Docket: 2015-3983(IT)APP

BETWEEN:

PETER PILGRIM,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on November 18, 2015, at Calgary, Alberta

By: The Honourable Justice Don R. Sommerfeldt

Appearances:

Agent for the Applicant:	Michael Baker
Counsel for the Respondent:	Jeff Watson

ORDER

The Application for an extension of time to file a Notice of Objection under the *Income Tax Act* (Canada) (the "*ITA*") for the 2009, 2010 and 2011 taxation years is dismissed, on the ground that the Minister of National Revenue (the "Minister") has failed to prove that the Notices of Reassessment for the 2009 and 2010 taxation years and the Notice of Assessment for the 2011 taxation year (collectively the "Notices") were sent to the correct address of the Applicant.

It is ordered and declared that, by reason of the Minister's failure to send the Notices to the correct address of the Applicant, the Applicant's Notice of Objection for the 2009, 2010 and 2011 taxation years was served on the Minister within the time limited by paragraph 165(1)(*a*) of the *ITA*.

Signed at Ottawa, Canada, this 1st day of December 2015.

"Don R. Sommerfeldt"

Sommerfeldt J.

Citation: 2015 TCC 302
Date: 20151201
Docket: 2015-3983(IT)APP

BETWEEN:

PETER PILGRIM,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Sommerfeldt J.

[1] These Reasons pertain to an Application by Peter Pilgrim for an Order under subsection 166.2(1) of the *Income Tax Act* (Canada) (the "*ITA*"), extending the time for serving a Notice of Objection in respect of the 2009, 2010 and 2011 taxation years. The Application was heard in Calgary, Alberta on November 18, 2015. At the conclusion of the hearing, I dismissed Mr. Pilgrim's Application, on the ground that the Minister of National Revenue (the "Minister") had failed to prove that the Notices of Reassessment for the 2009 and 2010 taxation years and the Notice of Assessment for the 2011 taxation year (collectively the "Notices") had been sent to the correct address of Mr. Pilgrim. I also ordered and declared that, by reason of the Minister's failure to send the Notices to the correct address of Mr. Pilgrim, Mr. Pilgrim's Notice of Objection for the 2009, 2010 and 2011 taxation years had been served on the Minister within the time limited by paragraph 165(1)(*a*) of the *ITA*. I was asked to provide written reasons for my decision.

[2] The evidence considered at the hearing consisted of an Affidavit by Mr. Pilgrim, *viva voce* testimony given by Mr. Pilgrim, a nine-page document consisting of various photographs and a site plan for a residential development known as "Riverview Terrace" and located at 245 Red Deer Drive SW, Medicine Hat, Alberta, and an Affidavit of Paul Sendher, who is employed by the Canada Revenue Agency (the "CRA") as a Litigation Officer in the Vancouver Tax Services Office.

[3] In September 2012 the CRA issued to Mr. Pilgrim Notices of Reassessment for the 2009 and 2010 taxation years and a Notice of Assessment for the 2011 taxation year (collectively defined above as the "Notices"). The Notices were mailed by the CRA on September 28, 2012.

[4] The issue in this Application is whether the Notices were mailed to Mr. Pilgrim's correct address.

[5] Mr. Pilgrim testified that he did not receive the Notices and that he first learned of the reassessments and the assessment which were the subject of the Notices (collectively the "Assessments") in late May or early June of 2014, when he received his Notice of Assessment for the 2012 taxation year, which had been mailed to him on May 15, 2014. The 2012 Notice indicated that a substantial outstanding balance was owed by Mr. Pilgrim in respect of taxation years preceding 2012. Mr. Pilgrim then contacted an accountant, who brought this Application on Mr. Pilgrim's behalf.

[6] Attached to Mr. Sendher's Affidavit as Exhibit "A" is a redacted printout from the CRA's electronic records showing the Assessments and a printout from the CRA's electronic records showing a history of Mr. Pilgrim's mailing addresses from July 2010 to October 2015. Based on the first portion of Exhibit "A", it appears that the Assessments were issued by the CRA on September 28, 2012. The second portion of Exhibit "A" shows that, from September 15, 2011 to May 8, 2014, the mailing address used by the CRA for Mr. Pilgrim was 245 Red Deer Drive SW, Medicine Hat, Alberta, T1A 8P4. On May 8, 2014, the CRA changed its records to show Mr. Pilgrim's mailing address as ***318*** **–** 245 Red Deer Drive SW, Medicine Hat, Alberta, T1A 8P4 (emphasis added).[1]

[7] During the hearing, it was counsel for the Respondent who first noticed that the address to which the CRA had mailed the Notices was not the complete address of Mr. Pilgrim. At that point, counsel for the Respondent graciously acknowledged that the CRA had not mailed the Notices to Mr. Pilgrim's correct address.

