he or she did not receive the Notice of Assessment and thus believes that it was not mailed. Alternatively, the taxpayer may assert that the Notice was mailed to the wrong address through no fault of the taxpayer and was thus, in effect, not mailed.

b) Step 2: If the taxpayer asserts that the Notice of Assessment was not mailed, the Minister must introduce sufficient evidence to prove, on a balance of probabilities, that the Notice of Assessment was indeed mailed or, if the taxpayer has asserted that it was mailed to the wrong address, that it was mailed to the address that the CRA properly had on file[4].

c) Step 3: If the Minister is able to prove that the Notice of Assessment was indeed mailed, then the mailing is presumed to have occurred on the date set out on the Notice (subsection 244(14)). This is a rebuttable presumption[5]. The taxpayer may introduce evidence to prove that it was actually mailed on a different date. The deadline for filing a Notice of Objection is calculated

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3 *Aztec Industries Inc. v. The Queen*, (FCA) 1995 CarswellNat 278; *Schafer v. The Queen*, (FCA) 2000 CarswellNat 1948

4 *Schafer* (FCA); *Scott v. MNR* (1960) [1961] Ex. C.R. 120; *236130 British Columbia Ltd. v. The Queen* 2006 FCA 352; *Bowen v. The Queen* (FCA) 1991 CarswellNat 520

5 *McGowan v. The Queen* (FCA) 1995 CarswellNat 381 in *obiter* at para 19

from the mailing date established by this step (subsection 165(1)). The "normal reassessment period" for a tax year also commences from the mailing date established by this step (subsection 152(3.1)).

d) Step 4: Once the mailing date is established (either through the presumption or through proof of a different date), the assessment is deemed to have been made on that date (subsection 244(15)) and the Notice of Assessment is deemed to have been received on that date (subsection 248(7)). These deeming provisions are not rebuttable[6]. The date on which an assessment is made is used to determine whether a reassessment was made outside of the "normal reassessment period" of a tax year (subsection 152(4)). Step 4 is not strictly relevant for the purposes of determining the deadline for filing a Notice of Objection. That determination is made in Step 3. Step 4 simply makes it clear that the fact that a taxpayer did not actually receive the Notice of Assessment is irrelevant.

[7] The main dispute between the parties regarding these steps is whether the taxpayer's credibility is to be considered at Step 1 or Step 2. While this may, at first, appear to be a minor issue, one can see its importance if one considers a situation where the Minister has no evidence of mailing whatsoever but the Court does not believe the taxpayer's assertion that the Notice was not mailed. If credibility is determined at Step 1, the taxpayer will lose as the test will never proceed to the point where the Minister has to prove mailing. If credibility is determined at Step 2, the Crown will lose as it will be unable to discharge its onus.

[8] The Crown takes the position that the taxpayer's credibility is to be determined at Step 1. The Crown argues that, if the taxpayer's assertion is not credible, Step 1 is not satisfied and thus the analysis never proceeds to Step 2 and the Crown never has to prove the date of mailing.

[9] Mr. Mpamugo takes the position that the taxpayer's credibility is not determined until Step 2. He argues that Step 1 is satisfied if a taxpayer simply makes an assertion regardless of whether the Court finds that assertion to be credible. He submits that it is only at Step 2, when the Court has to decide whether the Crown has proven mailing on a balance of probabilities, that the credibility of the taxpayer's assertion becomes relevant.

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6 *Schafer* (FCA)

[10] I prefer Mr. Mpamugo's view. The taxpayer's credibility should be determined at Step 2.

[11] The Crown relies heavily on a decision of this Court in *Nicholls v. The Queen* which stated that the Crown "only has the onus to prove that the assessments were sent if the [taxpayer] alleges that he has not received the assessments and that allegation is credible"[7]. *Nicholls* was followed in *Oddi v. The Queen*[8] and *Menzies v. The Queen*[9]. With respect, I am not convinced by those cases. To me, the logical place to consider credibility is where Courts normally consider it: in the weighing of the evidence on a balance of probabilities.

