

BETWEEN:

SULAKSHANA RAJA,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

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Motion made by the Applicant to reconsider the Order  
dated August 14, 2024

Before: The Honourable Justice Michael U. Ezri

Written Submissions:

Agent for the Applicant: Vinod Raja

Counsel for the Respondent: Rameek Kaur Sidhu

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**ORDER**

WHEREAS a Motion dated August 22, 2024 filed by the applicant to, “appeal the ruling of Justice Michael Ezri rendered on August 14, 2024” in reliance upon Rule 168(b) of the *Tax Court of Canada Rules (General Procedure)*, which motion was described by the applicant in a letter dated August 27, 2024 as a “Notice of Motion filed on August 22, 2024 for reconsideration”; and

UPON reading the submissions of the parties;

IT IS ORDERED THAT:

The Applicant's Motion is dismissed without costs in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 10<sup>th</sup> day of September 2024.

“Michael Ezri”

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Ezri J.

Citation: 2024 TCC 118  
Date: September 10, 2024  
Docket: 2023-2083(IT)APP

BETWEEN:

SULAKSHANA RAJA,

Applicant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR ORDER**

Ezri J.

#### **I. Facts**

[1] This motion is brought by the applicant, Sulakshana Raja for reconsideration of an Order dated Aug 14, 2024 dismissing an application to extend time to file appeals of assessments issued for the applicant's 2007, 2010 and 2011 taxation years. Oral reasons for were given on August 13, 2024 following the hearing of the application to extend time.

[2] The applicant requests reconsideration on the basis that when I heard this application, I was not made aware that the applicant had attempted to file a notice of appeal on September 12, 2023. That date was within one year and 90 days following the June 16, 2022 date on the notices of confirmation of the Assessments.

[3] The applicant relies on Rule 168 of the *Tax Court of Canada Rules (General Procedure)* which permit a party to ask this Court to reconsider decisions where the judgment does not accord with the reasons given or where there is some other matter that should have been dealt with but that was overlooked or accidentally omitted. Although not referenced in the motion, Rule 172 permits a judgment to be amended where it contains an error arising from an accidental slip or omission or where it requires an amendment on a matter on which the court did not adjudicate.

## II. The Law of *Functus Officio*

[4] Once a Judge of this Court issues a decision, he or she is, to use a Latin phrase, “*functus officio*”. This translates to “having performed his or her office”.<sup>1</sup> The doctrine of *functus officio* provides that a judge who has given judgment no longer has the capacity to correct the judgment because he or she has fully discharged the duty imposed on him or her. The purpose of the doctrine is to lend finality to the conduct of proceedings. Absent such finality, the same matters could be returned to the same court again and again as each party raises new evidence and arguments about the case. As a further consequence, the absence of finality deprives an appellate court of a stable record against which to review decisions from a court of first instance.<sup>2</sup>

[5] Exceptionally, the Tax Court Rules permit this Court to correct, “small errors without an appeal to a higher Court when the conditions of section 168 are met.”<sup>3</sup>

## III. No Basis to apply s. 168 here

[6] The decision of this Court issued August 14, 2024 does accord with my oral reasons issued on that day. Nor is there any matter that was overlooked or accidentally omitted. This Court was asked to decide whether or not the applicant could extend time to file a notice of appeal and it decided that question.

[7] This motion is an attempt to further explain the facts and circumstances that led to the application to extend time. Rule 168 addresses inadvertent deficiencies in the Court’s decisions. It offers no relief from substantive mistakes in a judgment, still less does it open the door to adducing further evidence, or making additional arguments, to the Court following the issuance of a decision.

[8] Even if grounds for review under Rule 168 did exist, the applicant’s arguments are without merit. The affidavit comprising the applicant’s notice of motion deposes that, she attempted to file an appeal on September 12, 2023, but that,

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<sup>1</sup> See, Wong, Anna, SP, “The Doctrine of *Functus Officio*: The Changing Face of Finality’s Old Guard” (2020), CBR Vol. 98 No. 3, 543, at p. 546.

<sup>2</sup> *Ibid*, p. 547-548.

<sup>3</sup> *Nichols v R*, 2011 TCC 272, para 12.

“The Tax Court of Canada in Calgary incorrectly declined to file the said appeals saying that the time for filing expired, which was incorrect”.<sup>4</sup>

[9] Taking the affidavit evidence in the affidavit at face value, the applicant is simply wrong. The Tax Court Registry did not err in rejecting any attempt to file a notice of appeal on September 12, 2023.

[10] The time for filing the notice of appeal expired 90 days after June 16, 2022 i.e. in mid September 2022. It was not open to the applicant to file a notice of appeal almost a year later on September 12, 2023. As explained to the applicant in my oral reasons, what the applicant could have filed on September 12, 2023 was an application to extend time, but she did not. No such application was received until October 2, 2023. By then it was too late as more than one year and 90 days had elapsed following the June 16, 2022, date of the notice of confirmation.

[11] As a result this motion for reconsideration must be dismissed, without costs.

Signed at Ottawa, Canada, this 10<sup>th</sup> day of September 2024.

“Michael Ezri”

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Ezri J.

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<sup>4</sup> Emphasis added

CITATION: 2024 TCC 118

COURT FILE NO.: 2023-2083(IT)APP

STYLE OF CAUSE: SULUKSHANA RAJA AND HIS MAJESTY THE KING

MOTION REFERRED TO THE JUDGE: Week of September 2, 2024

REASONS FOR ORDER BY: The Honourable Justice Michael U. Ezri

DATE OF ORDER: September 10, 2024

APPEARANCES:

Agent for the Applicant: Vinod Raja

Counsel for the Respondent Rameek Kaur Sidhu

COUNSEL OF RECORD:

For the Applicant:

Name: N/A

Firm: N/A

For the Respondent:

Shalene Curtis-Micallef  
Deputy Attorney General of Canada  
Ottawa, Canada