Docket: 2010-3948(IT)I

BETWEEN:

DAVID HOMA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 13 and 14, 2012 at Ottawa, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

For the Appellant:	The appellant himself
Counsel for the Respondent:	Shane Aikat Andrew Miller

JUDGMENT

The appeal instituted under the *Income Tax Act* with respect to taxation years from 2003 to 2009, inclusive, is dismissed.

Each party shall bear their own costs.

Signed at Toronto, Ontario this 3rd day of April 2012.

"J. M. Woods"

Woods J.

Citation: 2012 TCC 110
Date: 20120403
Docket: 2010-3948(IT)I

BETWEEN:

DAVID HOMA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] The appellant, David Homa, is a retired engineer with extensive experience dealing with computers. He submits that the computer system used by the Canada Revenue Agency (CRA) is poorly designed and that this has caused him to be assessed an excessive amount of interest. Approximately $100 is at issue.

[2] The appellant seeks to bring attention to the computer problem, not simply to rectify the damage to him, but to shed light on a poorly understood problem for the benefit of all taxpayers.

[3] Three questions will be discussed in these reasons.

(a) Does this Court have jurisdiction over the subject matter of this dispute?

(b) Is the computer system flawed?

(c) Has an excessive amount of interest been charged?

Background

[4] On January 16, 2009, this Court disallowed in part the appellant's claim for a medical expense tax credit with respect to the 2003, 2004 and 2005 taxation years.

[5] The decision resulted in the imposition of interest on unpaid tax for the 2003 and 2005 taxation years. The appellant applied for interest relief on compassionate ground on April 4, 2009 (Ex. R-4). The application provides:

> […] He requests the committee to cancel the interest payments that have accumulated since the time he filed his appeal and to waive the interest payments over the next twelve months by the end of which time he will have paid all the outstanding taxes. He estimates the total interest to be less than a thousand dollars.

[6] The application was allowed in part. By letter dated December 1, 2009, the appellant was informed that interest charged for the 2003 and 2005 taxation years would be cancelled (Ex. A-1). Pursuant to this decision, the CRA cancelled interest accruing up to January 4, 2010, which was the date that the decision was processed. The amounts that were cancelled were $862.67 for the 2003 taxation year and $267.30 for the 2005 taxation year (Ex. A-15 and R-1).

[7] Before the decision was made, the appellant made a payment arrangement with the CRA to pay amounts owing for the 2003 and 2005 taxation years over time. Post-dated cheques were provided for monthly payments up to August 15, 2011 at which time the debt would be paid off in full if his application was allowed (Ex. A-15). According to the appellant, this arrangement was required by the CRA before it would consider the request for interest relief.

Does Court have jurisdiction?

[8] In an amended notice of appeal filed on January 6, 2011,[1] the appellant describes the appeal in the following manner.

> David Homa appeals from the Income Tax Act to the Tax Court of Canada from assessments of interest dated September 23, 2010[2] and October 20, 2010 for the taxation years 2003 to 2009.

[9] The documents referred to above are statements of account which set out aggregate amounts owing in respect of all taxation years.

[10] Pursuant to a preliminary motion brought by the respondent, I concluded that these documents are not notices of assessment and do not give rise to a right of appeal to this Court (2011 TCC 230).

[11] I did not dismiss the appeal entirely, however. The appeal was permitted to continue with respect to assessments for which a notice of appeal would not be out of time. These assessments relate to the 2006, 2007 and 2009 taxation years. This was done on the basis that these assessments may impose interest for which relief could potentially be given. I would add that this decision was in spite of the appellant's assertion at the motion that he was not appealing these assessments.

[12] At the hearing of the appeal, the appellant requested that I reconsider this decision. He submitted that that is recent jurisprudence which supports his position: *Bozzer v The Queen, Canada Revenue Agency and The Attorney General of Canada*, 2011 FCA 186, 2011 DTC 5106.

[13] The *Bozzer* decision does not, in my view, shed light on the issue in the preliminary motion, which was whether statements of account are notices of assessment.

[14] The question in *Bozzer* concerned the limitation period for making taxpayer relief applications under s. 220(3.1) of the *Act*. The issue turned on an interpretation of the phrase "interest … in respect of that taxation year." In his analysis, Stratas J. concluded that the relevant legislative provision was ambiguous and that the taxpayer's interpretation was to be preferred over the Crown's narrower interpretation.

