

BETWEEN:

ANWAR TALUKDAR,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on November 25 and 27, 2025  
at Toronto, Ontario

Before: The Honourable Justice J. Scott Bodie

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: David Heppenstall

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**JUDGMENT**

The appeal from a Notice of Assessment dated April 26, 2021, and confirmed by Notice dated November 4, 2022, made under the *Excise Tax Act*, in respect of the Appellant’s Good and Services Tax/Harmonized Sales Tax (GST/HST) New Housing Rebate Application is allowed, without costs, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that Mr. Talukdar is entitled to the GST/HST Rebate.

Signed this 10th day of February 2026.

“J. Scott Bodie”

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Bodie J.

Citation: 2026 TCC 28  
Date: 20260210  
Docket: 2023-226(GST)I

BETWEEN:

ANWAR TALUKDAR,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Bodie J.

#### **INTRODUCTION**

[1] Mr. Talukdar appeals by way of the informal procedure, an assessment (the “Assessment”) by the Minister of National Revenue (the “Minister”), denying him the Goods and Services Tax/Harmonized Sales Tax (“GST/HST”) New Housing Rebate (the “Rebate”) available under Part IX of the *Excise Sales Tax* (the “Act”). The amount of the Rebate adjustment at issue is \$22,593.31. The appeal arises from the purchase of a new residential condominium unit, located at 401-1346 Danforth Road, Scarborough, Ontario (the “Rebate Property”) by Mr. Talukdar and his wife, Salma Talukdar. The evidence shows that Mr. Talukdar, alone applied for the Rebate.

[2] Unless stated otherwise, all statutory references herein are to the Act.

## **ISSUE**

[3] It is the Minister's position that Mr. Talukdar is not entitled to the Rebate because he does not meet each of the requirements under subsection 254(2). In particular:

1. At the time that he became liable under the Condominium Purchase Agreement in respect of the Rebate Property, dated July 17, 2018 (the "Agreement of Purchase and Sale"), Mr. Talukdar did not intend to use the Rebate Property as a primary place of residence, as required by paragraph 254(2)(b); and
2. Mr. Talukdar was not the first to occupy the Rebate Property as a place of residence after substantial completion of its construction, as required by paragraph 254(2)(g).

[4] Accordingly, the issue to be decided in this appeal is whether the requirements of paragraphs 254(2)(b) and (g) are met, such that Mr. Talukdar is entitled to the Rebate in respect of the Rebate Property in the amount of \$22,593.31.

## **FACTS**

[5] Mr. Talukdar appeared as the sole witness at the hearing of this appeal. The Respondent did not call any witnesses.

[6] Mr. Talukdar testified that he and his wife signed the Agreement of Purchase and Sale for the Rebate Property with Heintzman Co-operative Development Corporation on July 17, 2018. According to such Agreement, the purchase price for the Rebate Property was \$298,812. Ownership of the Rebate Property was transferred to Mr. and Mrs. Talukdar on January 10, 2019. On May 10, 2019, Mr. Talukdar filed an application for the Rebate and was credited with the Rebate by the builder of the Rebate Property. The Rebate Property was listed for sale on February 6, 2020, and sold to a third party on May 22, 2020, for a purchase price of \$440,000.

## **LAW**

[7] When an individual buys a new home, a partial GST/HST rebate is available under subsection 254(2) which sets out seven conditions, each of which must be satisfied to qualify for the Rebate. In this appeal only the conditions set out in paragraphs 254(2)(b) and (g) are at issue. These provisions provide as follows:

254(2) Where

...

(b) at the time the particular individual becomes liable or assumes liability under an agreement of purchase and sale of the complex or unit entered into between the builder and the particular individual, the particular individual is acquiring the complex or unit for use as a primary place of residence of the particular individual or a relation of the particular individual,

...

(g) either

(i) the first individual to occupy the complex or unit as a place of residence at any time after the substantial completion of the construction or renovation is

...

(B) in the case of a residential condominium unit, an individual or a relation of an individual, who was at that time a purchaser of the unit under an agreement of purchase and sale of the unit, or

(ii) the particular individual makes an exempt supply by way of sale of the complex or unit and ownership thereof is transferred to the recipient of the supply before the complex or unit is occupied by any individual as a place of residence or lodging,

the Minister shall, subject to subsection (3), pay a rebate to the particular individual equal to...

