

Docket: 2014-3096(IT)G

BETWEEN:

BRUNO ELVIO ROSSI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Motion heard on December 8, 2014, at Montreal, Quebec.

Before: The Honourable Justice Johanne D' Auray

Appearances:

Counsel for the Appellant: Camille Janvier

Counsel for the Respondent: Anne-Marie Boutin

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### **JUDGMENT**

UPON motion by the respondent filed with this Court on November 20, 2014, seeking the dismissal of the appeal on the ground that the appellant failed to institute his appeal within the time prescribed in subsection 169(1) of the *Income Tax Act*;

The parties having been heard;

The motion is granted and the appeal from the assessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, without costs.

Signed at Ottawa, Canada, this 26th day of January 2015.

“Johanne D’ Auray”

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D’ Auray J.

Translation certified true  
on this 8th day of July 2015.

Erich Klein, Revisor

Citation: 2015 TCC 20  
Date: 20150126  
Docket: 2014-3096(IT)G

BETWEEN:

BRUNO ELVIO ROSSI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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### **REASONS FOR JUDGMENT**

D' Auray J.

#### **INTRODUCTION**

[1] The respondent's motion seeks the dismissal of the appeal of Bruno Elvio Rossi (the appellant) for the 2003 taxation year on the ground that the appellant did not file an appeal with the Court within the time prescribed in subsection 169(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the Act).

[2] The issue is whether the Minister of National Revenue (the Minister) discharged his duty under the Act by sending a notice of confirmation by registered mail to the appellant's address.

[3] The appellant submits that, since the Notice of Confirmation was returned to the Canada Revenue Agency (the CRA) by Canada Post, he never received the Notice of Confirmation.

FACTS

[4] On July 12, 2004, the Minister assessed the appellant for his 2003 taxation year.

[5] On October 17, 2006, the appellant was reassessed with respect to his 2003 taxation year.

[6] The appellant filed a notice of objection with regard to the reassessment of October 17, 2006.

[7] On June 17, 2010, the Minister sent the appellant, by registered mail, a notice of confirmation of the reassessment for the 2003 taxation year.

[8] The Notice of Confirmation was sent to the address that the appellant had provided to the Minister, namely, 743 D Rue Principale, Saint-Sauveur, Quebec J0R 1R0.

[9] The same day, June 17, 2010, the Minister also sent a copy of the Notice of Confirmation by first class mail to the appellant's accountant, James Bagiotas.

[10] On July 3, 2010, Canada Post returned the registered mail to the CRA as unclaimed by the appellant.

[11] On July 12, 2010, the Minister sent the Notice of Confirmation for the 2003 taxation year to the appellant again, this time by first class mail, also to the address that the appellant had provided: 743 D Rue Principale, Saint-Sauveur, Quebec J0R 1R0.

[12] On September 3, 2014, the appellant filed a notice of appeal with this Court with regard to the Notice of Confirmation dated June 17, 2010.

[13] The Minister contends that the notice of appeal filed by the appellant for the 2003 taxation year is invalid because the appellant did not file it with this Court within 90 days of the date of the Notice of Confirmation.

[14] The appellant submits that neither he nor his accountant received the letter dated June 17, 2010, containing the Notice of Confirmation. The appellant also stated that he had not received the letter containing the Notice of Confirmation sent by the CRA by first class mail on July 12, 2010 either.

[15] The appellant maintains that he was receiving statements of account that misled him into believing that the reassessment for the 2003 taxation year was still under objection. The statements of account are dated in 2013 and 2014. They were filed in evidence (Exhibits A-1, A-2, A-3 and A4).

[16] The appellant testified that he had appealed from a similar reassessment against him for his 2002 taxation year. The appellant submitted that he had intended to challenge the Notice of Confirmation for 2003, as he had challenged the reassessment for 2002. The dispute over the 2002 taxation year was settled under subsection 169(3) of the Act, that is, through an agreement between the two parties. Following this agreement, the appellant filed a discontinuance.

[17] Furthermore, the appellant stated that the collection officer in charge of the file for the 2002 taxation year was not able to provide him with information about the amounts indicated on the statements of account that he was receiving.

