

Docket: 2013-2532(GST)I

BETWEEN:

KELLY MACKEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on February 26, 2014, at Edmonton, Alberta

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Gergely Hegedus

JUDGMENT

The appeal with respect to the Appellant's reporting periods ending December 1, 2006, December 1, 2007, December 1, 2008, December 1, 2009 and December 1, 2010 is hereby quashed.

Signed at Ottawa, Canada, this 16th day of September 2014.

“B.Paris”

Paris J.

Citation: 2014 TCC 274
Date: 201409
Docket: 2013-2532(GST)I

BETWEEN:

KELLY MACKEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] This is an appeal from reassessments of GST for Mr. Mackey's reporting periods ending December 31 of each year from 2006 to 2010.

[2] The Respondent brought a motion to quash the appeal on the ground that the Court lacks jurisdiction to decide the issues that are raised.

[3] With respect to the reassessments for the reporting periods ending December 31 of 2006, 2007, 2008 and 2010, the Respondent filed affidavit evidence to show that Mr. Mackey had not filed notices of objection to those reassessments. Section 306 of the *Excise Tax Act (Act)* requires that a taxpayer file a notice of objection prior to commencing an appeal in this Court. Therefore I agree with the Respondent that the Court lacks jurisdiction to decide the appeal for those periods and the appeal for those periods must be quashed.

[4] The Respondent maintains that the appeal for the remaining period the year ending December 31, 2009, should be similarly quashed because Mr. Mackey is disputing the amount of credits applied to his GST account by the Canada Revenue Agency (CRA) rather than the amount of tax assessed.

[5] I am satisfied that all of the issues raised by Mr. Mackey for the remaining period in issue relate to the manner in which the CRA accounted for payments of GST made either by him or on his behalf by the real estate brokerage he worked

for. Mr. Mackey is not disputing the amount of net GST reassessed for the period. In fact, he was reassessed in accordance with the revised GST return he filed for the period on December 15, 2011. The dispute he has relates to the determination of the balance owing on his GST account and how the CRA accounted for payments made by him.

[6] Section 309 of the *ETA* sets out the Court's jurisdiction on hearing appeals as follows:

309. (1) The Tax Court may dispose of an appeal from an assessment by

(a) dismissing it; or

(b) allowing it and

(i) vacating the assessment, or

(ii) referring the assessment back to the Minister for reconsideration and reassessment.

[7] It is clear then, that this Court only has jurisdiction to determine the correctness of the amount of tax assessed and not matters relating to the payment of tax after it has been assessed. Since Mr. Mackey is not challenging the amount of net tax assessed for the period the Court has no jurisdiction to grant him any relief. Therefore, the Respondent's motion to quash the appeal for the period ending December 31, 2009 is also granted.

Signed at Ottawa, Canada, this 16th day of September 2014.

“B. Paris”

Paris J.

CITATION: 2014 TCC 274
COURT FILE NO.: 2013-2532(GST)I
STYLE OF CAUSE: KELLY MACKEY AND HER MAJESTY
THE QUEEN
PLACE OF HEARING: Edmonton, Alberta
DATE OF HEARING: February 26, 2014
REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris
DATE OF JUDGMENT: September 16, 2014

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Gergely Hegedus

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
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Ottawa, Canada