[8] The conditions of both paragraphs must be met in order to qualify for the Rebate. The particular individual must first demonstrate that the taxpayer had the initial intention, at the time that the agreement of purchase and sale was signed, that he or she, would occupy the property as his or her primary place of residence, as required by paragraph 254(2)(b). Secondly, the particular individual must demonstrate that the he or she was actually the first individual to occupy the property as a place of residence, or that the property was sold in an exempt sale before anyone occupied the property as a place of residence, as required by paragraph 254(2)(g).

[9] Although paragraph 254(2)(b) does not expressly refer to intention, in *Coburn Realty Ltd. v. The Queen*, 2006 TCC 245 at paragraph 11, former Chief Justice Bowman established that the words “for use” creates a purpose or intention test. This decision has been followed in numerous subsequent decisions of this Court.

[10] When determining a person's intentions, courts will consider the person's statements given in oral testimony. However, the weight given to such statements will depend upon the court's assessment of credibility. That assessment will generally involve an examination of the surrounding facts with the goal of determining whether they objectively support the person's stated intentions.

[11] In *Charlebois v. The King*, 2025 TCC 76, at paragraph 12, Justice Derksen wrote:

In considering a person's intention or purpose, a person's conduct is generally more revealing than "ex post facto declarations" (see generally *MacDonald v. Canada*, 2020 SCC 6, at paragraph 22). Courts are therefore, not guided only by a person's subjective statements of purpose and instead will look for objective manifestations of purpose (see *Symes v. Canada* [1993] 4 SCR 695 at p. 736) and examine the surrounding factual circumstances.

## **ANALYSIS**

### **1. The Respondent's Position**

[12] It is the Respondent's position that Mr. Talukdar is unable to discharge his burden of proving, on a balance of probabilities, that the factual circumstances surrounding this matter objectively support his oral testimony that he and his wife purchased the Rebate Property for use as their primary place of residence. In support of this position, counsel for the Respondent drew to the Court's attention the decision of the Federal Court of Appeal in *Eisbrenner v. Canada*, 2020 FCA 93, where the Court confirmed at paragraph 61 that in tax appeals the taxpayer has the burden of proving, on a balance of probabilities any facts alleged by the taxpayer in their notice of appeal and that are denied by the Crown.

[13] The Respondent argued that Mr. Talukdar failed to discharge this burden of proving, on a balance of probabilities, that he purchased the Rebate Property for use as his primary place of residence, predominately on the basis that he was unable to produce documents which, in the view of the Respondent, shows that he in fact used the Rebate Property as such after he acquired it.

[14] In making this argument, counsel for the Respondent referred the Court to the decision of former Chief Justice Bowman in *Coburn Realty Ltd.*, where he noted that the purpose of an acquisition, measured at the time a purchase and sale agreement is entered into, can often be best determined by examining the actual use of a property after it is acquired. Chief Justice Bowman wrote at paragraph 10:

Statements by a taxpayer of his or her subjective purpose and intent are not necessarily and in every case the most reliable basis upon which such a question can be determined. The actual use is frequently the best evidence of the purpose of the acquisition. In *510628 Ontario Limited v. The Queen*, 2000 GTC 877, the following was said:

It should be noted that the expression “for use primarily...” (en vue d’être utilisé) requires the determination of the purpose of the acquisition, not the actual use. Nonetheless, I should think that as a practical matter if property is in fact used primarily for commercial purposes, it is a reasonable inference that it was acquired for that purpose.

[15] The Respondent said that Mr. Talukdar failed to discharge his burden of proving, on a balance of probabilities, that after he and his wife acquired possession of the Rebate Property, they in fact used it as their primary place of residence. The Respondent noted that in *Kniazev v. The Queen*, 2019 TCC 58, Justice Smith wrote the following with respect to the meaning of that term:

Parliament’s use of the word “primary” also suggests that the purchaser must have a settled intention to centre or arrange his personal and family affairs around that property. The rebate is not intended for a secondary residence or “pied-a-terre”. An individual can own multiple residences but would typically have only one “primary place of residence”.