[18] The appellant testified that he lived at his residence in Saint-Sauveur only on weekends in 2010. During the week, he lived at his parents' residence in Montreal because of his job.

[19] In May 2010, the appellant filed a notice of change of address with Canada Post so that his mail would be redirected from his residence in Saint Sauveur to his parents' residence in Montreal for a one-year period. The appellant stated that he did not inform the CRA of the change in his mailing address.

[20] Mr. Bagiotas, the appellant's accountant, also testified that the statements of account that the appellant was receiving gave the impression that the reassessment for the 2003 taxation year was still under objection. In June 2014, he tried to contact several people at the CRA inquire about the appellant's tax status for the 2003 taxation year. His attempts were unsuccessful.

[21] In support of her motion, the respondent relied on the affidavit of Chantal Faubert, the CRA appeals officer responsible for the appellant's file. The respondent filed Ms. Faubert's affidavit with the Court. She also testified at the hearing.

[22] In January 2010, Ms. Faubert reviewed the appellant's file for the 2003 taxation year. She also reviewed the appellant's objection file for the 2002 taxation year. After reviewing the objection files, she decided to confirm the

reassessment for 2003 and issue a reassessment for 2002. The 2002 reassessment was sent by first class mail to the address provided by the appellant.

[23] In particular, Ms. Faubert stated the following in her affidavit:

[TRANSLATION]

3. In May 2010, I prepared the notice of confirmation of the reassessment for the appellant's 2003 taxation year, and this correspondence was mailed on June 16 or 17, 2010, as evidenced by the copies of the Notice of Confirmation, the covering letter and the mailing envelope attached hereto as Exhibit R-1 and forming an integral part hereof.

4. In May 2010, I prepared both a copy of the Notice of Confirmation and a covering letter to the appellant's representative, James Bagiotas, and this correspondence was mailed on June 16 or 17, 2010, as evidenced by the copy of the letter attached hereto as Exhibit R-2 and forming an integral part hereof.

5. Bruno Elvio Rossi did not claim his registered mail containing the notice of confirmation of the reassessment for his 2003 taxation year.

6. On July 3, 2010, Canada Post returned to the Canada Revenue Agency the registered mail that Bruno Elvio Rossi had not claimed, as evidenced by the copy of the envelope attached hereto as Exhibit R-3 and forming an integral part hereof.

7. On July 12, 2010, I mailed once again, by regular mail, the notice of confirmation of the reassessment for the appellant's 2003 taxation year and the covering letter.

8. The mailing of June 17, 2010, to Bruno Elvio Rossi's representative and the mailing of July 12, 2010, to Bruno Elvio Rossi were not returned to the Canada Revenue Agency.

[24] Ms. Faubert explained the procedure that she used to send the Notice of Confirmation. After her team leader signed the Notice of Confirmation, she handed over to the mail room staff responsible for mailing letters the Notice of Confirmation together with a covering letter and a registered mail envelope that she herself had prepared.

[25] Ms. Faubert stated that the Notice of Confirmation dated June 17, 2010, was sent to the appellant's address, namely, 743 D Rue Principale, Saint-Sauveur, Quebec, J0R 1R0. She indicated that this address was the same as the address on the appellant's Notice of Objection and the mailing address in the CRA computer

system as of June 17, 2010. It should be noted that the Notice of Confirmation was sent to the same address as that used to send the Notice of Reassessment for the 2002 taxation year, which the appellant did receive.

[26] In cross-examination, Ms. Faubert stated that the CRA's practice was to send notices of confirmation by registered mail. She indicated that she did not have personal knowledge of mail service procedures.

[27] Regarding the confusion caused by the statements of account, Ms. Faubert explained that a suspension code is used to suspend or temporarily interrupt collection actions in a taxpayer's file for any taxation years under objection.

