

Federal Court



Cour fédérale

Date: 20190218

Docket: T-1238-17

Citation: 2019 FC 200

Toronto, Ontario, February 18, 2019

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ROBERT JEWETT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] Mr. Robert Jewett (the “Applicant”) seeks judicial review of the decision (the “Decision”) of Ms. L. Beck, Team Leader (the “Team Leader”) at the Taxpayer Relief Centre of Expertise, Appeals Branch of the Canada Revenue Agency (the “CRA”), made on July 19, 2017. In that decision, the Team Leader refused the Applicant’s request for the waiver of interest

pursuant to section 220(3.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the “Act”).

Specifically, the Applicant requested the following:

1. The Cancellation of interest for the 2002 taxation year from January 01, 2006 to May 1, 2008 and March 5, 2013 to October 5, 2016;
2. The Cancellation of interest for the 2003 taxation year from January 01, 2006 to May 1, 2008 and June 25, 2011 to October 5, 2016; and
3. No agreement to waive any interest that would otherwise accrue on the 2002 and 2003 tax years starting on May 25, 2016.

[2] In this application for judicial review, the Applicant seeks the following relief:

1. An order referring the matter back to the Minister to redetermine CRA’s decision of July 19, 2017 to not grant the requested relief on its merits and that such redetermination be carried out by a person or persons previously uninvolved with the tax affairs of the Applicant, his wife, or Thomson 28 Co. Ltd.;
2. An order for the reasonable and proper costs of this Application as this Honourable Court in its discretion may award; and
3. Such further and other relief as counsel may advise and this Honourable Court may deem just.

[3] Pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 (the “Rules”), the Attorney General of Canada is the Respondent in this matter.

II. BACKGROUND

[4] The following facts are taken from the affidavits filed by the parties in this application for judicial review and from the Certified Tribunal Record (the “CTR”).

[5] The Applicant swore an affidavit on September 6, 2017, setting out the history of his dealings with the CRA for the 2002 and 2003 taxation years. Twenty-nine exhibits are attached to that affidavit. Those exhibits relate to various steps undertaken by the Applicant in pursuing relief under the Act.

[6] The Respondent filed the affidavit of Tracey MacGregor, a Taxpayer Relief Officer, Appeals Branch of the CRA. In her affidavit, sworn on October 11, 2017, Ms. MacGregor outlines the steps taken by the Applicant in seeking taxpayer relief and the response from the CRA, culminating in the decision of July 19, 2017.

[7] The Applicant’s tax liability for the 2002 and 2003 taxation years was assessed pursuant to subsection 152(7) of the Act because he did not initially file tax returns. He filed his tax returns for the 2002 and 2003 taxation years on March 16, 2012.

[8] The Applicant appealed the CRA’s assessments for the 1999, 2000 and 2001 taxation years to the Tax Court of Canada.

[9] In a decision dated November 20, 2009, Justice Miller, T.C.J., referred the matter back to the Minister of National Revenue for reconsideration and reassessment based on the reductions that he found should be applied to the taxation years of 1999, 2000 and 2001. He found that the credit card balance of \$47,576 from 2001 should be removed from personal expenditures in 2001 and added to 2002, which decreased the Applicant's personal expenditures for 2001 by \$7,296; see the decision in *Jewett v. Canada*, [2010] 4 C.T.C 2062.

[10] As a result of the Tax Court's decision, a "consequential reassessment" for the 2002 taxation year was conducted on April 8, 2010, pursuant to subsection 152(4.3) of the Act. By letter dated April 12, 2013, the CRA advised that it implemented Justice Miller's decision by increasing the Applicant's income for the 2002 taxation year by \$47,576 in accordance with that decision.

First Notice of Objection

[11] On May 2, 2008 the Applicant applied for an extension of time to file a Notice of Objection to the assessment for the 2002 and 2003 tax years.