[16] It was the position of the Respondent that Mr. Talukdar failed to prove, on a balance of probabilities that the Rebate Property had become the centre of his personal and family affairs because:

1. After acquiring the Rebate Property, Mr. Talukdar did not change his address to the address of the Rebate Property for purposes of the Canada Revenue Agency, the school of his children, and the Province of Ontario for purposes of his driver’s license. His address for these matters continued to be the address of his mother-in-law’s residence located on Regent Street in the City of Toronto (the “Regent St. Property”), where Mr. Talukdar and his family were living at the time that the Agreement of Purchase and Sale was signed.
2. Mr. Talukdar failed to produce sufficient documentary evidence to show that the Rebate Property became the family’s primary place of residence. Specifically:
  - a. While Mr. Talukdar produced his personal bank statements for the period Jan 1, 2019, to June 30, 2020, such bank statements did not set out a physical address. Moreover, Mr. Talukdar was unable, on cross-

examination, to point to any expenses listed in such statements which related to the maintenance of the Rebate Property, such as the payment of a utility bill for the Rebate Property.

- b. Mr. Talukdar did not produce landline telephone bills, internet bills or television bills for the Rebate Property.
  - c. Mr. Talukdar did not produce an invoice from a moving company related to moving into the Rebate Property, or any credit card or bank statements showing payment for such a move.
  - d. Mr. Talukdar produced only one utility bill with respect to the Property. While it was addressed to Mr. Talukdar at the Rebate Property, the invoice for the month of November 2019, was, in the Respondent's view, unusually low at \$32.91 for electricity and thermal heat. On cross-examination, Mr. Talukdar was unable to verify whether the invoice represented a typical monthly utility bill for his family at the Rebate Property.
  - e. Mr. Talukdar testified that the main reason he ultimately sold the Rebate Property was that he could not get parking in the building where the Rebate Property was located and there was no municipal parking within one-half a kilometer of the Rebate Property. He said he therefore received numerous parking tickets during the time he occupied the Rebate Property. However, he was unable to produce any copies of those parking tickets or copies of any emails or other materials which would indicate efforts to find suitable parking close to the Rebate Property, as he contended he had attempted to do, after moving into the Rebate Property to rectify the parking issue.
3. After the Rebate Property was acquired, his two older children continued to attend school near the Regent St. Property as opposed to a school near the Rebate Property. Mr. Talukdar testified that the two properties were approximately a 30 to 40-minute drive apart, depending on traffic.
  4. Mr. Talukdar's mother-in-law continued to look after his children, including his youngest child who was not yet of school age at the time, at the Regent St. Property, rather than at the Rebate Property.
  5. Mr. Talukdar did not call any witnesses to corroborate his position that he had the requisite intention at the time that he and his wife entered into the

Agreement of Purchase and Sale or that he and his family in fact occupied the Rebate Property as a place of residence.

2. Mr. Talukdar's Position

[17] On the other hand, it is Mr. Talukdar's contention that:

1. He had the intention at the time he entered into the Agreement of Purchase and Sale to use the Rebate Property as his primary place of residence, thus satisfying the condition set out in paragraph 254(2)(b); and
2. After completion of the construction of the Rebate Property, he was the first to occupy it as a place of residence, thus satisfying the condition set out in paragraph 254(2)(g).

[18] In his testimony, Mr. Talukdar explained that he is an immigrant to Canada and is employed as a restaurant server at a local hotel. He has three children who were all under the age of 10 when the Agreement of Purchase and Sale was signed. In 2017, he suffered a serious heart attack which caused him to rethink his priorities. At the time that he suffered his heart attack, he and his family were living with his mother-in-law at her Regent St. Property. He testified that he had never owned his own residence or in fact any real property before suffering the heart attack. He said that after the heart attack he believed that it was a priority that he attain a safe and secure home for his family in the event that something more serious should happen to him from a health perspective.

[19] Mr. Talukdar explained that in 2018, a friend at work told him about a non-profit organization called Options for Homes that provided assistance to first-time home buyers, by loaning to them most of the funds necessary to make an initial down payment towards the purchase of a home. He said that the organization had certain conditions that had to be met to qualify for such a loan, including that the first-time home buyer had to agree not to rent out the home purchased with the organization's assistance, and that the first-time home buyer needed to be able to qualify for a mortgage on his or her own.

