

Docket: 2012-3736(IT)APP

BETWEEN:

KALDEP GIDDA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on common evidence with the Applications of
Neelam Gidda (2012-3738(IT)APP),
Sunrise Vineyards Ltd., (2012-3739(IT)APP and
Gidda Bros. Orchards Ltd. (2012-3740(IT)APP)
on June 6, 2013, at Kelowna, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant

The Appellant himself

Counsel for the Respondent:

Jonathan Wittig

ORDER

The application for an Order extending the time within which the Appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years may be instituted, is dismissed.

Signed at Ottawa, Canada, this 17th day of June 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2012-3738(IT)APP

BETWEEN:

NEELAM GIDDA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on common evidence with the Applications of
Kaldep Gidda (2012-3736(IT)APP),
Sunrise Vineyards Ltd., (2012-3739(IT)APP and
Gidda Bros. Orchards Ltd. (2012-3740(IT)APP)
on June 6, 2013, at Kelowna, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

Agent for the Appellant

Kaldep Gidda

Counsel for the Respondent:

Jonathan Wittig

ORDER

The application for an Order extending the time within which the Appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years may be instituted, is dismissed.

Signed at Ottawa, Canada, this 17th day of June 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2012-3739(IT)APP

BETWEEN:

SUNRISE VINEYARDS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on common evidence with the Applications of
Kaldep Gidda (2012-3736(IT)APP),
Neelam Gidda (2012-3738(IT)APP) and
Gidda Bros. Orchards Ltd. (2012-3740(IT)APP)
on June 6, 2013, at Kelowna, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

Agent for the Appellant

Kaldep Gidda

Counsel for the Respondent:

Jonathan Wittig

ORDER

The application for an Order extending the time within which the Appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years may be instituted, is dismissed.

Signed at Ottawa, Canada, this 17th day of June 2013.

"Campbell J. Miller"

C. Miller J.

Docket: 2012-3740(IT)APP

BETWEEN:

GIDDA BROS. ORCHARDS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on common evidence with the Applications of
Kaldep Gidda (2012-3736(IT)APP),
Neelam Gidda (2012-3738(IT)APP), and
Sunrise Vineyards Ltd., (2012-3739(IT)APP)
on June 6, 2013, at Kelowna, British Columbia

By: The Honourable Justice Campbell J. Miller

Appearances:

Agent for the Appellant

Kaldep Gidda

Counsel for the Respondent:

Jonathan Wittig

ORDER

The application for an Order extending the time within which the Appeals from the reassessments made under the *Income Tax Act* for the 2003 and 2004 taxation years may be instituted, is dismissed.

Signed at Ottawa, Canada, this 17th day of June 2013.

"Campbell J. Miller"

C. Miller J.

Citation: 2013 TCC 190
Date: 20130617
Docket: 2012-3736(IT)APP

BETWEEN:

KALDEP GIDDA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2012-3738(IT)APP

BETWEEN:

NEELAM GIDDA,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

Docket: 2012-3739(IT)APP

BETWEEN:

SUNRISE VINEYARDS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

and

BETWEEN:

GIDDA BROS. ORCHARDS LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent,

REASONS FOR ORDER

C. Miller J.

[1] The *Tax Court of Canada Act* is clear that an appeal to the Tax Court of Canada is initiated by filing the appeal in the Court Registry. The *Income Tax Act* (the "Act") is likewise clear that a taxpayer has 90 days from the date the Minister of National Revenue (the "Minister") issues a Reassessment or Confirmation to file such an appeal, failing which the taxpayer has a further one year to bring an application to the Tax Court of Canada to extend that 90 day period.¹ In the case of the four Appellants before me, the application to extend was brought well beyond the one year and 90 day period. Mr. Kaldep Gidda, acting for all four Appellants, argues that he mistakenly filed the Appeals with the Canada Revenue Agency (the "CRA") in Penticton and, based on the *Hickerty v. The Queen*² decision, should be allowed to file the Appeals late.

