

Docket: 2012-4095(GST)I

BETWEEN:

JOSEPH SOLANKO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on March 13, 2014 at Hamilton, Ontario

By: The Honourable Justice Judith Woods

Appearances:

For the Appellant:                   The Appellant himself  
Counsel for the Respondent:       Jan Jensen

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**JUDGMENT**

It is ordered that the appeal with respect to an assessment made under the *Excise Tax Act* by notice dated April 8, 2011 is dismissed. The parties shall bear their own costs.

Signed at Toronto, Ontario this 28th day of March 2014.

“J.M. Woods”

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Woods J.

Citation: 2014 TCC 100  
Date: 20140328  
Docket: 2012-4095(GST)I

BETWEEN:

JOSEPH SOLANKO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

### **REASONS FOR JUDGMENT**

Woods J.

[1] Joseph Solanko appeals with respect to the denial of a rebate for an owner-built home that is provided for in subsection 256(2) of the *Excise Tax Act*.

[2] The respondent submits that the rebate was properly disallowed because the home was not constructed for use as a primary residence. The respondent also suggests that the application for the rebate was submitted long after the two year deadline that is provided for in subsection 256(3) of the *Act*.

[3] Mr. Solanko submits that he was misinformed as to the application requirements and that it would be fair to allow the tax rebate to him, as he has been an honest, hardworking taxpayer for many years.

Discussion

[4] I will first consider Mr. Solanko's arguments which are based on fairness considerations.

[5] For many years, it has been well-established by judicial authorities that this Court cannot grant relief solely on grounds of fairness. Parliament has the mandate to enact legislation governing the goods and services tax, and if this legislation does not permit a rebate in Mr. Solanko's circumstances, the Court must dismiss the appeal regardless of whether the result is harsh. Even if Mr. Solanko had been misinformed by the Canada Revenue Agency (CRA), this is not a basis to allow the rebate if the legislation does not provide for it.

[6] I turn now to the respondent's argument that the property was not constructed for use as a primary residence.

[7] The residence requirement is contained in paragraph 256(2)(a) of the *Act*. Relevant excerpts are set out below:

**256.(2) Rebate for owner-built homes - Where**

(a) a particular individual constructs or substantially renovates, or engages another person to construct or substantially renovate for the particular individual, a residential complex that is a single unit residential complex or a residential condominium unit for use as the primary place of residence of the particular individual or a relation of the particular individual,

[...]

the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to the amount determined by the formula

[...]

[8] The facts are not in dispute. In 2002, Mr. Solanko constructed a home that was intended to be his primary residence upon retirement. At the time, Mr. Solanko was living in Toronto and worked for the Toronto Transit Commission. He expected to retire in 2010. The newly-constructed home was located in Ayton, Ontario, which is approximately 170 kilometers from Toronto.

[9] From the time that the Ayton residence was built until Mr. Solanko's retirement, he stayed at the family home in Toronto during weekdays and went to the Ayton property on weekends.

[10] After his retirement in 2010, Mr. Solanko began to live in Ayton on a full-time basis. His spouse, however, continued to reside in the family home in Toronto to be close to her elderly mother. She still lives in Toronto.

[11] The question to be determined is whether Mr. Solanko satisfies the legislative requirement that the Ayton residence was constructed for use as Mr. Solanko's primary place of residence. I note that the legislation does not require immediate use of the newly-constructed home as a primary residence. However, the home must be constructed for this use.

[12] In my view, it would strain the rebate provision beyond what Parliament intended to allow the rebate in this case. I accept that when Mr. Solanko constructed the Ayton residence, he had in mind that he would reside there as his primary residence when he planned to retire in eight years time. However, at the time of the construction, retirement was far off. Essentially, it was speculation on Mr. Solanko's part as to what his circumstances would be in 2010.

[13] In addition, it is unlikely that Parliament had in mind that individuals could claim the rebate based on self-interested statements as to their intentions far into the future. The requirement in the legislation that the residence is constructed for use as a primary residence contemplates that the taxpayer has an intention to use the property as a primary residence closer in time to the construction than is in the case in this appeal.

[14] I would conclude that the appeal should be disallowed on this basis.

[15] In light of this conclusion, I do not propose to consider the respondent's second argument that the application for the rebate was made out of time. This issue is not clear cut because Mr. Solanko had first applied for the rebate before the two-year deadline.

Signed at Toronto, Ontario this 28th day of March 2014.

“J.M. Woods”

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Woods J.

CITATION: 2014 TCC 100

COURT FILE NO.: 2012-4095(GST)I

STYLE OF CAUSE: JOSEPH SOLANKO AND HER MAJESTY  
THE QUEEN

PLACE OF HEARING: Hamilton, Ontario

DATE OF HEARING: March 13, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Judith Woods

DATE OF JUDGMENT: March 28, 2014

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Jan Jensen

COUNSEL OF RECORD:

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Firm:

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