[12] I do not see any need to further protect the Minister from unscrupulous taxpayers who might raise false assertions. The existing system already provides sufficient protection to the Minister. Subsection 244(10) makes it easy for the Crown to prove mailing. Under that subsection, if a CRA officer provides an affidavit stating that the officer has charge of the appropriate records and has knowledge of the practices of the CRA, that he or she has examined those records, and that those records show that a Notice of Assessment was mailed, those statements shall be evidence, absent proof to the contrary, that the Notice was mailed. In a situation where the Court finds that a taxpayer is not credible, there will be no proof to the contrary so the Crown should be able to easily succeed based solely on such an affidavit.

[13] Even if the Crown cannot rely on a subsection 244(10) affidavit, it should still not be too difficult for the Crown to succeed if the Court finds that the taxpayer's assertion is not credible. The Crown merely needs to show that it is more likely than not that the Notice was mailed. So long as the Crown can introduce some evidence that the mailing occurred, with no credible evidence to counter the Crown's evidence, the conclusion should be that the Crown has proven mailing.

[14] Furthermore, I do not think that it is necessary to complicate an already complicated area by adding a requirement that the assertion raised by the taxpayer be judged to be credible before the Crown is called upon to prove mailing. Unless

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7 2011 TCC 39, at para 15
8 2016 TCC 102
9 2016 TCC 73

the hearing of the motion were divided and the Court issued a ruling on the credibility of the taxpayer's assertion before moving to Step 2, I have difficulty picturing how anything would change on a practical level. The Crown would have to be certain that the Court would find the taxpayer lacking in credibility before the Crown would choose not to introduce any evidence of mailing. Even if the hearing were divided into two parts, the Crown would frequently choose to lead evidence at Step 1 to challenge the taxpayer's credibility. Often that evidence would be the same or closely connected to the evidence that the Crown would want to rely on at Step 2 to prove mailing.

[15] The Crown suggests that the Minister should not be put to the expense of having to prove mailing if the Court finds the taxpayer's assertion to lack credibility and that that expense can be avoided if credibility is determined at Step 1. If, in a given case, the Crown thinks that a taxpayer's unbelievable assertion has wasted the Crown's and the Court's time and was simply based on the hope that the Crown might no longer have the records needed to prove mailing, the Crown may seek a higher award of costs.

[16] Based on all of the foregoing, I conclude that the credibility of the taxpayer's assertion is to be considered as part of the analysis at Step 2 rather than at Step 1.

IV. Application of the Mailing Test to the Facts

[17] I will now apply the test set out above to the facts of Mr. Mpamugo's case.

Step 1: Assertion that notices were not mailed

[18] Mr. Mpamugo's position is that he told the CRA to change his mailing address and they did not do so. As a result, he asserts that the Notices of Reassessment for his 1998 to 2002 tax years were never mailed to him.

[19] Mr. Mpamugo's position is complicated by the fact that the address that CRA had on file for him was his home address. Both he and his wife resided at that address on the dates that the Notices of Reassessment were purportedly mailed. It is therefore implicit in his assertion that he did not receive the Notices of

Reassessment at his home. Thus, while Mr. Mpamugo's position on this point was not entirely clear, I think that I must assume that he is arguing in the alternative that the Notices were not mailed in the first place as he did not receive them despite residing at the address to which they would have been mailed.

[20] Both Mr. Mpamugo's primary position and what I assume to be his alternative position satisfy Step 1 of the test.

Step 2: Proof of Mailing

[21] Since Mr. Mpamugo has raised an assertion that the Notices of Reassessment were not mailed, the Crown must prove on a balance of probabilities that they were.