[20] After being approved by Options for Homes, he entered into the Agreement of Purchase and Sale with the intention of moving his family into the Rebate Property in fulfillment of his new post-heart attack priorities. He said that he knew that the Rebate Property did not come with parking, but he believed, or at least

hoped, that once he moved in, he would be able to find suitable parking for rent in or within a close distance of the Rebate Property.

[21] He explained that he did not retain the services of a moving company as he and a friend moved all the furniture that the family needed from the Regent St. Property to the Rebate Property themselves.

[22] He testified that shortly before the family moved from the Regent St. Property his wife got a job at a school that was nearer to the Rebate Property than to the Regent St. Property, such that the new home was more convenient for his wife.

[23] He admitted that his two school aged children continued to attend the school near the Regent St. Property rather than a school near the Rebate Property. He said that as a father he believed this was in the best interests of his young children.

[24] On cross-examination, Mr. Talukdar testified that he and his family slept at the Rebate Property most, if not all nights after moving into the Rebate Property in January 2019, until the time that they sold the Rebate Property in May 2020. He said there may have been some nights in that period where his children slept at their grandma's place at the Regent St. Property, as they would visit her from time to time.

[25] Mr. Talukdar explained that on weekday mornings, he would drive his wife to her job at the school near the Rebate Property and then would drop off their youngest child at daycare and the older children to their school near the Regent St. Property, before going to work himself. Later in the day, he would pick everyone up at their various locations and the family would return to the Rebate Property.

[26] It was because of this routine that the lack of parking became an acute problem. Despite making inquiries to his neighbours in the building he was unable to find suitable parking for his vehicle. He testified that throughout 2019 he found that he was regaining his health and becoming stronger as he continued his recovery. As he became stronger, he came to believe that he and his family could do better. Therefore, after approximately 13 months of living in a place which he testified he enjoyed, except for the lack of suitable parking, he and his wife listed the Rebate Property for sale in February 2020 and sold it to a third party in May of that year.

[27] Mr. Talukdar testified that after selling the Rebate Property, the family did not return to the Regent St. Property. Rather, he and his family moved in with his brother-in law's family in Brampton, Ontario, where they remained until they bought

a new residence, once pandemic-related restrictions began to ease some months later.

[28] In his testimony on cross-examination, Mr. Talukdar acknowledged that he did not change his address with a number of Government agencies. He said that with all the other things that were going on in his life at the time, it was not a priority to do so, especially since his address for such purposes continued to be that of his mother-in-law's. He said several times that considering the issue he was now facing, he wished he had changed his address with the Canada Revenue Agency.

[29] He seemed frustrated at times when he was asked by counsel for the Respondent whether he had utility and other bills from this period on cross-examination. He did not try to explain why he did not have such records or why his bank statements from the period did not show expenses related to the Rebate Property, other than to say that it was his wife who generally looked after the bills and that utilities in respect of the household would have been paid from her personal account.

[30] Counsel for the Respondent asked the Court to draw a negative inference from the fact that Mr. Talukdar could not produce more in the way of documentary evidence regarding his occupancy of the Rebate Property, and particularly his inability to produce utility and similar bills with respect to the Rebate Property from throughout 2019 and the first half of 2020. He noted that under section 286, every person that makes an application for a rebate must keep all records that are necessary to establish the amount of any rebate to which the person is entitled, until the expiration of six years after the end of the year to which they relate. However, he did not make any submissions to the Court as to whether the utility bills he requested would properly be considered to be records necessary to establish the amount of the rebate.

[31] In any event, I am not prepared to draw a negative inference from Mr. Talukdar's inability to produce such records in this matter. First, the utility bills requested by the Respondent were from a period that was over five years before the date of the hearing and, for Mr. Talukdar, at least two moves ago. The Respondent was not clear on the issue of whether Mr. Talukdar was under any legal obligation to keep such records. It should not be surprising that Mr. Talukdar would be unable to produce such records after such a lapse of time, especially after a number of moves with a relatively large and young family. Secondly, while a series of utility bills or parking tickets addressed to Mr. Talukdar at the Rebate Property may have served as an indicator of residence, they would not have been dispositive of the key issues

of his intention at the time the Agreement of Purchase and Sale was entered into, nor of the question of whether he occupied the Rebate Property as his primary place of residence, in any event. A person could use an address as his or her mailing address for bills without necessarily using the address as their primary place of residence.