[12] On June 25, 2009, the CRA confirmed that the assessments for the 2002 and 2003 taxation years were made in accordance with the Act following review of the Applicant's Notice of Objection. In his decision, the Team Leader found that this objection expired because the CRA was not provided with the requested information within the requested timeframe.

Second Notice of Objection

[13] On June 24, 2011, the Applicant submitted a second application for an extension of time to file a Notice of Objection for the tax years 1999 to 2003 and 2009.

[14] In a letter dated January 4, 2012, Ms. Lori Miller, Chief of Appeals of the Sudbury Tax Services Office of the CRA informed the Applicant that the application for extension was accepted, but that the CRA was unable to accept the objection relating to the assessment for the 2002 taxation year dated April 8, 2010 or the assessment for the 2003 taxation year dated February 1, 2008.

[15] Initially, the CRA denied the objection for 2002 and for 2003. Following exchange of correspondence on behalf of the Applicant with the CRA, the CRA accepted the validity of the objection for the 2002 taxation year. It found that the objection for the 2003 taxation year was out of time. It allowed in part the objection for the 2002 taxation year.

First Taxpayer Relief Request

[16] The Applicant filed a Request for Taxpayer relief on July 3, 2014 relative to the 2003 taxation year. This request was denied May 7, 2015. The details of this request are not relevant to the decision under review.

Second Taxpayer Relief Request

[17] The Applicant submitted a second Taxpayer Relief Request on May 25, 2016, seeking cancellation of interest that accrued from May 25, 2006 to May 25, 2016 for the 2002 and 2003 taxation years and a waiver of all future interest for the 2002 and 2003 taxation years. He claimed that the relief was warranted because there was an unreasonable delay on the part of the CRA in resolving his objection dated June 24, 2011, relying on paragraph 26(f) of the IC07-1 *Taxpayer Relief Provisions* (the “IC07-1”).

[18] On December 5, 2016 the CRA granted the Applicant’s second Taxpayer Relief Request in part. It cancelled the arrears interest for his 2002 taxation year for the period from June 24, 2011 to March 5, 2013, pursuant to 220(3.1) of the Act.

[19] The CRA declined relief from arrears interest for the period from January 1, 2006 to June 24, 2011 and March 5, 2013 to October 5, 2016 for the 2002 taxation year and from January 1, 2006 to present for the 2003 taxation year.

Second Level Review of the Taxpayer Relief Request

[20] On May 4, 2017 the Applicant submitted a request for reconsideration of the Taxpayer Relief decision dated December 5, 2016. He sought cancellation of the arrears interest assessed on the 2002 and 2003 tax years from May 25, 2006 to June 24, 2011 and March 6, 2013 to present. He also requested the waiver of all future interest on any balance respecting the 2002 and 2003 taxation years.

[21] The Applicant requested relief for the 2003 taxation year on the basis that the failure of his lawyer to file an appeal to the Tax Court constituted an “exceptional circumstance” warranting relief from third-party errors. He relied upon section 35 of the IC07-1.

[22] In a decision dated July 19, 2017, the Applicant’s request was granted in part. Ms. Beck, Team Leader of the Taxpayer Relief Centre of Expertise Appeals Branch, found that relief was warranted from May 2, 2008 to June 24, 2011 due to actions of the CRA. The decision granted relief from arrears interest assessed on the 2002 and 2003 taxation years for the period from May 2, 2008 to June 24, 2011.

[23] Ms. Beck found that there was possible miscommunication between the Applicant and/or his representative and the CRA in the period between the Applicant’s first objection dated May 2, 2008 and his second objection dated June 24, 2011. This decision is the subject of this application for judicial review.

III. SUBMISSIONS

Applicant’s Submissions

[24] The Applicant submits that the Decision, dated July 19, 2017 is unreasonable because it is based on a flawed recommendation made by Ms. Tracey MacGregor. He claims that Ms. MacGregor made a number of factual errors.