Crown's evidence:

[22] The Crown relies on an affidavit of Bruce Costigan to prove that the Notices of Reassessment were mailed. Mr. Costigan is a litigation officer with the CRA. The relevant portions of Mr. Costigan's affidavit do not meet the requirements of subsection 244(10). Subsection 244(10) requires that the affiant have charge of the records in question. Mr. Costigan did not have charge of those records. The key portions of Mr. Costigan's affidavit relating to the mailing of the Notices of Reassessment were based on information that he had obtained from two individuals at CRA (Gwen Dugal and Dave Sheridan) that he believed to be true. Ms. Dugal and Mr. Sheridan had charge of the relevant records. Mr. Costigan did not have the ability to view the records in question himself.

[23] The fact that the portions of Mr. Costigan's affidavits dealing with mailing do not comply with subsection 244(10) does not mean that I must disregard them. If the Minister is unable to provide an affidavit that complies with subsection 244(10), the Court must weigh the evidence provided by the taxpayer in order to determine whether it is more likely than not that the Notice was mailed[10].

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[10] *Carcone*; *Central Springs Ltd. v. The Queen* 2006 TCC 524

[24] Given the size of CRA's operations and the sheer number of Notices of Assessment that are mailed each year, the Minister will generally adduce evidence indicating the normal procedure that is followed by the CRA in mailing Notices of Assessment and a reason why the Court should accept that that procedure was followed in the taxpayer's case[11].

[25] Mr. Costigan stated that Ms. Dugal is a Senior Programs Officer with the Individual Returns Processing Section within the Assessing, Benefit and Service Branch of the CRA. Mr. Costigan described what he had learned from Ms. Dugal about how Notices of Assessment are printed. This description was set out in Mr. Costigan's affidavit and fleshed out on his cross-examination. He stated that Ms. Dugal had told him that Notices of Assessment are grouped and sent electronically to be printed, that each group is assigned a cycle number, that the date printed on the Notices of Assessment is the date on which the Assessments will be mailed and that the Notices of Assessment are actually printed a number of days earlier than that. Mr. Costigan testified on cross-examination that he had been informed by Ms. Dugal and others in similar positions that there were checks and balances in place to ensure that a Notice of Assessment that was sent for printing was ultimately printed. He explained that the number of Notices of Assessment that were supposed to be in a cycle was compared to the number of envelopes containing Notices of Assessment that were ultimately produced at the end of the cycle and that, if there was a discrepancy in the count, the envelopes were thrown out and the entire cycle was re-run. Mr. Costigan provided the cycle numbers (known as DAS Cycle numbers) for the reassessments in issue. He also provided the dates on which those cycles numbers were to be printed along with the dates that would have been printed on the notices of reassessment (i.e. the dates that the Notices of Reassessment were to be mailed).

[26] Mr. Costigan stated that Mr. Sheridan is a Manager Print to Mail at CRA. Mr. Costigan stated that Mr. Sheridan had informed him that, due to the significant amount of time that has passed since the Notices of Reassessment in question were printed, the CRA no longer has the records that would provide any further information on the mailing of the notices.

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[11] *Schafer v. The Queen* (TCC) 1998 CarswellNat 1002; cited with approval in *Kovacevic* at para 16

[27] Mr. Costigan provided the foregoing information not just for the Notices of Reassessment in question, but also for three additional Notices of Reassessment purportedly mailed to Mr. Mpamugo in respect of his 1999 tax year. These three notices preceded the 1999 Notice of Reassessment in question and were purportedly mailed between the mailing date of the 1998 Notice of Reassessment and the ultimate 1999 Notice of Reassessment. Mr. Mpamugo claims not to have received these three notices either.

[28] All of the foregoing evidence is based on information and belief. Rule 72 of the *Tax Court of Canada Rules (General Procedure)* permits affidavit evidence based on information and belief to be admitted if the source of the information and the fact of the belief are stated. Any concerns about the necessity of the resulting hearsay evidence or its reliability go to the weight the Court should give to the evidence.[12] Mr. Costigan's affidavit complies with Rule 72. Mr. Costigan identifies which statements are made on information and belief and states the sources of that information and his belief in them. Accordingly, I find Mr. Costigan's evidence to be admissible. The question remains, however, how much weight I should give to the evidence.

