Docket: 97-3304(IT)G

BETWEEN:

SATISH KUMAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion heard *ex parte* on July 20, 2004, at Sydney, Nova Scotia,

By: The Honourable Justice E.A. Bowie

Appearance:

For the Appellant: The Appellant himself

ORDER

Upon motion by the Appellant for an Order under *Rule* 172.4 of the *Tax Court of Canada Rules (General Procedure)* that would require the Minister of National Revenue or its legal counsel, Mr. John Smithers, to show cause why they ought not to be held in contempt of Court.

And upon reading the affidavit of the Appellant, and hearing the submissions of the Appellant;

It is ordered that the motion is dismissed.

Signed at Ottawa, Canada, this 23rd day of July, 2004.

"E.A. Bowie"

Bowie J.

Citation: 2004TCC521
Date: 20040723
Docket: 97-3304(IT)G

BETWEEN:

SATISH KUMAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Bowie J.

[1] This matter has a long history. Mr. Kumar's appeals from his reassessments under the *Income Tax Act* for 1992, 1993 and 1994 were begun in 1997. The trial took place before a judge of this Court on July 14, 1999. At the conclusion the trial Judge allowed the appeals, giving oral Reasons for Judgment. On August 3, 1999, he issued his formal written Judgment, which allowed the appeals and referred the reassessments back to the Minister of National Revenue for reconsideration and reassessment. It specified the amounts that were to be added to the Appellant's non-capital losses for 1992 and 1994, and deducted from his income for 1993. The Appellant took the position, which he maintains to this day, that the Judgment did not conform to the Reasons given orally by the trial Judge at the end of the trial, and that the Judge had intended to give him an additional increment to his 1994 loss and a further deduction from his 1993 profit. The Appellant applied under the slip rule to have the Judgment amended. The trial judge dismissed the motion. The Appellant did not appeal from either the trial Judgment or the Order dismissing the motion to amend it.

[2] Now, some five years later, the Appellant moves for an Order under *Rule* 172.4 of the *Tax Court of Canada Rules (General Procedure)* that would require "the Minister of National Revenue or their [*sic*] legal counsel, Mr. John

Smithers" to show cause why they ought not to be held in contempt of Court. The Appellant advanced three reasons why I should make such an Order.

[3] The first submission is that an officer of the Canada Revenue Agency[1] (as it is now known) committed perjury at the trial by providing false evidence. The second is that "CCRA ignored" a status hearing Order made on November 24, 1998 that required examinations for discovery to be completed by February 1, 1998. The third is that when CRA reassessed the Appellant to implement the Judgment of August 3, 1999, it issued assessments that are not, according to the Appellant, in conformity with the oral Reasons for Judgment that had been delivered at the end of the trial. Instead, they conform to the Judgment issued on August 3, 1999.

[4] The test to be applied by a Judge hearing an application for a show cause order has been conveniently set out by the Federal Court of Appeal in *The Queen v. Perry*.[2] Pratte J., speaking for the Court, said of the judge who heard the show cause application:

> … His duty was to determine whether the affidavit evidence filed in support of the application for a show cause order established, *prima facie*, that the persons or some of the persons mentioned in Schedule A to the notice of motion had breached the injunction pronounced by Mr. Justice Walsh. If the evidence established a *prima facie* breach of the injunction, the Judge had to issue the show cause order sought unless the evidence showed clearly that the violation of the injunction was so unimportant or had taken place in such circumstances that it be absolutely certain that it did not deserve to be punished.[3]

[5] I should make it clear at the outset that this motion cannot succeed in respect of "the Minister of National Revenue". It is well settled that a Minister of the Crown cannot be committed for contempt because of acts or omissions of the officers of her department: see *Bhatnager v. Canada*, [1990] 2 S.C.R. 217.

[6] Quite apart from this fundamental flaw in the Appellant's position, this motion could not have succeeded on the basis of the material that Mr. Kumar has put before me. His business was audited by CRA, both as to goods and services tax

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1 I shall refer to the Canada Revenue Agency and its two predecessors, Revenue Canada and the Canada Customs and Revenue Agency as CRA.

2 [1982] 2 F.C. 519.

3 *ibid*, p. 525.

and as to income tax. His cost of goods sold, specifically purchases, for the years 1993 and 1994, as he had recorded them, were considered by the GST auditor to be correct. The income tax auditor arrived at amounts for purchases that were approximately $10,500 lower for 1993 and $6,000 lower for 1994. Mr. Kumar's proposition is that the CRA officer who testified at the trial must have committed perjury, because she put forward the lower numbers. The material before me on this motion does not provide a basis on which I could ascertain which auditor was correct and which of them was wrong. Even assuming that it were established that the GST auditor was correct, the material provides no basis on which I could conclude that the income tax auditor knowingly presented false evidence. The affidavit material is equally consistent with an innocent mistake as with a misstatement made with intent to deceive. Intent to deceive is, of course, an essential element of perjury. An innocent mistake could not provide a basis for a finding that the witness was guilty of contempt of the Court.

[7] I turn now to the allegation that either the Minister or her counsel was in breach of the status hearing Order. The specific provision that he says was not complied with is a requirement to complete examinations for discovery by February 1, 1999. Mr. Kumar said that he wrote letters and made telephone calls to counsel, and was ignored. That may or may not be so – the affidavit material is vague at best. It exhibits one letter only, and it simply invites counsel to meet and discuss simplifying the issues, and a possible settlement. *Rule* 103 makes specific provision for compelling the attendance of a person to be examined for discovery. There is no evidence before me that Mr. Kumar served an appointment or a subpoena, or took any step under *Rule* 103 to compel the attendance of anyone. Clearly, there can be no contempt in failing to attend to be examined for discovery if there is no requirement to attend at a specific time and place.

[8] Finally, Mr. Kumar suggests that when the Minister reassessed him in November 1999 to implement the trial Judgment, those reassessments should have conformed to the oral Reasons given by the trial Judge on July 14; instead they conformed to his formal written Judgment issued on August 3, 1999. This, he says, is contempt, because the Minister should have known that the Reasons were correct and the formal Judgment wrong. This submission is simply ludicrous. It is trite that the Judgment issued and entered is the decision of the Court. Moreover, by that time the trial judge had considered and dismissed the Appellant's motion to have the Judgment amended under the slip rule. The Minister's reassessments were the only ones she could have made.

[9] Mr. Kumar's remedy following the dismissal of his motion under the slip rule, was to appeal to the Federal Court of Appeal from the Judgment, or from the Order dismissing his motion, or both.

[10] The present motion has no merit whatsoever, and it is dismissed. If Mr. Kumar believed that the reassessments made in November 1999 did not properly implement the Court's judgment he could have delivered notices of objection, and eventually appealed to this Court. He did none of these, but seeks a committal order instead.

[11] If Mr. Kumar wishes at this late date to attempt to get the matter before the Federal Court of Appeal, he will have to first apply to a Judge of that Court to extend the time to appeal.

Signed at Ottawa, Canada, this 23rd day of July, 2004.

"E.A. Bowie"

Bowie J.

CITATION:	2004TCC521
COURT FILE NO.:	97-3304(IT)G
STYLE OF CAUSE:	Satish Kumar and Her Majesty the Queen
PLACE OF HEARING:	Sydney, Nova Scotia
DATE OF HEARING:	July 20, 2004
REASONS FOR ORDER BY:	The Honourable Justice E.A. Bowie
DATE OF ORDER:	July 23, 2004

APPEARANCE:

For the Appellant:	The Appellant himself

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	N/A
For the Respondent:	Morris Rosenberg Deputy Attorney General of Canada Ottawa, Canada