

BETWEEN:

SUNIL SHREEDHAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion determined by written submissions.

By: The Honourable Justice Patrick Boyle

Representatives:

Agents for the Appellant: Jessica Stansfield (student-at-law)

Julio Paoletti (student-at-law)

Counsel for the Respondent: Charlotte Deslauriers

ORDER

Upon motion made by the Respondent at the hearing of March 1, 2016 to quash the appeal on the basis of a nil assessment;

Upon the Court adjourning the hearing pending further submissions from the parties;

And upon reviewing submissions received from the Appellant on March 29, 2016 and from the Respondent on May 2, 2016;

This Court orders that the Respondent's motion is dismissed for the reasons attached.

Signed at Ottawa, Canada, this 9th day of November 2016.

“Patrick Boyle”

Boyle J.

Citation: 2016 TCC 254

Date: 20161109

Docket: 2015-1894(IT)I

BETWEEN:

SUNIL SHREEDHAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Boyle J.

[1] In this appeal under the Court's informal procedure, the Respondent has raised a preliminary objection in its reply that the Appellant is contesting a nil assessment, something which is not generally permitted.

[2] The substantive underlying issue in the notice of appeal is not relevant to deciding this preliminary issue. It suffices to say that the Canada Revenue Agency (the "CRA") reassessed the Appellant to include in his income an amount reported to it as an amount taxable to the Appellant by the trustee of a Registered Education Savings Plan which the Appellant's grandfather established for his benefit. The Appellant denies having received this or any amount directly or indirectly. The Appellant is also concerned that he does not know the terms of the trust, nor anything else about it.

[3] When reassessing the Appellant, the CRA included this amount in his income. The CRA then deducted a corresponding amount from unclaimed education-related deductions that remained available to the Appellant. It is this discretionary deduction, which the Appellant did not claim, but which the CRA deducted, which resulted in the reassessment of an additional income amount being nonetheless a nil assessment.

[4] It is not entirely clear and obvious to me that, in circumstances in which a nil assessment results from the CRA offsetting an amount of reassessed income with an available discretionary deduction which the taxpayer did not claim or request, the taxpayer should be denied the right to appeal that assessment. That is an issue which I would want to consider very seriously before striking a taxpayer's appeal. However, I do not need to decide that in this case.

[5] On its face, the reassessment of the Appellant was not a nil assessment. An amount of interest was assessed by the CRA in its reassessment of him. Assessed interest, as opposed to post-assessment accrued interest, forms part of the assessment. As it is not a nil assessment, an appeal can proceed. See my more detailed review of this issue in *Cooper v. The Queen*, 2009 TCC 236, and the cases referred to therein. This is consistent with paragraph 15 of *Canada v. Interior Savings Credit Union*, 2007 FCA 151, wherein the Federal Court of Appeal says that there is nothing to appeal unless the taxpayer challenges the tax, interest or penalties assessed in the year. Such an appeal can proceed with respect to any aspect of the assessment and is not limited to the interest assessed. In *Cooper*, the amount of interest was \$6.47 and in the Appellant's case it is \$2.10. These are very modest amounts but they are not nil. They are amounts CRA chose to add to the particular reassessments.

[6] For these reasons, the Respondent's objection is dismissed and the appeal should be set back down for hearing.

[7] I wish to add the observation that the Appellant was clear that his driving concern in appealing was that he was not aware of, or provided with, the information by the CRA, the Respondent or his grandfather with which he could conclude that the amount was properly includable in his income. It is not entirely clear to me that a court hearing will help resolve this aspect unless he is prepared to subpoena his grandfather. I would hope that between the Respondent and the Appellant's grandfather, a more efficient way to help the Appellant ascertain if his concerns are warranted can easily be recognized and acted upon.

Signed at Ottawa, Canada, this 9th day of November 2016.

“Patrick Boyle”

Boyle J.

CITATION: 2016 TCC 254

COURT FILE NO.: 2015-1894(IT)I

STYLE OF CAUSE: SUNIL SHREEDHAR v. THE QUEEN

REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle

DATE OF ORDER: November 9, 2016

REPRESENTATIVES:

Agents for the Appellant: Jessica Stansfield (student-at-law)
Julio Paoletti (student-at-law)

Counsel for the Respondent: Charlotte Deslauriers

COUNSEL OF RECORD:

For the Appellant:

Firm:

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