[29] I agree with Mr. Mpamugo's counsel that it would have been preferable to have an affidavit from Ms. Dugal. The Crown did not provide a compelling reason why it was necessary for Mr. Costigan to provide the affidavit instead of Ms. Dugal. I do, however, find Mr. Costigan's evidence to be relatively reliable. It was clear from his cross-examination on his affidavit that he had, in the course of similar cases in the past, spoken to other individuals with similar knowledge as Ms. Dugal and that the understanding of the printing system that he had gained from those conversations was in accordance with the information that he obtained from Ms. Dugal and, in fact, went beyond it.

[30] Based on all of the foregoing, while I am not prepared to give the portions of Mr. Costigan's affidavits dealing with mailing a lot of weight, I am similarly not prepared to give them no weight at all. I am not prepared to conclude, on the basis of Mr. Costigan's affidavits, that the Notices of Reassessment were actually printed or mailed. I do, however, find them to be weak evidence that the CRA anticipated printing the following Notices of Reassessment and anticipated mailing

[12] *Carcone v. The Queen* 2011 TCC 550; *Williamson v. The Queen* 2009 TCC 222; *Gould v. Lumonics Research Ltd.* 1983 CarswellNat 7; *Buhler Versatile Inc. v. The Queen* 2016 FCA 68

those Notices of Reassessment to Mr. Mpamugo on the following dates as part of larger batches of notices:

Year	Anticipated Print Dates	Anticipated Mailing Dates
1998	March 16, 2000	March 23, 2000
1999	October 2, 2000	October 10, 2000
1999	December 4, 2000	December 11, 2000
1999	January 19, 2001	January 26, 2001
1999	March 1, 2001	March 8, 2001
2000	February 25, 2002	March 4, 2002
2001	June 23, 2008	July 2, 2008
2002	December 1, 2003	December 8, 2003

[31] Mr. Costigan stated that he had reviewed the CRA's mailing address history report and had determined that Mr. Mpamugo's mailing address from 1993 to 2013 had been his home address in Mississauga, Ontario. He also stated that he was unable to find any indication that mail had been returned from that address during that time period. This evidence was not provided based on information and belief. It was provided based on Mr. Costigan's own review of the records in question. It was not shaken on cross-examination. Based on the foregoing, I find that the address that would have appeared on the foregoing Notices of Reassessment was Mr. Mpamugo's home address.

Mr. Mpamugo's evidence

[32] I did not find Mr. Mpamugo credible. His testimony (both oral and in affidavits) was full of inconsistencies, exaggerations and omissions. Much of it was implausible. He was evasive on cross-examination. He frequently paused for long periods of time in his testimony in what appeared to me to be an effort to fabricate an explanation for an inconsistency that he suspected he was about to be caught in. His memory was inexplicably vague on certain facts that I would have expected him to recall given his detailed recollection of other matters.

[33] Mr. Mpamugo's testimony regarding changing his address was totally lacking in credibility. He asserted that he had not received the Notices of Reassessment because the CRA had failed to follow his oral instructions to change his mailing address when he was being held pending bail at the Maplehurst

Detention Centre and to automatically change his mailing address following his sentencing to the Beaver Creek Correctional Institution.

[34] Mr. Mpamugo gave evidence both in his affidavit and on cross-examination setting out in detail how he had seen a woman taking notes at his first bail hearing, how he had been introduced to this woman at his second bail hearing where he had learned that she was a CRA Collections officer named Jodi Roul, how he had then spoken to Ms. Roul and told her that he wanted his mailing address changed to the Maplehurst Detention Centre where he was then being held and how she had noted his new address.

[35] I find that this conversation never took place. Mr. Mpamugo's first bail hearing was held on November 5, 1999. His second bail hearing was held on November 17, 1999. Ms. Roul was not assigned to Mr. Mpamugo's file until 2003.