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[1] During the hearing, counsel for the Respondent explained that, when the CRA corrected Mr. Pilgrim's mailing address in its records on May 8, 2014, the correction automatically repopulated all of the address fields in the CRA's computerized records in respect of Mr. Pilgrim. Accordingly, the first portion of Exhibit "A" now shows the correct mailing address for Mr. Pilgrim. However, the comparable record on September 28, 2012 would have shown the incorrect mailing address for Mr. Pilgrim.

[8] The history of mailing addresses used by the CRA for Mr. Pilgrim, as set out in the second portion of Exhibit "A" to Mr. Sendher's Affidavit, also indicates that on September 15, 2011, December 5, 2011 and May 8, 2014, items mailed to Mr. Pilgrim were returned to the CRA, suggesting that the CRA was aware, or could have been aware, that 245 Red Deer Drive SW (i.e., without showing 318 as the unit number) was not the correct address for Mr. Pilgrim.

[9] During his testimony, Mr. Pilgrim indicated that 245 Red Deer Drive SW, Medicine Hat is the address of a large residential development known as Riverview Terrace. Mr. Pilgrim's agent tendered a document, which was entered as Exhibit A-1, containing photographs of the exterior of Riverview Terrace, a site plan and a photograph of the intercom directory located near the front entrance of Riverview Terrace. The site plan shows that there are approximately 115 on-site surface parking stalls in the parking lot at Riverview Terrace. The photograph of the intercom directory at Riverview Terrace indicates that there are 79 suites or units in that development.

[10] Mr. Pilgrim's agent submitted that Riverview Terrace is such a large development that an occupant's unit number is an essential component of the address of that occupant. I concur with that submission. Furthermore, as indicated above, between September 15, 2011 and May 8, 2014 at least three items were mailed by the CRA to the incomplete (i.e., without showing "318" as Mr. Pilgrim's unit number) address of Mr. Pilgrim and were subsequently returned to the CRA, presumably without having been delivered to Mr. Pilgrim. Thus, it is plausible that other items, such as the Notices, which were mailed with an incomplete address for Mr. Pilgrim, may similarly not have been delivered.

[11] Paragraph 166.1(7)(*a*) of the *ITA* provides that an application to the CRA to extend the time for serving a notice of objection must be made within one year after the expiration of the time otherwise limited by the *ITA* for serving a notice of objection. As the Notices were purportedly mailed by the CRA on September 28, 2012, the CRA took the position that the deadline for making an application under subsection 166.1(1) of the *ITA* was December 27, 2013 for the 2009 and 2010 taxation years and April 30, 2014 for the 2011 taxation year. Those supposed deadlines were calculated by reference to paragraph 165(1)(*a*) of the *ITA*, which provides that the deadline for objecting to an assessment is the later of:

a. the day that is one year after the particular taxpayer's filing-due date for the year, and

b. the day that is 90 days after the day of sending of the notice of assessment.

[12] Subparagraph 165(1)(*a*)(ii) of the *ITA* only requires, in essence, that a notice of assessment be sent. It does not require that it be received. This can work a harsh result. For instance, in *Chomatas v The Queen*,[2] this court stated that the period of one year and 90 days during which an application to extend time may be made starts to run when the notice of assessment is sent, and that receipt of the notice is not necessary, such that a taxpayer's right to object could expire without the taxpayer even knowing about the assessment.

[13] However, where a taxpayer alleges that a notice of assessment or reassessment was not mailed or otherwise communicated to him, the Minister bears the burden of proving that the notice was mailed or otherwise communicated to the taxpayer.[3]

[14] It is incumbent upon the Minister to mail or otherwise send a notice of assessment or reassessment to a taxpayer's correct address. In *Scott v MNR*,[4] the Exchequer Court stated:

> … the giving of notice of assessment is part of the fixation operation referred to as an assessment in the statute and … an assessment is not made until the Minister has completed his statutory duties as an assessor by giving the prescribed notice….
>
> … it would seem apparent that Parliament intended that such notices [of assessment] should be given by post. This, however, being itself an inference from language used in the statute, it is in my opinion also to be inferred that Parliament never intended that such a notice could be given effectively by the "mailing" of it to the taxpayer at some wrong or fictitious address and I find nothing in the statute to suggest that Parliament intended that a taxpayer should be bound by an assessment or fixed with notice of an assessment upon the posting of a notice thereof addressed to him elsewhere than at his actual address or at an

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2 2013 TCC 319, ¶ 7. See also *The Queen v Schafer*, [2000] GSTC 82, 2000 DTC 6542 (FCA), ¶ 7, 12 and 24.