[15] The decision in *Bozzer* does not address the question that is at issue here, which is whether statements of account are notices of assessment. There is no reason to revisit my earlier conclusion that they are not notices of assessment.

[16] There is, however, a valid appeal with respect to assessments for the 2006, 2007 and 2009 taxation years. At the hearing of the appeal, the appellant repeated the statement that he made at the motion that he did not intend to appeal from these assessments. In light of this statement, it is not appropriate that these assessments be considered.

[17] These conclusions are sufficient to dispose of the appeal, but I wish to briefly comment on the two other questions mentioned above.

Is the computer system flawed?

[18] The appellant seeks relief for excessive interest charged as a result of a flawed CRA computer system.

[19] The appellant's argument, as I understand it, is that the statements of account reflect interest charged with respect to the 2003 and 2005 taxation years, which is contrary to the CRA's decision on interest relief. It is suggested that this error is caused by a faulty CRA computer system, which was not designed to process interest where some taxation years are interest-free.

[20] On a related point, he also argues that the CRA inappropriately applied refund amounts against amounts owing for the 2003 and 2005 taxation years rather than against amounts owing for interest-bearing years. This increased the overall assessment of interest, it is submitted.

[21] There is a fundamental flaw with this argument. The appellant's theory that there is a defect with the computer system is based on the premise that the CRA completely nullified interest for 2003 and 2005. However, the CRA did not completely waive interest. These years were not totally interest-free.

[22] Based on the evidence presented, the CRA intended only to cancel interest which had accrued up until the time that the decision was taken. Future interest accruals were not affected.

[23] As a result, no flaw in the computer system has been demonstrated.

Has an excessive amount of interest been charged?

[24] The appellant testified that he only became aware that the CRA did not intend to waive future interest during a meeting with the CRA last summer. I have some sympathy with this because the CRA letter which communicated the interest relief decision did not clearly spell out that future interest was not being waived.

[25] At the hearing, the appellant seemed to suggest that future interest was waived because this is what the letter communicated to him.

[26] The evidence does not support this. The evidence as a whole suggests that the CRA did not intend to waive future interest.

[27] The difficulty is that the CRA did not clearly communicate its decision. The respondent disputes this on the basis that the letter distinguishes past and future interest by the terms “cancel” and “waive” in accordance with Information Circular IC-07-1. If the proposition is that taxpayers should be familiar with information circulars when interpreting correspondence from the CRA, I would strongly disagree. I also note that even the respondent was not consistent with its use of the terms “cancel” and “waive.” (See paragraph 3 of the original Reply filed on June 27, 2011.)

[28] The wording of the CRA letter is unfortunate, but it is not grounds for giving relief in this Court. In an appropriate case, the principles of estoppel might be applied, but there is not a sufficient evidentiary foundation to support the application of estoppel here. Accordingly, even if there had been a valid appeal in respect of an assessment, there is no relief that this Court could give.

Conclusion

[29] The appeal will be dismissed. Each party shall bear their own costs.

Signed at Toronto, Ontario this 3rd day of April 2012.

“J. M. Woods”

Woods J.

[1] A further amended notice of appeal was received by the Court sometime later. At the hearing, counsel for the respondent asked me to clarify whether this document had been filed. Upon a subsequent review of the Court file, I would confirm that this document was not filed, but that a copy was placed in the Court file pursuant to my direction.
[2] The amended notice of appeal contains a clerical error with respect to this date. It was corrected by the appellant at the hearing.

CITATION:	2012 TCC 110
COURT FILE NO.:	2010-3948(IT)I
STYLE OF CAUSE:	DAVID HOMA v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Ottawa, Ontario
DATES OF HEARING:	March 13 and 14, 2012
REASONS FOR JUDGMENT BY:	The Honourable Justice J.M. Woods
DATE OF JUDGMENT:	April 3, 2012

APPEARANCES:

For the Appellant:	The appellant himself
Counsel for the Respondent:	Shane Aikat Andrew Miller

COUNSEL OF RECORD:

For the Appellant:

Name:	
Firm:	

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Ontario