[2] I will briefly review the facts. There are two individual Appellants, Kaldep Gidda and Neelam Gidda and two corporate Appellants, Gidda Bros. Orchards Ltd. and Sunrise Vineyards Ltd. The timing of their assessments and objections are set out in the Affidavits of S. Hundal, a CRA officer. The pertinent dates are as follows:

With respect to Kaldep Gidda:

¹ Subsection 167(5) of the Income Tax Act.

² 2007 TCC 482.

- on December 15, 2008, Kaldep Gidda objected to the Notices of Reassessment for the 2003 and 2004 taxation years;
- on July 22, 2010, in response to the Notice of Objection, the Minister confirmed the assessments for the 2003 and 2004 taxation years;
- on September 17, 2012, Mr. Gidda filed an Application for an Extension of Time at the Registry of the Tax Court of Canada.

With respect to Neelam Gidda:

- on December 15, 2008, Neelam Gidda objected to the Notices of Reassessment for the 2003 and 2004 taxation years;
- on July 9, 2010, in response to Ms. Gidda's Notice of Objection, the Minister confirmed the reassessments for the 2003 and 2004 taxation years;
- on September 17, 2012, Ms. Gidda filed an Application for an Extension of Time at the Registry of the Tax Court of Canada.

With respect to Gidda Bros. Orchards Ltd.:

- Gidda Bros. objected to the July 23, 2010, Notices of Reassessment for the 2003 and 2004 taxation years by way of Notice of Objection dated September 29, 2010;
- In response to Gidda Bros. Notice of Objection, a Notice of Confirmation was issued on March 3, 2011, for the 2003 and 2004 taxation years;
- Gidda Bros. filed an Application at the Registry of the Tax Court of Canada on September 17, 2012 to extend the time to file a notice of appeal.

With respect to Sunrise Vineyards Ltd.:

- Sunrise objected to the July 27, 2010, Notice of Reassessment for the 2003 and 2004 taxation years by way of Notice of Objection dated September 30, 2010;

- in response to the Notice of Objection, a Notice of Confirmation was issued on March 3, 2011, for the 2003 and 2004 taxation years;
- Sunrise filed an Application at the Registry of the Tax Court of Canada on September 17, 2012 to extend the time to file a notice of appeal.

[3] Mr. Gidda, in his Affidavits filed with the Motion, and also confirmed in his testimony at the hearing, indicated that he attempted to file the Notices of Appeal for all four Appellants on a timely basis with the CRA, not with the Tax Court of Canada. Attached to his Affidavit were copies of brief letters for the two corporations, such letters appearing to be Appeals, stamped as received at the Penticton office of the CRA on May 9, 2011. With respect to the personal Appeals of Mr. Gidda and Ms. Gidda, Mr. Gidda's Affidavits had copies of an appeal letter addressed to the CRA in Surrey dated August 19, 2010 for Ms. Gidda, and August 20, 2010 for Mr. Gidda. At the hearing of the Application, Mr. Gidda testified that all four Appeals were personally delivered to the Penticton office together, presumably in May 2011. This does not appear to accord with his affidavit. There is no evidence the letters from Mr. Gidda to Surrey regarding the personal appeals of Mr. Gidda and Ms. Gidda were ever mailed or indeed received in Surrey. A former collection officer, Ms. Lesnoski, testified that when she took over the collections file, and discovered that Mr. Gidda believed he had filed an Appeal at the Penticton CRA office, she checked the appeals' Registry and found no notification of such.

[4] Mr. Gidda claims he did not know there was a difference between the CRA and the Tax Court of Canada, and did not know where to file, though he did acknowledge that he had seen the information sheet the CRA sends out to taxpayers, indicating how to appeal. He also had an accounting firm assist with what he called the first appeal: he was to deal with the rest of the appeals.

[5] Mr. Gidda stated in his Affidavit that he had no prior dealings with the Tax Court of Canada, yet the Respondent produced two Tax Court of Canada judgments, one in which Mr. Gidda was the Appellant and the other in which he acted as agent. The Crown also provided a Federal Court order, effectively ordering Mr. Gidda to be cooperative with the CRA.