3 *Aztec Industries Inc. v The Queen*, [1995] 1 CTC 327, 95 DTC 5235, 179 NR 383 (FCA), ¶ 12; *Carcone v The Queen*, 2011 TCC 550, ¶ 19 and 21; and *Hamer v The Queen*, 2014 TCC 218, ¶ 3.

4 *Scott v MNR*, [1960] CTC 402, 60 DTC 1273 (Ex. Ct.), at ¶ 27-29.

> address which he has in some manner authorized or adopted as his address for that purpose.… [In] *Societa Principessa Iolanda Margherita di Savoia (fondata dai Bonitesi), Inc. v. Broderick)* (1932), 183 N.E. 382, … Kellogg, J., speaking for the Court of Appeals of New York, said at page 384:
>
> > "When the statute says that the superintendent 'shall cause said notice to be mailed'…, we think the intent clear that the notice must be 'mailed' with an appropriate address upon the envelope;"
>
> … such a mailing or sending [to an incorrect address] was not a valid mailing or sending within the meaning of [the applicable provision] of the Act….[5]

[15] In accordance with the above principle, the Federal Court of Appeal has held that the fact that a notice of reassessment was sent to a wrong address leads to the conclusion that the reassessment was not issued at all.[6]

[16] As observed above, from September 15, 2011 to May 8, 2014, the CRA was using an incomplete address for Mr. Pilgrim. In particular, the address did not show the number of his unit in Riverview Terrace. During this period, at least three items purportedly sent by the CRA to Mr. Pilgrim were returned to the CRA as undelivered, with the result that the CRA should have been on notice that it did not have an appropriate address for him.

[17] No evidence was presented at the hearing as to how the CRA came to have an incomplete address for Mr. Pilgrim or how it came to learn his complete address on or about May 8, 2014. It is possible that Mr. Pilgrim provided an incomplete address to the CRA, and it is also possible that he provided the complete address but the CRA incorrectly entered it into its computer. For the purposes of this Application, I am prepared to give the benefit of the doubt to Mr. Pilgrim.

[18] Accordingly, I find that the CRA did not send the Notices to Mr. Pilgrim. Therefore, the limitation period contemplated by subparagraph 165(1)(*a*)(ii) of the *ITA* did not begin to run, with the result that Mr. Pilgrim's Notice of Objection was served on the Minister within the time limited by paragraph 165(1)(*a*) of the *ITA*.

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5 Portions of the above quotation were quoted in *236130 British Columbia Ltd. v The Queen*, 2006 FCA 352, ¶ 22; in *236130 British Columbia Ltd. v The Queen*, 2005 TCC 770, ¶ 41; and in *Carcone v The Queen*, 2011 TCC 550, ¶ 21.

6 *236130 British Columbia Ltd. v The Queen*, 2006 FCA 352, ¶ 20.

[19] Hence, there is no need for Mr. Pilgrim to apply to extend the time for serving the Notice of Objection. Thus, the issue of whether Mr. Pilgrim's application under subsection 166.1(1) of the *ITA* was made on or before the deadline contemplated by paragraphs 166.1(7)(*a*) and 166.2(5)(*a*) of the *ITA* is moot.

[20] Given that Mr. Pilgrim's Notice of Objection was served on a timely basis, the appropriate disposition of this Application is to dismiss it,[7] on the ground that the Minister has failed to prove that the Notices were sent to the correct address of Mr. Pilgrim.

Signed at Ottawa, Canada, this 1st day of December 2015.

"Don R. Sommerfeldt"

Sommerfeldt J.

[7] See *Aztec Industries*, *supra* note 3, ¶ 23.

CITATION:	2015 TCC 302
COURT FILE NO.:	2015-3983(IT)APP
STYLE OF CAUSE:	PETER PILGRIM AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	November 18, 2015
REASONS FOR ORDER BY:	The Honourable Justice Don R. Sommerfeldt
DATE OF ORDER:	December 1, 2015

APPEARANCES:

Agent for the Applicant:	Michael Baker
Counsel for the Respondent:	Jeff Watson

COUNSEL OF RECORD:

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Name:

Firm:

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