[36] More importantly, the whole idea that Mr. Mpamugo changed his address to the Maplehurst Detention Centre is completely implausible. Mr. Mpamugo describes spending "a very long time" in Maplehurst Detention Centre between his first and second bail hearings[13]. He spent 13 days there. He was denied bail at his appearance on November 5, 1999 and was ultimately released on November 17, 1999[14]. Mr. Mpamugo would have me believe that he changed his address from his home, where his wife continued to reside throughout the entire period in question, to a detention centre where he had just spent 13 days despite the fact that, when he purports to have had the conversation changing his address, he was about to be released from that detention centre. That is equivalent to a taxpayer returning from two weeks of holidays in Whistler and deciding to send a change of address form to CRA switching her address to the hotel she had just stayed at in Whistler in case she ended up returning there next year. Between his

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13 Affidavit of Mr. Mpamugo dated December 29, 2015, para 3

14 On cross-examination, Mr. Mpamugo tried to make the period of his incarceration appear slightly longer by suggesting that it had taken him an addition week or two to get the money together for bail so he had not immediately been released. Exhibit "A" to Mr. Mpamugo's affidavit dated May 16, 2016 is a letter from Maplehurst Detention Centre. It describes Mr. Mpamugo as having been released on November 17, 1999. Mr. Mpamugo made no reference to the extra week or two in his affidavit. I prefer the clear documentary evidence from Maplehurst Detention Centre that Mr. Mpamugo attached to his own affidavit over the oral testimony that Mr. Mpamugo introduced for the first time on cross-examination.

arrest on August 4, 1999 and his sentencing over five years later, Mr. Mpamugo was imprisoned for a total of only 67 days. The first 13 days were while Mr. Mpamugo was awaiting bail in 1999. The next 54 days were in 2001 as a result of Mr. Mpamugo breaching the conditions of his bail[15]. Those 54 days were not days that, at the time that he purportedly changed his address, he would have anticipated spending incarcerated as they arose from a breach of his bail conditions. In summary, the notion that Mr. Mpamugo would have changed his address to Maplehurst Detention Centre in these circumstances is simply absurd and the fact that he was willing to spin this tale significantly undermines his credibility.

[37] Mr. Mpamugo's counsel asked me to draw an adverse inference from the fact that the Crown did not introduce into evidence the notes of the Collections Officer assigned to Mr. Mpamugo's file on the dates that he says he spoke to Ms. Roul. I am unwilling to do so. I find it more likely that the Crown's failure to introduce the notes in question arose not from a desire to hide their contents but rather from a belief that it was unnecessary to pile on even more evidence that Mr. Mpamugo lacked credibility. Had Mr. Mpamugo's counsel felt that those notes were important evidence, he could have sought their production.

[38] The idea that CRA knew that they should change Mr. Mpamugo's address to the Beaver Creek Correctional Institution when he was sentenced is flawed for two reasons. First, it is not up to the Minister to change a taxpayer's address without instructions from the taxpayer. Second, the Minister had no way of knowing where Mr. Mpamugo was going when he was sentenced. Mr. Mpamugo did not even know where he was going. He was not sent to Beaver Creek at first. He was held in a series of four different institutions for at least two months before he finally ended up being transferred to Beaver Creek. Even then, he spent years of his sentence on day parole living at a halfway house or on full parole living at home. During his

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[15] Mr. Mpamugo was evasive when asked how he had breached his bail conditions. He suggested that he missed a meeting with a parole officer. Until it was put to him by the Crown on cross-examination, he made no mention of the fact that his bail was revoked because he had been charged with a separate fraud.

entire incarceration, his wife continued to reside at their home and bring him his mail[16].