[6] A review of CRA officers' diaries, including Ms. Lesnoski own notations, make it clear that Mr. Gidda did not always accept mailed notifications from the CRA, did not answer calls, and at one point, refused to allow CRA officers on his

property. It was also clear that Mr. Gidda had a number of matters on the go with CRA, not just the Appeals in issue.

[7] Mr. Gidda presented in Court as uncooperative, vague and evasive: at times his evidence was contradictory and outright incorrect. He was initially not even prepared to give evidence as the Court did not have his religion's equivalent of the Bible, and he refused to affirm. He also objected to the Respondent providing its authorities the morning of the hearing, requesting an adjournment. I found his attitude obstructionist and uncooperative. I allowed Mr. Gidda to have a friend sit beside him for moral support, though it became clear that his friend was really directing Mr. Gidda.

[8] In his written submissions, Mr. Gidda raised a number of arguments as to why the applications should be allowed.

- a) First, he relied on Rules 7 and 9 of the *Tax Court of Canada Rules* (General Procedure) (the "*Rules*"), arguing this gave the Court sufficient leeway to effectively ignore the time restriction. The Appellant is mistaken. It is the legislation itself, not the Court's *Rules*, which sets the strict time limit. The Court cannot, by its own rules, usurp Parliament's authority in this regard. Subsection 167(5) of the *Act* is clear – no application can be made for an extension beyond one year after the 90 day period for filing the appeal has passed. This is a strict requirement.
- b) Second, the Appellant argued that the requirement to file with the Tax Court of Canada Registry includes the CRA as part of that Registry, especially where, as here, the CRA accepts the envelop containing the appeal. "Registry" is a defined term under the *Tax Court of Canada Act* and does not include any office of the CRA under any circumstances. This argument has no merit.
- c) Third, the Appellant argued the CRA had an obligation to advise the Appellant that the Appeal had been improperly filed and failure to do so cannot deprive the Appellant of his day in Court. This is akin to the argument that the Courts are bound by the actions or advice of the CRA. We are not. It is well established that if the CRA proffers incorrect advice to a taxpayer, and the taxpayer relies on that advice to his detriment, that does not bind the Tax Court of Canada as to how to determine the correctness of an assessment. There may be avenues for the taxpayer to pursue, but asking the Tax Court of Canada to base its

judgment on incorrect CRA advice is not one of them. While this may garner some sympathy, it cannot override the clear wording of the legislation.

[9] Having said that, I turn now to what I consider the Appellant's main argument, and that is the reliance on the case of *Hickerty* to suspend the one year limitation period in certain circumstances.

[10] In *Hickerty*, the Appellant mailed her appeal to the Tax Court of Canada, but at the wrong address, and also to the CRA (on advice of a CRA Information Officer) on a timely basis. She did so before getting the CRA's information package as to where to file. Justice Boyle clearly had some sympathy for Ms. Hickerty in these circumstances and concluded:

12. Thus I return to the question whether the time the Applicant was under the mistaken misapprehension that she had validly instituted her appeal is included in the one year grace period. In the circumstances, I am of the view that the period during which the taxpayer is under a reasonable but mistaken belief that she has validly instituted an appeal is not included in the further one year grace period provided for in paragraph 167(5)(a). This issue does not appear to have been previously considered by the Court with respect to either late filed objections or appeals. An interpretation favourable to the taxpayer is consistent with this Court's expressed preference to have taxpayers' tax disputes heard and resolved on their merits, especially in the absence of any prejudice to the Crown. To interpret and apply this differently would deprive a taxpayer of the right to have an appeal that she reasonably believed for a period of just less than five months to have properly instituted, heard on its merits, where there was nothing else she could reasonably have been expected to do during that period. In most cases, the one year period will be a calendar year plain and simple. However, if a taxpayer mistakenly but reasonably believes that she has validly instituted an appeal and the other requirements of subsection 167(5) are met, the one year grace period stops running until the taxpayer becomes aware, or should have become aware if she is acting and thinking reasonably, that the intended appeal was invalid. That is, there will come a point when a taxpayer's mistaken belief may cease to be reasonable but, on the facts of this case, it was reasonable for her to continue to so believe until at least December 10, 2003, even if it may have ceased to be reasonable by December 10, 2004.
13. This case and this last issue are significantly different than the issues of awareness and understanding of an assessment, and of discoverability, considered by the Federal Court of Appeal in the case of *H. M.Q. v. Carlson*, 2002 DTC 6893. In that case, the taxpayer had not even objected to his tax assessments issued in 1993 until he sought to late file his objection

