

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240305

Docket: A-371-18

Citation: 2024 FCA 41

**CORAM: WEBB J.A.
LASKIN J.A.
GOYETTE J.A.**

Docket: A-371-18

BETWEEN:

COMME CORPORATION

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on March 5, 2024.
Judgment delivered from the Bench at Toronto, Ontario, on March 5, 2024.

REASONS FOR JUDGMENT OF THE COURT BY:

WEBB J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on March 5, 2024).

WEBB J.A.

[1] The appellant's application to have its application to the Minister of National Revenue (the Minister) to extend the time to object to an assessment under the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the Act) be granted or to commence an appeal to the Tax Court of Canada was dismissed by the Tax Court of Canada (*per Visser J.*, Tax Court File No. 2018-1186(GST)APP).

[2] This is an appeal from the Order of the Tax Court dismissing the appellant's application. The issue in this appeal is whether the Tax Court judge erred in dismissing this application.

[3] The following dates and events are relevant in this matter:

<u>Date</u>	<u>Event</u>
December 14, 2014	A notice of reassessment was issued following the appellant's filing of its GST return for the reporting period from January 5, 2010 to December 31, 2010 (the Reporting Period). The GST return was filed in response to an arbitrary assessment issued on November 18, 2011. The Minister had previously requested, on two separate occasions, that the appellant file its GST return. This is the relevant notice of reassessment in this matter.
November 2, 2015	The appellant submitted a notice of objection to the Minister.
November 27, 2015	The Minister rejected the notice of objection because it was not filed within the time limit set out in subsection 301(1.1) of the Act (within 90 days after the date the notice of reassessment was sent to the appellant). The appellant was informed that it would have to request an extension of time to file the notice of objection. This application would have to be made within one year after the expiration of the time period within which the

<u>Date</u>	<u>Event</u>
	appellant could have filed an objection without an extension of time.
June 25, 2017	The appellant wrote to the Canada Revenue Agency (CRA) requesting that the CRA accept an amended return for the Reporting Period.
July 27, 2017	The CRA informed the appellant that it would not be reassessed based on the amended return.
October 23, 2017	The appellant submitted, to the Minister, a request for an extension of time to object in response to the letter from the CRA dated July 27, 2017.
November 28, 2017	The Minister rejected the application on the basis that the time within which an application could have been made to object to the notice of reassessment (which was issued on December 14, 2014) expired on March 16, 2016 and therefore the request was too late.
April 5, 2018	The appellant filed the application with the Tax Court referred to in paragraph 1 above.

[4] Subsection 304(5) of the Act provides that the Tax Court cannot grant an application to extend the time to object to an assessment unless the conditions set out in paragraphs (a) and (b) are satisfied. Paragraph (a) provides that the appellant must have filed its application to the Minister to extend the time to object within one year after the expiration of the time period

within which the appellant could have filed an objection without an extension of time. The letter from the CRA dated July 27, 2017 is not an assessment. The relevant reassessment in this matter is dated December 14, 2014. The time period within which the appellant could have requested an extension of time to object to this reassessment expired on March 16, 2016.

[5] Since the appellant only applied after March 16, 2016 to the Minister to request an extension of time to object to the relevant reassessment, there is no basis on which the Tax Court could have granted an extension of time for the appellant to object to this reassessment. The Tax Court did not err in dismissing this application.

[6] Filing a valid notice of objection is a condition precedent to commencing an appeal to the Tax Court (*Beima v. Canada*, 2016 FCA 205, at paragraph 14). Since the appellant did not file a valid notice of objection, the time period to commence an appeal to the Tax Court has not commenced. As noted in *Beima*, at paragraph 14, “[a]n extension of time is not available if the time period has not commenced”.

[7] The Act stipulates specific requirements for making an objection to the Minister and filing an appeal to the Tax Court. The appellant did not comply with these requirements. Neither the Tax Court nor this Court has the jurisdiction (either equitable or otherwise) to waive compliance with or modify these statutory requirements.

[8] The Tax Court Judge did not err in dismissing the appellant’s application for an extension of time to file an appeal to the Tax Court.

[9] This appeal will be dismissed with costs.

"Wyman W. Webb"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-371-18

APPEAL FROM AN ORDER OF THE HONOURABLE JUSTICE VISSER OF THE TAX COURT OF CANADA DATED OCTOBER 15, 2018, IN DOCKET NO. 2018-1186(GST)APP

STYLE OF CAUSE: COMME CORPORATION
v. HIS MAJESTY THE KING

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 5, 2024

REASONS FOR JUDGMENT OF THE COURT BY: WEBB J.A.
LASKIN J.A.
GOYETTE J.A.

DELIVERED FROM THE BENCH BY: WEBB J.A.

APPEARANCES:

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