

Federal Court of Appeal



Cour d'appel fédérale

Date: 20151104

Docket: A-140-14

Citation: 2015 FCA 246

**CORAM: RYER J.A.
BOIVIN J.A.
RENNIE J.A.**

BETWEEN:

QUYNH VO

Appellant

And

HER MAJESTY THE QUEEN

Respondent

Heard at Calgary, Alberta, on November 4, 2015.
Judgment delivered from the Bench at Calgary, Alberta, on November 4, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on November 4, 2015).

RYER J.A.

[1] This is an appeal by Ms. Quynh Vo (the “Taxpayer”) from a judgment of Justice Robert Hogan (the “Judge”), dated February 11, 2014, in Tax Court of Canada Docket 2013-3540(IT)APP, dismissing an application for an order extending the time within which to serve a notice of objection in respect of a reassessment (the “Reassessment”) of the Taxpayer’s 2008

taxation year that was issued pursuant to the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the “Act”).

[2] The Reassessment was sent to the Taxpayer on October 6, 2011 and she was permitted, by subsection 165(1) of the Act, to file a notice of objection within 90 days from that date, that is to say by January 4, 2012. A notice of objection was not served by the Taxpayer within that 90 day period.

[3] The Taxpayer does not dispute that the Reassessment was sent by the Minister on October 6, 2011. Indeed, she acknowledges that she was expecting a reassessment of her 2008 taxation year. However, she asserted that she did not receive the Reassessment and that she only became aware of it in March of 2013, when she received a telephone call from the collections division of the Canada Revenue Agency, during which she was asked for payment of the amount owing under the Reassessment.

[4] By letter dated March 28, 2013, the Taxpayer purported to object to the Reassessment. Since this letter was outside of the 90 day period for serving a notice of objection, as permitted by subsection 165(1) of the Act, the Minister treated the letter as a request for an extension of time to serve a notice of objection, as provided for in subsection 166.1(1) of the Act.

[5] Unfortunately for the Taxpayer, subsection 166.1(7) of the Act prevents the Minister from granting an extension where the application is made after one year from the expiration of the period within which the Act permits a notice of objection to be filed. In the circumstances,

that one year period ended on January 4, 2013. Accordingly, by correspondence dated June 7, 2013, the Minister denied the application.

[6] By letter dated September 20, 2013, the Taxpayer applied to the Tax Court of Canada for an extension of time to file a notice of objection, as permitted by subsection 166.2(1) of the Act. However, that provision requires that such an application be made within 90 days after the date of mailing of the Minister's refusal of the application made under subsection 166.1(1) of the Act. Accordingly, the Taxpayer's application to the Tax Court of Canada was made outside of this 90 day period.

[7] Additionally, subsection 166.2(5) of the Act precludes the granting of an application for an extension by the Tax Court of Canada unless the application to the Minister under subsection 166.1(1) of the Act is made within the one year period immediately following the expiration of the 90 day period within which the taxpayer is permitted to file a notice of objection under subsection 165(1) of the Act.

[8] As a result, even if the Taxpayer's application under subsection 166.2(1) of the Act had been made on a timely basis, paragraph 166.2(5)(a) of the Act would have prevented the Tax Court of Canada from granting the requested extension. In order to have avoided the limitation in that paragraph, the Taxpayer would have had to make her application under subsection 166.1(1) of the Act no later than January 4, 2013, which she did not do.

[9] In an appeal of a decision of the Tax Court of Canada, this Court reviews questions of law on the standard of correctness. Questions of fact and mixed fact and law in respect of which there are no extricable legal questions are reviewed on the standard of palpable and overriding error (see: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235 at paragraphs 7 to 37).

[10] We are of the view that in refusing the Taxpayer's application for an extension of time to serve a notice of objection in respect of her 2008 taxation year, the Judge properly interpreted and applied all relevant provisions of the Act and made no error of fact or mixed fact and law that warrants our intervention. Accordingly, the appeal will be dismissed with costs in the amount of \$300.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-140-14

**(APPEAL FROM A JUDGMENT OF JUSTICE HOGAN DATED FEBRUARY 11, 2014
IN THE TAX COURT OF CANADA, DOCKET No: 2013-3540(IT)APP)**

STYLE OF CAUSE:

QUYNH VO v. HER MAJESTY
THE QUEEN

PLACE OF HEARING:

Calgary, Alberta

DATE OF HEARING:

NOVEMBER 4, 2015

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

BOIVIN J.A.

RENNIE J.A.

DELIVERED FROM THE BENCH BY:

RYER J.A.

APPEARANCES:

Quynh Vo

ON HER OWN BEHALF

Valerie Meier

FOR THE RESPONDENT

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FOR THE RESPONDENT