

Citation: 2005TCC797  
Date: 20060127  
Docket: 2003-18(IT)APP

BETWEEN:

DOUG DRAY,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

(Delivered orally from the bench on May 12, 2003,  
in Vancouver, British Columbia)

Margeson, J.

[1] The matter before the Court at this time is by way of application. It is an application of the Minister to quash the appellant's appeal for the year 1997, on the basis that it is an appeal against a nil assessment. This is a concept which taxpayers may have difficulty understanding.

[2] What is involved in an appeal before the Tax Court of Canada is an appeal against an assessment. The *Income Tax Act* gives the Minister the right to make an assessment, to raise an assessment, the Court cannot raise an assessment against an individual based upon whatever evidence is before it. The appeal has to be from the assessment itself.

[3] The Minister has filed an affidavit to which is attached a copy of the Notice of Reassessment. This affidavit indicates that it was a nil assessment.

[4] When the Minister assesses no tax then there is no appeal from it. In *Liampat Holdings Limited v. The Queen*, (1995) 96 D.T.C. 6020 (F.C.T.D.) at page 6021, the Court said: "There is a long line of jurisprudence that no appeal lies from a nil assessment. In *Okalta Oils Ltd. v. M.N.R.* (1955), 55 DTC 1176 (S.C.C.), one of the earliest cases dealing with nil assessments, where Fauteux, J., writing for the

Court, observed that "assessment" meant the actual amount of tax which a taxpayer was called upon to pay. If no amount was claimed, there was no assessment therefore, no right of appeal. ..."

[5] Further the Court said, "The case law is clear and, in my view, this Court has no jurisdiction to consider the plaintiff's 1982 nil tax assessment, even if the loss would have an effect on a subsequent loss determination. However, the taxpayer is not left without alternatives. Subsection 152(1.1) provides that a taxpayer may request that the Minister determine the amount of the taxpayer's loss." It reads as follows:

152(1.1) Where the Minister ascertains the amount is a taxpayer's non-capital loss, net capital loss, restricted farm loss or limited partnership loss for a taxation year and the taxpayer has not reported that amount as such a loss in his return of income for that year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of such loss and shall send a notice of determination to the person by whom the return was filed.

[6] Further the Court said, "According to Interpretation Bulletin IT-512: Determination and Redetermination of Losses, this provision was put in place specifically to deal with situations where a taxpayer has no right of appeal because there of a nil assessment. I have not found any time limitations for seeking a loss determination and counsel for the plaintiff, in his written submissions did not direct me to such a provision. Accordingly, the plaintiff will not be unfairly prejudiced by the conclusion that I am without jurisdiction to consider the appeal from the 1982 assessment on its merits."

[7] In the case at bar, at first blush, in light of the Appellant's evidence, this result may seem to be unfair, but again as indicated above, the Appellant is not left without some remedy. But what is before the Court today is whether or not the Appellant is entitled to appeal the assessment that the Minister has made.

[8] The Court is satisfied that the appeal here is from a nil assessment. The law is clear that this Court has no jurisdiction to deal with an appeal from a nil assessment.

[9] Consequently, the Court will have to allow the Minister's application and quash the appeal, as being one from a nil assessment.

Signed at New Glasgow, Nova Scotia, this 27th day of January, 2006.

“T.E. Margeson”

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Margeson, J.

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REASONS FOR JUDGMENT BY: The Honourable Justice T.E. Margeson  
DATE OF JUDGMENT: January 27, 2006

APPEARANCES:

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COUNSEL OF RECORD:

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Firm:

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