

Docket: 2008-1302(IT)I

BETWEEN:

PATRICK GROULX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Before: The Honourable Justice Valerie Miller

Appearances:

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Amit Ummat

ORDER

Upon Motion by the Respondent for an Order of this Court quashing the Appellant's purported appeal from the assessment made under the *Income Tax Act* for the 1997, 1998, 2000, 2001, 2003 and 2004 taxation years;

The motion is allowed, without costs, and the purported appeals are quashed.

Signed at Halifax, Nova Scotia, this 15th day of August 2008.

“V.A. Miller”

V.A. Miller, J.

Citation:2008TCC445
Date: 20080815
Docket: 2008-1302(IT)I

BETWEEN:

PATRICK GROULX,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

V. A. Miller, J.

[1] The Respondent has brought a motion for an Order to quash the Appellant's appeals for the 1997, 1998, 2000, 2001, 2003 and 2004 taxation years. The grounds for the Respondent's motion are as follows:

- a) The appeals for the 2000, 2001, 2003 and 2004 taxation years concern assessments for nil federal tax, related interest and penalties;
- b) The appeals for the 1997 and 1998 taxation years concern reassessments that were issued with the taxpayer's consent, pursuant to subsection 152(4.2) of the *Income Tax Act* (the "Act") and pursuant to subsections 165(1.2) and 169(1) of the Act the Appellant may not object or appeal those reassessments.

[2] The Respondent has asked, in the alternative, for an Order pursuant to subsection 18.16(1) of the *Tax Court of Canada Act* granting her leave to file a Reply to the Notice of Appeal. She has asked for 60 days from the date of the Order to file the Reply.

[3] Subsection 18.16(1) of the Act reads:

18.16 (1) The Minister of National Revenue shall file a reply to a notice of appeal within sixty days after the day on which the Registry of the Court transmits to that Minister the notice of appeal unless the appellant consents, before or after the expiration of the sixty day period, to the filing of that reply after the sixty day period or the Court allows the Minister, on application made before or after the expiration of the sixty day period, to file the reply after that period.

18.16 (1) Le ministre du Revenu national dispose de soixante jours suivant la transmission de l'avis d'appel par le greffe de la Cour pour y répondre; il peut, toutefois, répondre après ce délai avec le consentement de l'appellant ou la permission de la Cour; le consentement et la permission peuvent être demandés soit avant, soit après l'expiration du délai.

[4] The Appellant has also brought a motion asking this Court to hear the issue under appeal on the date assigned to the Respondent's motion. The grounds for the Appellant's motion are:

- a) All methods of discussion has failed to provide results consistent in accordance with the Tax Law of Canada and related Interpretation Bulletins, resulting in a request to this Honourable Court to decide the result on this date set.
- b) The matter is simply the correct calculation of
 - i) non-capital loss carry forward/back and
 - ii) interest on the resultant refund- most of it already agreed.

[5] If I dismiss the Respondent's motion, then I intend to grant her 60 days to file the Reply to Notice of Appeal. As a result, I dismissed the Appellant's motion as I would not hear the issue in appeal.

[6] The Respondent has relied on the affidavit evidence of Carlene Josephs. In her affidavit, Ms. Josephs stated that the Appellant's 1997 and 1998 taxations had been reassessed pursuant to subsection 152(4.2) of the Act on January 31, 2007 and September 4, 2007 respectively.

[7] Subsection 152(4.2) reads as follows:

Reassessment with taxpayer's consent

(4.2) Notwithstanding subsections (4), (4.1) and (5), for the purpose of determining, at any time after the end of the normal reassessment period of a taxpayer who is an individual (other than a trust) or a testamentary trust in respect of a taxation year, the amount of any refund to which the taxpayer is entitled at that time for the year, or a reduction of an amount payable under this Part by the taxpayer for the year, the Minister may, if the taxpayer makes an application for that determination on or before the day that is ten calendar years after the end of that taxation year,

(a) reassess tax, interest or penalties payable under this Part by the taxpayer in respect of that year; and

(b) redetermine the amount, if any, deemed by subsection 120(2) or (2.2), 122.5(3), 122.51(2), 122.7(2) or (3), 127.1(1), 127.41(3) or 210.2(3) or (4) to be paid on account of the taxpayer's tax payable under this Part for the year or deemed by subsection 122.61(1) to be an overpayment on account of the taxpayer's liability

Nouvelle cotisation et nouvelle détermination

(4.2) Malgré les paragraphes (4), (4.1) et (5), pour déterminer, à un moment donné après la fin de la période normale de nouvelle cotisation applicable à un contribuable — particulier, autre qu'une fiducie, ou fiducie testamentaire — pour une année d'imposition le remboursement auquel le contribuable a droit à ce moment pour l'année ou la réduction d'un montant payable par le contribuable pour l'année en vertu de la présente partie, le ministre peut, si le contribuable demande pareille détermination au plus tard le jour qui suit de dix années civiles la fin de cette année d'imposition, à la fois :

a) établir de nouvelles cotisations concernant l'impôt, les intérêts ou les pénalités payables par le contribuable pour l'année en vertu de la présente partie;

b) déterminer de nouveau l'impôt qui est réputé, par les paragraphes 120(2) ou (2.2), 122.5(3), 122.51(2), 122.7(2) ou (3), 127.1(1), 127.41(3) ou 210.2(3) ou (4), avoir été payé au titre de l'impôt payable par le contribuable en vertu de la présente partie pour l'année ou qui est réputé, par le

under this Part for the year.

paragraphe 122.61(1), être un paiement en trop au titre des sommes dont le contribuable est redevable en vertu de la présente partie pour l'année.