in 1999, some five years later. The Court of Appeal concluded he could not be helped because he was “neither diligent nor reasonable in the way he conducted himself following service of the Notice of Assessment.”

[11] What is clear is that for a taxpayer to avail himself or herself of this suspension of limitation, the taxpayer must act diligently and reasonably. As I indicated in the case of *Castle v. Canada*³, I have some concern with this suspension of time. Clearly, Justice Boyle also recognized there will be circumstances where a mistaken belief is no longer reasonable.

[12] For several reasons, I have concluded Mr. Gidda was neither diligent nor reasonable such that, even if I accepted Justice Boyle’s approach in *Hickerty*, Mr. Gidda does not fall within this saving proposition. I am not prepared to suspend any time in calculating the one year limitation for the following reasons.

[13] Firstly, Mr. Gidda presented as evasive and uncooperative. I have serious doubts whether the August 20 alleged letter of appeal was even ever received by the CRA. If Mr. Gidda treated the CRA, as his attitude in Court might suggest he would have, I have serious doubts about a good deal of what Mr. Gidda had to say actually occurred between him and the CRA.

[14] Second, Mr. Gidda was aware of how to appeal. I simply do not believe him when he says he did not understand there was a difference between the Tax Court of Canada and the CRA. He acknowledged receiving the information package from CRA indicating how to appeal. He had been in the Tax Court of Canada twice before. He had an accountant looking at matters for him. It is unreasonable in these circumstances to suggest there was any real mistaken belief of where to file.

[15] Thirdly, and importantly, unlike Ms. Hickerty, he did not attempt to file with the Tax Court of Canada.

[16] Finally, he did not act diligently as he had ongoing communications with the CRA, though never evidently asked into his Appeal. Also, when the CRA attempted to contact him, he would avoid them. Had he acted reasonably, returned calls and generally cooperated, he would have found out within the one year and 90 day period that no appeals had been validly filed. He did not so act.

³ [2008] T.C.J. No. 66.

[17] No, Mr. Gidda's circumstances are far different from Ms. Hickerty's. I have not been persuaded that his mistaken belief was reasonable. The Applications of all four Appellant's are indeed beyond the mandatory one year limitation period as set out in subsection 167(5) of the *Act*, and their Applications must be dismissed.

Signed at Ottawa, Canada, this 17th day of June 2013.

"Campbell J. Miller"

C. Miller J.

CITATION: 2013 TCC 190

COURT FILE NO.: 2012-3736(IT)APP

STYLE OF CAUSE: KALDEP GIDDA, NEELAM GIDDA,
SUNRISE VINEYARDS LTD. AND
GIDDA BROS. ORCHARDS LTD. AND
HER MAJESTY THE QUEEN

PLACE OF HEARING: Kelowna, British Columbia

DATE OF HEARING: June 6, 2013

REASONS FOR ORDER BY: The Honourable Justice Campbell J. Miller

DATE OF ORDER : June 17, 2013

APPEARANCES:

For the Appellant, Kaldep Gidda:	The Appellant himself
Agent for the Appellant, Neelam Gidda:	Kaldep Gidda
Agent for the Appellant, Sunrise Vineyards Ltd.:	Kaldep Gidda
Agent for the Appellant, Gidda Bros. Orchards Ltd.:	Kaldep Gidda

Counsel for the Respondent: Jonathan Wittig

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: William F. Pentney

Page: 2

Deputy Attorney General of Canada
Ottawa, Canada