[39] Mr. Mpamugo states in his affidavit that he received mail from and sent mail to various other parties with whom he was dealing in the years in question using his jail addresses. Documents showing this statement to be false were entered into evidence on cross-examination. Mr. Mpamugo used his home address when communicating with the Ontario Superior Court of Justice[17], when filing an appeal from his criminal conviction to the Ontario Court of Appeal[18] and when communicating with the Ontario Court of Appeal[19]. The legal aid lawyers initially retained to conduct that appeal[20] and the Ministry of the Attorney General for Ontario[21] both communicated with Mr. Mpamugo at his home address. Mr. Mpamugo even used his home address when sending correspondence to CRA[22].

[40] Mr. Mpamugo did not even raise the assertion that he had not received the Notices of Reassessment until after the Crown sought to quash his appeal. Mr. Mpamugo's Notice of Objection does not contain any reference to his not having received the Notices of Reassessment or to their not having been mailed. The closest that it comes is to state that he does not know how the amount of tax that he owes was calculated. This same pattern continues in Mr. Mpamugo's Notice of Appeal. The Notice of Appeal does not contain any reference to his not having received the Notices of Reassessment or to their not having been mailed. The closest that it comes is to state that Mr. Mpamugo has no idea why the amount of tax, penalties and interest that he allegedly owes is so high. Indeed, he even makes a statement which contradicts his position. He states "This appeal did not meet the 90 days requirement because I was confided [sic] in prison". This statement suggests that he had received the Notices of Reassessment but was unable to object on time because he was in jail. It is not until after the Crown filed

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16 Mr. Mpamugo's evidence both in his affidavits and initially on cross-examination appeared designed to suggest that he had spent much more time in jail following his sentencing than the one year he actually spent before being released on day parole. His evasiveness on this matter hurt his credibility.

17 Exhibit R-8

18 Exhibit R-2, Tab 2B

19 Exhibit R-11

20 Exhibits R-6 and R-7

21 Exhibit R-9

22 Exhibit R-4

its motion to quash the appeal that Mr. Mpamugo first asserted that he did not receive the Notices of Reassessment and introduced his story about changing mailing addresses.

[41] I note in passing that Mr. Mpamugo's unbelievable claim that he changed his address was not even a good explanation of why he would not have received the Notices of Reassessment. As it turns out, Mr. Mpamugo was not actually in jail on any of the dates that the Minister asserts the Notices of Reassessment were mailed[23]. On each of the dates that the Minister asserts that she issued the Notices of Reassessment, Mr. Mpamugo was either out on bail or out on parole. In either case, he was living at home.

[42] In summary, based on Mr. Mpamugo's lack of credibility, I find that he did not change his address with the CRA in the years in question.

[43] Given my overall findings on Mr. Mpamugo's credibility, I do not believe his alternative assertion that he did not receive the Notices of Reassessment at his home address. It is important to clarify that my lack of belief in Mr. Mpamugo's assertion that he did not receive the Notices does not mean that I find he did receive them. It simply means there is no evidence that they were not received and thus no evidence from which I could infer that they were not mailed.

Evidence Which Is Not Evidence of Mailing

[44] There are two key pieces of evidence that the Crown introduced that are not evidence that the Notices of Reassessment were mailed but that do hurt Mr. Mpamugo's credibility. The first is evidence concerning Mr. Mpamugo's discussions with CRA Collections. The second is evidence concerning work done by Mr. Mpamugo's accountants.

[45] Turning first to the discussions with Collections. The Crown introduced evidence which showed that Mr. Mpamugo had meetings, phone calls and correspondence with Collections Officers relating to the collection of the amounts allegedly assessed in the Notices of Reassessment and that he paid certain amounts

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[23] I find that he was being held pending bail from November 5-17, 1999 , held for a breach of his bail conditions from October 29 – December 1, 2001 and in prison following his sentencing from December 9, 2004 to December 9, 2005.

on account of those amounts. In *Aztec Industries v. The Queen*[24] the Federal Court of Appeal made it clear that a taxpayer's knowledge that the Minister believed she had assessed the taxpayer, the taxpayer's knowledge of actions taken by Collections to collect the amount purportedly assessed and any payments made by the taxpayer on account of the amount purportedly assessed are not evidence that a Notice of Assessment was mailed. Accordingly, I have not considered these discussions to be evidence that the reassessments were mailed.

