

Docket: 2009-769(IT)I

BETWEEN:

AMBARO M. GULED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard on June 29, 2010 at Toronto, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Mark Tonkovich

ORDER

The Respondent's motion to quash the Appellant's appeal in relation to the reassessment of her 2005 taxation year is allowed, without costs, and this appeal is quashed. The Appellant's appeal in relation to the reassessment of her 2003, 2004, and 2006 taxation years shall continue.

Signed at Halifax, Nova Scotia, this 19th day of July, 2010.

“Wyman W. Webb”

Webb, J.

Citation: 2010TCC387

Date: 20100719

Docket: 2009-769(IT)I

BETWEEN:

AMBARO M. GULED,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb, J.

[1] The Respondent filed a Motion to quash the appeal that the Appellant has filed in relation to the reassessment of her 2005 taxation year. The basis for this Motion is that:

- (a) this appeal was not filed within 90 days of the date that the notice that the Minister had confirmed the reassessment was mailed to the Appellant; and
- (b) the Appellant did not make an application to extend the time within which her appeal may be filed to this Court within the time period specified in section 167 of the *Income Tax Act* (the “Act”).

The Respondent’s Motion does not apply to the appeal filed by the Appellant in relation to the reassessment of her tax liability for 2003, 2004, and 2006.

[2] The Appellant was reassessed in respect of her tax liability for 2005 by a Notice of Reassessment dated July 19, 2007. She filed a Notice of Objection and the Minister confirmed the reassessment of her 2005 taxation year and sent a notice of confirmation to her on March 26, 2008. The Appellant had retained Tomlin Associates to represent her but it appears that they did not file an appeal on her behalf in relation to this reassessment.

[3] On September 7, 2008 the Appellant wrote to the “Chief of Appeals of Revenue Canada” to request an extension of time to appeal in relation to the reassessments issued for 2003, 2004, 2005 and 2006. On March 6, 2009 the Appellant filed an appeal to this Court.

[4] Subsection 169(1) of the *Act* provides that:

169. (1) Where a taxpayer has served notice of objection to an assessment under section 165, the taxpayer may appeal to the Tax Court of Canada to have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[5] The time period within which an appeal may be made to this Court, as set out in this subsection, is 90 days from the date the notice of confirmation of the reassessment was mailed to the Appellant. Since the notice of confirmation was mailed to the Appellant on March 26, 2008, this 90 day period expired long before the Notice of Appeal was filed on March 6, 2009.

[6] A taxpayer may make an application to extend the time within which an appeal may be made to this Court. Section 167 of the *Act* governs such applications. This section provides that:

167. (1) Where an appeal to the Tax Court of Canada has not been instituted by a taxpayer under section 169 within the time limited by that section for doing so, the taxpayer may make an application to the Court for an order extending the time within which the appeal may be instituted and the Court may make an order extending the time for appealing and may impose such terms as it deems just.

(2) An application made under subsection (1) shall set out the reasons why the appeal was not instituted within the time limited by section 169 for doing so.

(3) An application made under subsection (1) shall be made by filing in the Registry of the Tax Court of Canada, in accordance with the provisions of the Tax Court of Canada Act, three copies of the application accompanied by three copies of the notice of appeal.

(4) The Tax Court of Canada shall send a copy of each application made under this section to the office of the Deputy Attorney General of Canada.

(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; and

(b) the taxpayer demonstrates that

(i) within the time otherwise limited by section 169 for appealing the taxpayer

(A) was unable to act or to instruct another to act in the taxpayer's name, or

(B) had a bona fide intention to appeal,

(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,

(iii) the application was made as soon as circumstances permitted, and

(iv) there are reasonable grounds for the appeal.

[7] In *Dewey v. The Queen*, 2004 FCA 82, 2004 D.T.C. 6159, [2004] 2 C.T.C. 311, Justice Sharlow writing on behalf of the Federal Court of Appeal noted that:

3 Section 167 of the *Income Tax Act* permits the Tax Court to extend the time for commencing an appeal to the Tax Court, if a number of the conditions are met. A failure to meet any one of the conditions is fatal to the application.

[8] The letter that the Appellant wrote to the Chief of Appeals cannot be considered to be an application to extend the time to appeal to this Court as it was not filed in the Registry of the Tax Court of Canada as required by subsection 167(3) of the *Act*.

[9] The Notice of Appeal filed on March 6, 2009 cannot be considered to be an application for an extension of time within which such appeal may be filed as it does not “set out the reasons why the appeal was not instituted within the time limited by section 169 for doing so”, which is a requirement of subsection 167(2) of the *Act*. It seems clear that the Appellant filed an appeal on March 6, 2009, not an application to

extend the time within which an appeal may be filed as there was no attempt to address the requirements of subsection 167(2) of the *Act*. This is a statutory requirement that must be satisfied. No Order to extend the time within which an appeal may be made to this Court can be issued unless an application is made within the time specified in paragraph 167(5)(a) of the *Act*. This application must be filed in the Registry of this Court (subsection 167(3) of the *Act*) and must include the reasons “why the appeal was not instituted within the time limited by section 169 for doing so” (subsection 167(2) of the *Act*).

[10] Since the appeal was filed more than 90 days after the notice of confirmation was mailed to the Appellant it cannot be a valid appeal unless an application to extend the time within which an appeal may be made is granted. Having failed to comply with the requirements of subsection 167(2) of the *Act* in the document that was filed by the Appellant in the Registry of this Court on March 6, 2009, this document cannot be considered to be a valid application to extend the time within which an appeal may be made to this Court. The Appellant’s appeal in relation to the reassessment of her tax liability for 2005 is, therefore, not a valid appeal to this Court nor is the document filed on March 6, 2009 a valid application to extend the time within which an appeal may be made to this Court.

[11] As a result the Respondent’s motion to quash the Appellant’s appeal in relation to the reassessment of her 2005 taxation year is allowed, without costs, and this appeal is quashed.

Signed at Halifax, Nova Scotia, this 19th day of July, 2010.

“Wyman W. Webb”

Webb, J.

CITATION: 2010TCC387

COURT FILE NO.: 2009-769(IT)I

STYLE OF CAUSE: AMBARO M. GULED
AND THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 29, 2010

REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb

DATE OF ORDER: July 19, 2010

APPEARANCES:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Mark Tonkovich

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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