[28] Ms. Faubert stated that the code is entered when the CRA receives an objection and that it must be removed when a decision is made on the objection. It is the clerks' responsibility to remove the code. The CRA's collection actions begin once the code is removed. She indicated that, in the case of the appellant, the code was not removed in a timely manner for the 2003 taxation year. Although Ms. Faubert testified that, according to the CRA's records, the suspension code for the appellant's account was removed on November 21, 2013, the evidence shows that the amounts at issue for the 2003 taxation year were still suspended according to a statement of account dated April 2, 2014.

#### Respondent's submissions

[29] According to the respondent, the Minister's only obligation is to prove that the Notice of Confirmation was sent to the appellant, and nothing in the Act requires that the Notice be received by the appellant.

[30] The respondent submits that the Notice of Confirmation was sent by registered mail to the appellant on June 17, 2010, and by first class mail on July 12, 2010. The appellant instituted an appeal on September 3, 2014, four years after the expiration of the 90-day time limit prescribed in subsection 169(1) of the Act. Moreover, the respondent contends that under subsection 167(5) of the Act the Court does not have jurisdiction to grant the appellant an extension of time.

#### Appellant's submissions

[31] The appellant for his part submits that the sending by registered mail on June 17, 2010, cannot constitute a valid mailing that would cause the 90-day period provided for in subsection 169(1) of the Act to begin to run. The appellant argues

that he did not receive the Notice of Confirmation because the Notice was returned to the CRA by Canada Post. According to the appellant, the presumptions under the Act with respect to the sending and receipt of notices do not apply to mailings by registered mail.

[32] The appellant also argues that the proof of the second mailing by first class mail is deficient and does not meet the tests established in the case law.

[33] The appellant further contends that, according to the CRA's statements of account, the amounts for the 2003 taxation year were still suspended, which would imply that the CRA had not ruled on his objection for 2003. Thus, he argues that the CRA placed him in a situation in which he could not act.

[34] Consequently, the appellant submits that he could file a notice of appeal in September 2014.

### ANALYSIS

[35] Under subsection 169(1) of the Act, an appeal must be instituted within 90 days from the day the notice of confirmation is mailed. Subsection 169(1) reads as follows:

169(1) Appeal — 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 sent to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[36] Subsection 165(3) of the Act states that the duties of the Minister in relation to a notice of objection are as follows:

165 (3) Duties of Minister — On receipt of a notice of objection under this section, the Minister shall, with all due dispatch, reconsider the assessment and



vacate, confirm or vary the assessment or reassess, and shall thereupon notify the taxpayer in writing of the Minister's action.

[37] In *Bowen v. Minister of National Revenue*, [1991] F.C.J. No. 1054, the Federal Court of Appeal made the following comments regarding the Minister's duties under subsection 165(3) of the Act:

In our opinion, the duty resting upon the Minister under subsection 165(3) was to do precisely what he did, viz., notify the respondent of the confirmation by registered mail. Nothing in that subsection or in section 169 required the notification to be "served" personally or to be received by the taxpayer. In dispatching the notification by registered mail the Minister was entitled to avail himself of the address or addresses which the respondent himself had already furnished. There was no obligation on him to look beyond that information. Moreover, a requirement for the receipt of the notification would be difficult if not totally unworkable from an administrative standpoint. Parliament has not required it; it has required merely that the notification be dispatched by registered mail.

[38] The Federal Court of Appeal's decision in *Bowen, supra*, was rendered in relation to the earlier version of subsection 165(3) of the Act, which read as follows at the time:

165(3) Duties of Minister — Upon receipt of a notice of objection under this section, the Minister shall,

(a) with all due dispatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, or

(b) where the taxpayer indicates in the notice of objection that he wishes to appeal immediately either to the Tax Court of Canada or to the Federal Court and that he waives reconsideration of the assessment and the Minister consents, file a copy of the notice of objection with the Registrar of the Tax Court or in the Registry of the Federal Court, as the case may be,

and he shall thereupon notify the taxpayer of his action by registered mail.

[39] The amendment to subsection 165(3) of the Act has not changed the principles stated by the Federal Court of Appeal in *Bowen, supra*.

[40] Subsection 165(3) of the Act sets out the requirement of informing the taxpayer in writing. There is no requirement that the Minister serve his decision on the taxpayer by personal service or prove that the taxpayer has received it.