### 3. Decision

[32] In my view, this case turns on the Court's assessment of the credibility of Mr. Talukdar's testimony. The Respondent's position is that Mr. Talukdar is unable to prove, on a balance of probabilities, that the requirements set out in paragraphs 254(2)(b) and (g) were met, primarily because he did not have documents necessary to show that he occupied the Rebate Property as his primary place of residence.

[33] I disagree with this position. I have provided a detailed factual background to this matter, as it was related by Mr. Talukdar in his testimony, to illustrate the inherent credibility of such testimony when the situation as a whole is examined. In my view the surrounding facts, as related by Mr. Talukdar, support his stated intention that he and his wife purchased the Rebate Property for use as his primary residence. In this case, the totality of Mr. Talukdar's oral testimony is sufficient to establish, on a balance of probabilities, that he had the requisite intention at the requisite time and that he met the occupation requirements with respect to the Rebate Property, necessary to qualify for the Rebate.

[34] Mr. Talukdar is not a wealthy man. There is nothing in the evidence to indicate that he had the means or the inclination to engage in real estate speculation. Further, the Respondent conceded that there is no indication that he leased the Rebate Property or that anybody else occupied the Rebate Property after substantial completion of the Rebate Property, as lessee or in any other capacity. Yet 13 months expired between the time that ownership of the Rebate Property was transferred to Mr. Talukdar and his wife, and the time that they listed the property for sale. This seems a long time for someone in Mr. Talukdar's situation to leave the only property he has ever owned vacant while continuing to carry a mortgage which he qualified for, only with the help of a non-profit organization.

[35] I found Mr. Talukdar's description of his change of perspective following his 2017 heart attack compelling. Further there is no evidence that he continued to reside at the Regent St. Property after the time that ownership of the Rebate Property was transferred to Mr. Talukdar and his wife, as suggested by the Respondent. I note that the evidence shows that after the Rebate Property was sold to a third party,

Mr. Talukdar and his family moved, not to the Regent St. Property, but to the home of Mr. Talukdar's brother-in-law in Brampton.

[36] Further, counsel for the Respondent argued that the fact that Mr. Talukdar did not change his address for corresponding with several government agencies, including the Canada Revenue Agency, from the Regent St. Property to the Rebate Property, should be viewed as a strong indicator that the Rebate Property did not become the centre of his personal and family life. I note, however, Mr. Talukdar's testimony that his mother-in-law continued to live at the Regent St. Property. In this regard, I agree with Justice Angers' statement in *Yang v. The Queen*, 2009 TCC 636 at paragraph 10, that the change of address factor may be of less importance in determining use as a primary residence where owners of a new property still have relatives at a former place of residence.

[37] I found Mr. Talukdar's testimony to be credible and reliable. On the basis of such testimony, it is my view that Mr. Talukdar has been able to show, on a balance of probabilities, that first, he had the intention at the time that the Agreement of Purchase and Sale was entered into to use the Rebate Property as his primary residence, as required by paragraph 254(2)(b), and secondly, that after substantial completion of the construction of the Rebate Property, he was the first to occupy the Rebate Property as a place of residence, as required by paragraph 254(2)(g). In doing so, he was able, on a balance of probabilities, to successfully demolish the Respondent's assumption, as contained in its Reply, that neither Mr. Talukdar nor a qualified relation occupied the Rebate Property as a primary place of residence. The Respondent was unable to produce any evidence in support of the demolished assumption.

[38] Accordingly, the appeal is allowed, without costs, and the Assessment is referred back to the Minister for reconsideration and reassessment on the basis that Mr. Talukdar is entitled to the Rebate in respect of the Rebate Property.

Signed this 10th day of February 2026.

“J. Scott Bodie”

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Bodie J.

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DATE OF JUDGMENT: February 10, 2026

APPEARANCES:

For the Appellant: The Appellant himself

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