

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240912

Docket: A-62-24

Citation: 2024 FCA 143

**CORAM: WOODS J.A.
LASKIN J.A.
MONAGHAN J.A.**

BETWEEN:

NICHOLA ANTROBUS

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on September 4, 2024.

Judgment delivered at Ottawa, Ontario, on September 12, 2024.

REASONS FOR JUDGMENT BY:

MONAGHAN J.A.

CONCURRED IN BY:

**WOODS J.A.
LASKIN J.A.**

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REASONS FOR JUDGMENT

MONAGHAN J.A.

[1] The appellant, Nichola Antrobus, appeals a judgment of the Tax Court of Canada dated January 22, 2024 in Court File 2023-1210(GST)APP. For reasons delivered orally on January 11, 2024 (*per* Rossiter CJ), that judgment dismissed the appellant's applications for extensions of time to file notices of objection to two reassessments.

[2] The notices of reassessment, dated July 14, 2017 and January 4, 2018, denied the appellant's claims for a new housing rebate under Part IX of the *Excise Tax Act*, R.S.C. 1985, c. E-15, in connection with properties she purchased in 2016 and 2017.

[3] Under the *Excise Tax Act*, a taxpayer who wishes to object to a reassessment must file a notice of objection in "the prescribed form and manner" within 90 days of the mailing of the notice of reassessment: *Excise Tax Act*, s. 301(1.1). The Minister of National Revenue may, but is not required to, accept a notice of objection not filed in prescribed manner: *Excise Tax Act*, s. 301(2).

[4] If the taxpayer fails to timely file a notice of objection, they may apply to the Minister for an extension of time to do so, but that application must be made within one year of the date the notice of objection was otherwise due: *Excise Tax Act*, s. 303(7)(a). Where the Minister refuses the application or does not respond to it within 90 days, the taxpayer may apply to the Tax Court for an extension of time to object: *Excise Tax Act*, s. 304(1). Thus, the Tax Court cannot grant an extension of time unless the taxpayer has first sought an extension of time from the Minister.

[5] Here the relevant 90-day periods for objecting ended on October 12, 2017 and April 4, 2018, respectively. In each case, the one-year period for applying to the Minister for an extension of time to object ran from the end of the 90-day period.

[6] Before the Tax Court, the appellant explained that over several years, both before and after receiving the reassessments, she had several telephone conversations with representatives of

the Canada Revenue Agency (CRA) audit division and had submitted and resubmitted documents they requested in support of her applications for the new housing rebate.

[7] The Tax Court found that the appellant did not file a notice of objection to either reassessment within the 90-day period, nor apply to the Minister for an extension of time to do so within the relevant one-year periods. As a result, the Tax Court concluded it could not grant her an extension of time to object to the reassessments.

[8] Before us, the appellant argues that the Tax Court erred in failing to recognize that her communications with the CRA constituted a notice of objection that the Minister accepted as permitted by subsection 301(2) of the *Excise Tax Act*.

[9] While the Tax Court did not address this question explicitly in its reasons, on appeal we must assess whether the reasons are sufficient in the context of the case for which they were given and with the presumption that the judge knows the law that they work with daily: *R. v. G.F.*, 2021 SCC 20 at paras. 68-69, 74. Reasons need not explain the “what” and the “why” when the answers to those questions are clear in the record: *R. v. G.F.* at para. 70, citing *R. v. R.E.M.*, 2008 SCC 5 at paras. 38-40 and *R. v. Sheppard*, 2002 SCC 26 at paras. 46, 55. We must presume that judges based their conclusion on a review of the entirety of the evidence unless it is clear they did not: *Housen v. Nikolaisen*, 2002 SCC 33 at para. 72.

[10] Here the Tax Court properly described the issue before it as whether a notice of objection was filed within the relevant 90-day period or a request had been made to the Minister for an

extension of time to file it within the relevant one-year period. It then said “I find that...the answer to both those questions is the answer no.”

[11] This is a finding of mixed fact and law. Under the appellate standard of review that applies on this appeal, we cannot interfere with a finding of mixed fact and law absent a palpable and overriding error, or an extricable error of law: *Housen v Nikolaisen* at para. 36. The appellant has not identified any such error.

[12] Moreover, I have carefully reviewed the transcript of the proceedings before the Tax Court and the documents in the record before it. In my view, the Tax Court’s conclusion that the appellant did not file a notice of objection to either reassessment is entirely consistent with that evidence. I see no reviewable errors.

[13] That said, like the Tax Court, I have significant sympathy for the appellant. She communicated with the CRA in an attempt to resolve her tax matters informally. She thought she was doing everything she was required to do so that a notice of objection was not necessary. As she saw it, the CRA asked for documents and she provided them, so the matter would be resolved.

[14] The appellant is not unique. Every year hundreds of applications to extend the time to file an objection or appeal come before the Tax Court: *Xu v. The King*, 2022 TCC 108 at para. 18. Some are successful; many are not. What is clear, however, is many taxpayers believe communicating with the CRA, and responding to its requests for information, is sufficient to

amount to an objection to an assessment, only to have the Minister take the position they have missed the deadline to object: see, for example, *Ihama-Anthony v. The Queen*, 2018 TCC 262 at para. 37; *FOOi Inc. v. The King*, 2023 TCC 176; *Vidal v. The Queen*, 2022 TCC 54; *Schneidmiller v. The Queen*, 2009 TCC 354 at para. 3; *Xu v. The King* at paras. 25-26. Worse, in some cases the CRA misinforms taxpayers to their detriment: *Adams v. The King*, 2023 TCC 86 at para. 24; *Campbell v. The King*, 2023 TCC 170 at para. 27.

[15] The Supreme Court of Canada emphasizes the importance of removing barriers that impede access to justice: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 1. Many taxpayers simply cannot afford to engage tax professionals to assist them in dealing with the CRA. Yet, in this case, rather than clearly informing the appellant about the critical importance of the timely filing of a notice of objection, her notices of reassessment included general statements about where to find more information about her reassessment and objecting to it, and how to contact the CRA. While I attribute no ill will to the CRA or its representatives, simply put, that does not reflect the stakes. I am certain the CRA can and should do better.

[16] The respondent seeks costs of this appeal. The appellant submits that each party should bear their own costs. I would dismiss the appeal but, in my discretion, would award no costs.

“K.A. Siobhan Monaghan”

J.A.

“I agree.

Judith Woods J.A.”

“I agree.

John B. Laskin J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-62-24

STYLE OF CAUSE: NICHOLA ANTROBUS V. HIS
MAJESTY THE KING

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REASONS FOR JUDGMENT BY: MONAGHAN J.A.

CONCURRED IN BY: WOODS J.A.
LASKIN J.A.

DATED: SEPTEMBER 12, 2024

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