[8] In essence, subsection 152(4.2) allows a taxpayer to apply to the Minister of National Revenue to have a return reconsidered and reassessed beyond the normal reassessment period if that reassessment would result in a refund or a reduction of tax, penalties or interest for that year. See *Mellish v. R.*, 2007TCC228.

[9] Once the Minister issues the reassessment under subsection 152(4.2), a taxpayer may not object to that reassessment. Subsection 165(1.2) reads:

Limitation on objections

(1.2) Notwithstanding subsections 165(1) and 165(1.1), no objection may be made by a taxpayer to an assessment made under subsection 118.1(11), 152(4.2), 169(3) or 220(3.1) nor, for greater certainty, in respect of an issue for which the right of objection has been waived in writing by the taxpayer.

Restriction

(1.2) Malgré les paragraphes (1) et (1.1), aucune opposition ne peut être faite par un contribuable à une cotisation établie en application des paragraphes 118.1(11), 152(4.2), 169(3) ou 220(3.1). Il est entendu que cette interdiction vaut pour les oppositions relatives à une question pour laquelle le contribuable a renoncé par écrit à son droit d'opposition.

[10] As a taxpayer cannot object to a reassessment that has been made in accordance with subsection 152(4.2), it follows that the taxpayer cannot appeal that reassessment. Any appeal to the Tax Court of Canada must be made in accordance with section 169 which reads:

Appeal

169. (1) 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

Appel

169. (1) Lorsqu'un contribuable a signifié un avis d'opposition à une cotisation, prévu à l'article 165, il peut interjeter appel auprès de la

have the assessment vacated or varied after either	Cour canadienne de l'impôt pour faire annuler ou modifier la cotisation
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[11] The taxpayer is precluded from appealing his 1997 and 1998 taxation years to the Tax Court as he cannot object to the reassessments for those years as they have been made in accordance with subsection 152(4.2). Justice O'Connor had this to say in his decision in *Mellish*:

[10] The Court has previously considered the interplay between these three subsections and has consistently concluded that there is no right of appeal to the Tax Court of Canada for a reassessment issued under subsection 152(4.2)

- *Yaremy*^[1] - Once satisfied that the reassessment was issued under subsection 152(4.2), the Court concluded, at paragraph 10, "that subsection 165(1.2) applies and no valid objection could be made by the Appellant. If no valid objection can be made, then no valid appeal can be commenced under subsection 169(1)."
- *Haggart*^[2] - The Court concluded, at paragraph 37, "that it is not possible to file a valid Notice of Objection nor a Notice of Appeal to a Reassessment that was issued under subsection 152(4.2) of the Act."
- *Chou*^[3] - The Court concluded, at paragraph 15, that "as the appellant could not validly file a notice of objection to the...reassessment issued pursuant to subsection 152(4.2) of the Act, she was consequently barred under subsections 165(1.2) and 169(1) of the Act from instituting an appeal from that reassessment before this Court."

[12] In her affidavit, Ms. Josephs also stated that the records of the CRA disclosed that the Appellant's 2000, 2001 and 2004 taxation years were reassessed on September 4, 2007, May 18, 2006 and May 23, 2006 respectively. The Appellant was assessed for his 2003 taxation year on August 26, 2004. For each of these years the reassessment or assessment resulted in nil federal taxes payable.

[13] There is no appeal from a nil assessment. See *Her Majesty the Queen v. Bowater Mersey Paper Company Limited*, 1987 CarswellNat 453, [1987] 2 C.T.C. 159, 78 N.R. 233, 87 D.T.C. 5382(FCA).

[14] As a result of the above, the Respondent's motion to quash is granted. The appeal for the 1997, 1998, 2000, 2001, 2003 and 2004 taxation years are quashed.

Signed at Halifax, Nova Scotia, this 15th day of August 2008.

“V.A. Miller”

V. A. Miller, J.

CITATION: 2008TCC445
COURT FILE NO.: 2008-1302(IT)I
STYLE OF CAUSE: PATRICK GROULX AND THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: July 21, 2008
REASONS FOR ORDER BY: The Honourable Justice Valerie Miller
DATE OF ORDER: August 15, 2008

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Amit Ummat

COUNSEL OF RECORD:

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Firm:

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