[41] In *Skalbania v. The Queen*, 2009 TCC 576, the taxpayer argued that registered mail is a process distinct from other methods of sending mail and that this process is not complete where the mail is returned to the sender. Justice Hershfield of this Court commented as follows at paragraph 26:

[26] Nothing in the Appellant's arguments, as carefully crafted as they were, suggests that a different conclusion is warranted on the facts of this case involving a notice sent by registered mail. Indeed, to suggest otherwise would mean that a taxpayer could foil the Minister's ability to reassess within the normal reassessment period by avoiding receipt of registered mail.

[42] In this case, the evidence shows that the Minister fulfilled his obligation under subsection 165(3) of the Act.

[43] The evidence demonstrated that the Notice of Confirmation was sent in writing on June 17, 2010, to the appellant's address at 743 D Rue Principale, Saint-Sauveur, Quebec, J0R 1R0. It was sent by registered mail as evidenced by the mailing envelope attached to the affidavit as Exhibit R-1. In her testimony, Ms. Faubert described the procedure for sending registered mail. She noted that the Notice of Confirmation was sent to the appellant's correct address. Ms. Faubert mentioned that she had verified that it was the appellant's authorized address entered in the CRA's files. She also said that it was the address on the appellant's Notice of Objection for the 2003 taxation year. That was also the address used to send the reassessment for the 2002 taxation year.

[44] Although there was insufficient evidence to establish the second mailing, by first class mail, of the Notice of Confirmation, the evidence still shows that Ms. Faubert did take action with respect to the Notice of Confirmation that was returned to her. Moreover, proof of the second mailing, by first class mail, is not required for a ruling on this motion.

[45] Four years passed between the CRA's mailing of the Notice of Confirmation by registered mail on June 17, 2010 and the filing of the Notice of Appeal with this Court on September 3, 2014. Thus, it is clear that the time limit for filing an appeal with this Court of 90 days from the day the Notice of Confirmation was sent, prescribed in subsection 169(1) of the Act, was not respected.

[46] In reviewing the statements of account, it is easy to understand why the appellant and his accountant had the impression that the CRA had not made a decision on the objection: the amounts for 2003 were still suspended. Ms. Faubert

admitted that the code should have been changed on the statements of account since a decision had been made confirming the reassessment.

[47] That being said, on October 28, 2013, the date of the most recent statement of account produced in evidence, the 90-day time limit for instituting an appeal under subsection 169(1), as well as the time limit prescribed in subsection 167(5) for applications for an extension of time for appealing, had expired since the Notice of Confirmation was dated June 17, 2010.

[48] Mr. Bagiotas stated that he had contacted the CRA in 2014, but by that time it was already too late to file an appeal with this Court.

[49] The appellant, contrary to what he claims, was not unable to act. Under paragraph 169(1)(b) of the Act, a taxpayer may appeal to this Court after 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.

[50] It is my view that despite the confusion caused by the CRA's statements of account in this file, the fact remains that the Minister discharged his duty to give the taxpayer notice in writing. I have found no legal grounds for dismissing the respondent's motion. As mentioned by counsel for the respondent, this is therefore a case in which the appellant could apply to the CRA for relief in the form of the waiver of interest and penalties.

[51] As a result, the respondent's motion to dismiss the appellant's appeal in relation to the reassessment of his tax liability for the 2003 taxation year is granted and the appellant's appeal is dismissed, without costs.

Signed at Ottawa, Canada, this 26th day of January 2015.

“Johanne D' Auray”

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D'Auray J.

Translation certified true  
on this 8th day of July 2015.

Erich Klein, Revisor

CITATION: 2015 TCC 20

COURT FILE NO.: 2014-3096(IT)G

STYLE OF CAUSE: BRUNO ELVIO ROSSI v. HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: December 8, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Johanne D' Auray

DATE OF JUDGMENT: January 26, 2015

APPEARANCES:

Counsel for the appellant: Camille Janvier  
Counsel for the respondent: Anne-Marie Boutin

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