[46] However, I do find that Mr. Mpamugo's testimony regarding these discussions with Collections seriously undermined his credibility. Mr. Mpamugo testified that he was unaware that he had any tax problems until he tried to sell his house in 2014 and discovered that CRA had a lien over it. Mr. Mpamugo acknowledged having had discussions with CRA Collections about requirements to pay that were issued against him, his wife and his children. He explained that those conversations were limited to discussing whether the requirements to pay could supercede existing Ontario Superior Court orders freezing his assets and explaining the difficult financial position that the requirements put his family in. Mr. Mpamugo stated that he did not discuss his underlying tax debt or those of his wife and children with Collections as he was unaware of those debts. I find the idea that Mr. Mpamugo would have had conversations with CRA Collections officers who were seeking to collect in excess of $5,000,000 from him and his family and would not have asked any questions at all about the underlying tax liability to be preposterous. This is not a case where a taxpayer has an outstanding $100,000 liability and the CRA assesses an additional $3,000. In a situation like that I could believe that the taxpayer might not question where the additional amount came from. In Mr. Mpamugo's case, the amount that CRA was seeking to collect was so overwhelmingly large that it is impossible to believe that he would not have asked where it came from. Mr. Mpamugo would have me believe that, faced with requirements to pay for such a large sum and being totally unaware of his actually owing anything to the CRA, he attended a meeting with Collections where he discussed only the mechanics of the requirements to pay and his financial circumstances and never once asked about the underlying debts. He would have me believe that CRA was pursuing his children for what the Reasons for Judgment in the criminal trial would lead me to believe was $500,000 each and yet he never asked why his children, who were university students at the time, could possibly owe CRA that much money. The fact that Mr. Mpamugo put forward such a

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[24] 1995 CarswellNat 278, [1995] 1 CTC 327

ridiculous story seriously undermines his credibility. It is simply unfathomable that Mr. Mpamugo would have had the conversation with Collections that he claims to have had. If TD Bank arrived at my door one day and told me that they were garnishing my pay because I was behind on my mortgage, the first thing out of my mouth would be "What mortgage? I have never borrowed money from TD in my life!" not "The amount you are garnishing is a little steep in my current financial situation. Do you think we could discuss a reduction."

[47] Turning then to the work done by Mr. Mpamugo's accountants. The Crown also introduced documentary evidence from Mr. Mpamugo's accountants indicating that they were aware that Mr. Mpamugo had been reassessed and were working to object to those reassessments. The documents do not specifically mention reviewing the Notices of Reassessment. It appears to me that a summary sheet prepared by the accountants confuses Notices of Reassessment with statements of account on more than one occasion. There are a number of documents described as Notices of Reassessment that bear dates other than the dates in question. Had I seen evidence that the accountants had actually reviewed the Notices of Reassessment, I would have concluded from that fact that the Notices were mailed. Absent that evidence, while I have no doubt that the accountants believed that the Minister had reassessed Mr. Mpamugo, I am only able to conclude from that Mr. Mpamugo was aware that the Minister believed she had reassessed him. I cannot conclude that the Notices were mailed.

[48] However, I do find that Mr. Mpamugo's testimony regarding the work done by his accountants undermined his credibility. The documents from Mr. Mpamugo's accountants indicated that the accountants were working to "counteract the existing tax assessments" on Mr. Mpamugo, his wife and Marygold and were planning on appealing[25]. The documents indicate that Mr. Mpamugo, whose assets had been frozen and who was facing difficult financial choices, paid the accountants tens of thousands of dollars for their work over two years. Mr. Mpamugo testified that he had no discussions with his accountants about what they believed to be outstanding reassessments, that he was unaware of the work they were doing, that he was unaware of the fact that the accountants believed there had been reassessments and that those reassessments were not mentioned at a meeting that he and one of those accountants attended with Collections. These assertions are not believable and further undermine Mr. Mpamugo's credibility.

