

Docket: 2012-396(IT)APP

BETWEEN:

JOHN MONSEF,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Application heard on May 1, 2012, at Vancouver, British Columbia

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Applicant:

The Applicant Himself

Counsel for the Respondent:

Nabeel Peermohamed,  
(Student-at-law)  
Amandeep Sandhu

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ORDER

The Applicant's application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004, 2005 and 2006 taxation years may be instituted is dismissed, without costs.

Signed at Edmonton, Alberta, this 5<sup>th</sup> day of June 2012.

“Wyman W. Webb”

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Webb J.

Citation: 2012TCC189  
Date: 20120605  
Docket: 2012-396(IT)APP

BETWEEN:

JOHN MONSEF,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

**REASONS FOR ORDER**

Webb J.

[1] The Applicant, on January 19, 2012, filed an application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004, 2005 and 2006 taxation years may be instituted. The notice of confirmation of the reassessments of the Applicant's 2004, 2005 and 2006 taxation years was dated September 9, 2010.

[2] The time within which an appeal may be instituted to this Court is set out in subsection 169(1) of the *Income Tax Act* (the "Act"), which, prior to December 15, 2010, provided as follows:

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 have the assessment vacated or varied after either

(a) the Minister has confirmed the assessment or reassessed, or

(b) 90 days have elapsed after service of the notice of objection and the Minister has not notified the taxpayer that the Minister has vacated or confirmed the assessment or reassessed,

but no appeal under this section may be instituted after the expiration of 90 days from the day notice has been mailed<sup>1</sup> to the taxpayer under section 165 that the Minister has confirmed the assessment or reassessed.

[3] If a taxpayer does not institute an appeal within this time period (which the Applicant did not), the taxpayer may, as provided in section 167 of the *Act*, apply to have the time for instituting an appeal extended. However, paragraph 167(5)(a) of the *Act* provides as follows:

(5) No order shall be made under this section unless

(a) the application is made within one year after the expiration of the time limited by section 169 for appealing; ...

[4] As a result of the provisions of paragraph 167(5)(a) of the *Act*, unless the Applicant made the application to extend the time within which appeals to this Court may be instituted in relation to the reassessments of the Applicant's 2004, 2005 and 2006 taxation years within one year and 90 days from the day that notice that the reassessments had been confirmed was mailed<sup>2</sup> to the Applicant, no order to grant the requested extension of time can be made.

[5] In this case the Applicant's application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004, 2005 and 2006 taxation years may be instituted (which was filed on January 19, 2012) was not made within this time period as it was not made until more than one year and four months after the reassessments of the Applicant's 2004, 2005 and 2006 taxation years had been confirmed (September 9, 2010). Therefore no order can be granted to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004, 2005 and 2006 taxation years may be instituted. The provisions of paragraph 167(5)(a) of the *Act* are clear and there is no provision of the *Act* that would allow this Court to extend this time period.

[6] As a result, the Applicant's application to extend the time within which appeals to this Court in relation to the reassessments of the Applicant's 2004, 2005 and 2006 taxation years may be instituted is dismissed, without costs.

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<sup>1</sup> Effective December 15, 2010, the word "sent" was substituted for "mailed".

<sup>2</sup> As a result of the provisions of subsection 244(14) of the *Act*, the notice of confirmation is presumed to be mailed or sent on the date of such notice.

Signed at Edmonton, Alberta, this 5<sup>th</sup> day of June 2012.

“Wyman W. Webb”

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Webb J.

CITATION: 2012TCC189  
COURT FILE NO.: 2012-396(IT)APP  
STYLE OF CAUSE: JOHN MONSEF AND HER MAJESTY  
THE QUEEN  
PLACE OF HEARING: Vancouver, British Columbia  
DATE OF HEARING: May 1, 2012  
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb  
DATE OF ORDER: June 5, 2012

APPEARANCES:

For the Applicant: The Applicant Himself  
Counsel for the Respondent: Nabeel Peermohamed, (Student-at-law)  
Amandeep Sandhu

COUNSEL OF RECORD:

For the Applicant:

Name:

Firm:

For the Respondent:

Myles J. Kirvan  
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