

BETWEEN:

SAVA VIDANOVIC,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on July 11, 2012 at Montreal, Quebec.

Before: The Honourable Justice Lucie Lamarre

Appearances:

For the Applicant: The Applicant himself

Counsel for the Respondent: Valerie Messore

ORDER

Upon application for an order extending the time within which notices of objection under the *Income Tax Act* for the 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995 taxation years may be served;

And upon hearing what was alleged by the parties;

The application for the 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995 taxation years is dismissed.

Signed at Ottawa, Canada, this 23th day of July 2012.

“Lucie Lamarre”

Lamarre J.

Citation: 2012 TCC 265
Date: 20120723
Docket: 2012-1925(IT)APP

BETWEEN:

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Respondent.

REASONS FOR ORDER

Lamarre J.

[1] I have heard what was characterized by the Registry of this Court as an application for an extension of time to file notices of objection for the years 1988 through 1995. The application before me was filed with the Court on May 16, 2012.

[2] It appears from the testimony of Ms. Francine Perreault, a litigation officer with the Canada Revenue Agency (**CRA**), and from a printout of income and deductions (Option C) for all the years at issue (Exhibit R-1) that the applicant was assessed and reassessed as follows:

Years	Initial Assessment	First Reassessment	Second Reassessment	Third Reassessment
1988	May 31, 1989	May 29, 1992	August 25, 1993	
1989	May 29, 1992	August 25, 1993		
1990	May 29, 1992	August 25, 1993		
1991	July 15, 1992			
1992	Not filed			
1993	June 20, 1994	October 10, 1995	September 16, 1996	October 15, 1996
1994	June 19, 1995	September 16, 1996		
1995	June 3, 1996	September 16, 1996		

[3] It is obvious from that printout that by virtue of subsections 165(1), 166.1(1) and 166.2 (1) and subparagraphs 166.1(7)(a) and 166.2(5)(a) of the *Income Tax Act (ITA)*, the applicant is now precluded from objecting to any of the latest reassessments issued with respect to the taxation years at issue. Those provisions read as follows:

165. (1) Objections to assessment. A taxpayer who objects to an assessment under this Part may serve on the Minister a notice of objection, in writing, setting out the reasons for the objection and all relevant facts,

(a) where the assessment is in respect of the taxpayer for a taxation year and the taxpayer is an individual (other than a trust) or a testamentary trust, on or before the later of

(i) the day that is one year after the taxpayer's filing-due date for the year, and

(ii) the day that is 90 days after the day of sending of the notice of assessment; and

(b) in any other case, on or before the day that is 90 days after the day of sending of the notice of assessment.

...

166.1 (1) Extension of time by Minister. Where no notice of objection to an assessment has been served under section 165, nor any request under subsection 245(6) made, within the time limited by those provisions for doing so, the taxpayer may apply to the Minister to extend the time for serving the notice of objection or making the request.

...

(7) When order to be made. No application shall be granted under this section unless

(a) the application is made within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be; and

...

166.2 (1) Extension of time by Tax Court. A taxpayer who has made an application under subsection 166.1 [(1)] may apply to the Tax Court of Canada to have the application granted after either

(a) the Minister has refused the application, or

(b) 90 days have elapsed after service of the application under subsection 166.1(1) and the Minister has not notified the taxpayer of the Minister's decision,

but no application under this section may be made after the expiration of 90 days after the day on which notification of the decision was mailed to the taxpayer.

...

(5) When application to be granted. No application shall be granted under this section unless

(a) the application was made under subsection 166.1(1) within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request, as the case may be....

[4] Ms. Perreault testified that she did not find in the system any application for an extension of time to object to the most recent assessments for the years 1991 through 1995. She also said that normally correspondence is kept in the system for six years, but if there is an outstanding appeal, the file will remain in the system until the appeal process is over.

[5] On August 18, 2010, the applicant requested a reassessment for the 1970 to 1999 taxation years, asking for a revision of his tax returns with respect to his pension contributions, the retroactive payment of pension benefits, and what he called on overcharge of government taxes (Exhibit R-2).

[6] By letter dated December 15, 2010, the CRA replied to the applicant, telling him that the Minister of National Revenue (**Minister**) no longer had the discretion to reassess his income tax returns in order to give a refund, or to apply a refund against amounts owing, beyond the normal three-year period, since an application by the taxpayer for such relief had to be made not more than ten years after the end of the taxation year for which the request was made (Exhibit R-3). This answer was based on subsection 152(4.2) of the ITA, which read as follows, effective January 1, 2005:

152(4.2) Reassessment with taxpayer's consent. 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 under this Part for the year.

[7] Here, the request dated August 18, 2010 for the years 1970 to 1999 was made out of time.

[8] Ms. Perreault also testified that the applicant filed an application for an extension of time to file a notice of objection for the years 1988, 1989 and 1990, on or about October 19, 2011 (this application most probably consists of two letters filed by the applicant as Exhibit A-4, one sent to the Montérégie-Rive-Sud Tax Services Office, and the other to the Complexe Cousineau, Saint-Hubert. Both letters are dated October 16, 2011). On January 16, 2012, the CRA informed the applicant that the application was made more than one year after the expiration of the time limited by paragraph 165(1)(a) of the ITA and could not be granted by reason of subsection 166.1(7) of the ITA (Exhibit R-4).

[9] The applicant filed various documents. He intended to show that he did file a notice of objection well before October 19, 2011. Exhibit A-1 is a letter dated April 16, 1993 sent to him by what was then Revenue Canada and stating that his application for an extension of time to file an objection for the years 1988, 1989 and 1990 was granted.

[10] However, it appears from Exhibit R-1 that the applicant was reassessed for those three years on August 25, 1993, after the notice of objection was accepted. The applicant subsequently made no further objection.

[11] The applicant filed other letters, dated November 17, 1995 (Exhibit A-8) and April 26, 1996 (Exhibit A-2). He stated that these were notices of objection. It would seem that, whether or not these letters were actually sent to the CRA, the applicant was reassessed for 1993, 1994 and 1995 after the dates on which the letters were

purportedly sent, and as for the years prior to 1993, the letters were out of time in any case.

[12] The applicant appeared alone in Court, without his accountant, who had apparently dealt with the CRA for all the years for which he is claiming a refund. There is no evidence that notices of objection or applications for an extension of time were filed by the accountant in a timely manner.

[13] None of the documentation provided by the applicant evidences any notice of objection or request for an extension of time to file a notice of objection to the most recent assessment issued for each year.

[14] The CRA was right in declining to reopen all the years at issue as it did no longer had jurisdiction to do so in light of subsection 152(4.2) of the ITA, and it is now too late to file a notice of objection for any of those years.

[15] The application brought before me is dismissed.

Signed at Ottawa, Canada, this 23th day of July 2012.

“Lucie Lamarre”

Lamarre J.

CITATION: 2012 TCC 265

COURT FILE NO.: 2012-1925(IT)APP

STYLE OF CAUSE: SAVA VIDANOVIC v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Montreal, Quebec

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REASONS FOR ORDER BY: The Honourable Justice Lucie Lamarre

DATE OF ORDER: July 23, 2012

APPEARANCES:

For the Applicant: The Applicant himself
Counsel for the Respondent: Valerie Messoré

COUNSEL OF RECORD:

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Firm:

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