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[25] Exhibit R-13

Summary

[49] In summary, since I find that Mr. Mpamugo's assertion that he changed his mailing address is not credible, there is no evidence on which I could conclude that any Notices mailed by the Minister were mailed to the wrong address. Similarly, there is no evidence on which I could conclude that the Notices of Reassessment were not received by Mr. Mpamugo at his home address. Thus, there is no basis upon which I could infer, from a lack of receipt, that the Notices were never mailed.

[50] By contrast, there is evidence that the Minister sent Notices of Reassessment for processing along with batches of Notices of Assessment and Reassessment of other unrelated taxpayers on eight separate occasions in five different years, evidence that the Minister anticipated that all those Notices would be printed and mailed in the ordinary course, evidence that the Minister had checks and balances in place to ensure that Notices sent for printing would, in fact, be printed and mailed, evidence that the address on the eight Notices of Reassessment intended for Mr. Mpamugo would have been Mr. Mpamugo's home address and evidence that no mail was returned undelivered from Mr. Mpamugo's home address in the years in question.

[51] I find it extremely improbable that eight different times in five different years the Minister would have sent Notices of Reassessment for Mr. Mpamugo to be printed along with the Notices of unrelated taxpayers and that none of Mr. Mpamugo's Notices would actually have been printed and mailed.

[52] In previous cases where the Court has concluded that the Minister has failed to prove mailing, the Minister either had no evidence of mailing or the Minister's weak evidence was outweighed by the taxpayer's credible testimony that he or she did not receive the Notice in question. That is not the case here. The evidence before me is neither fulsome nor ideal but it is the evidence that I am left with and the evidence upon which I must decide whether the Notices of Reassessment were mailed. As set out above, the Crown need only prove that that it is more likely than not that the Notices were mailed. Faced with weak evidence that the Notices were mailed, no credible evidence that they were not received and an extremely low probability that none of them was mailed, I find that it is more likely than not that they were indeed mailed.

Step 3: Date of Mailing

[53] Mr. Mpamugo concedes that if I find that the Notices of Reassessment were mailed, then they were mailed on the dates identified by the Minister. Accordingly, I find that the Notices of Reassessment in question were sent to Mr. Mpamugo on the dates asserted by the Crown.

[54] Pursuant to subsection 165(1), a taxpayer may object to a Reassessment on or before the day that is 90 days after the mailing of the Notice of Reassessment. Mr. Mpamugo filed a Notice of Objection on July 3, 2014. This was well after the respective 90 day deadlines for objecting to the Reassessments, the latest of which expired in 2008. Mr. Mpamugo has not obtained an extension of time to file Notices of Objection from either the Minister or this Court and is well out of time to do so now. Thus, he does not have valid Notices of Objection. Without valid Notices of Objection, Mr. Mpamugo is unable to meet a key precondition for appealing to this Court.

[55] Based on all of the foregoing, the Motion is allowed. The Appeal is quashed.

V. Costs

[56] Costs are awarded to the Respondent. It is my hope that the parties will reach an agreement on costs. If they do not, they shall have 30 days from the date of this Judgment to make submissions on costs to me. In attempting to reach an agreement, I suggest that Mr. Mpamugo keep in mind my comments in paragraph 15 above.

[57] **The Amended Reasons for Order is issued in substitution of the Reasons for Order dated September 28, 2016**.

Signed at Ottawa, Canada, this **20th day of October 2016**.

"David E. Graham"

Graham J.

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REASONS FOR ORDER BY:	The Honourable Justice David E. Graham
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DATE OF AMENDED REASONS FOR ORDER:	**October 20, 2016**

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