[25] The Applicant submits that the Decision is indefensible in respect of the facts because it fails to account for CRA delay. He argues that the CRA is responsible for delays from March 6, 2013 to May 5, 2014 regarding the 2002 taxation year and from June 24, 2011 to December 6, 2013 regarding the 2003 taxation year and that the Decision fails to account for these delays.

Respondent's Submissions

[26] The Respondent submits that the Decision is reasonable. He argues that the Team Leader reasonably found that the Applicant is not entitled to relief beyond that which the CRA has already given. He argues that this conclusion is reasonable based on the Applicant's failure to file income tax returns as and when required by the Act and the failure of the Applicant's lawyer to appeal the assessments to the Tax Court of Canada.

[27] The Respondent submits that the CRA is not responsible for delays in processing the Applicant's objection to the consequential assessment for the 2002 taxation year in the period between March 6, 2013 and May 5, 2014. He further argues that any delays with respect to processing the Applicant's objection to the 2003 taxation year assessment between June 24, 2011 and December 6, 2012 were a result of errors made by the Applicant's counsel, not the CRA.

[28] Finally, the Respondent submits that the Minister's discretion was properly exercised because the Minister considered the relevant factors and the Applicant's circumstances.

IV. DISCUSSION

[29] The first matter to be addressed is the applicable standard of review.

[30] According to the decision in *Telfer v. Canada Revenue Agency*, [2009] 4 C.T.C. 123, this genre of discretionary decision made under the Act is reviewable on the standard of reasonableness.

[31] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the standard of reasonableness requires that a decision be transparent, justifiable and intelligible, falling within a range of possible, acceptable outcomes that are defensible on the law and the facts.

[32] The Applicant's principal argument is that the decision is based on unreasonable factual findings. He complains about the findings made by Ms. MacGregor.

[33] Questions of fact are reviewable on the standard of reasonableness. The overall reasonableness of a decision is likewise reviewable on the standard of reasonableness.

[34] While ministerial guidelines are not the same as legislation, several paragraphs of IC07-1 are relevant, as follow:

¶ 9. A taxpayer can ask for relief in accordance with the provisions of the Act listed in this paragraph. After consideration of the relevant facts and circumstances, a delegated official of the CRA (see ¶ 17) will decide whether it is appropriate to:

...

(a) waive or cancel penalties and interest under subsection 220(3.1);

...

¶ 23. The Minister may grant relief from the application of penalty and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement at issue:

(a) extraordinary circumstances

(b) actions of the CRA

(c) inability to pay or financial hardship

¶ 26. Penalties and interest may also be waived or cancelled if the penalty and interest arose primarily because of the actions of the CRA, such as:

...

(f) undue delays in resolving an objection or an appeal, or in completing an audit.

[35] I now turn to the issue of whether Ms. MacGregor made any erroneous findings of fact and whether overall, the decision of the Team Leader is reasonable.

[36] I am not persuaded that Ms. MacGregor erred in making findings of fact about the Applicant's history of compliance with the Act. The Applicant was late in filing his tax returns for 2002 and 2003. This is a matter that lay within the control with the control of the Applicant.

[37] The assessment of delay falls within the mandate of the employees of the CRA.

[38] At paragraph 11 of her affidavit, Ms. MacGregor set out the factors she considered in making her recommendation to grant partial relief, as follows:

In coming to my recommendation for granting the applicant partial interest relief, I considered carefully the circumstances of the applicant, and concluded that the applicant was prevented from meeting his payment obligations due to some CRA delay, and in particular:

- on May 2, 2008, the applicant served his request for an extension of time to file objections to the Minister's reassessments for his 2002 and 2003 taxation years;
- on August 20, 2008, the applicant served his objections to the Minister's reassessments for his 2002 and 2003 taxation years;
- on February 18, 2009, CRA acknowledged receipt of the applicant's objections for his 2002 and 2003 taxation years;
- on or about October 26, 2009, CRA closed the file for the Applicant's objections for his 2002 and 2003 taxation years;
- in May/June 2010, CRA officers incorrectly advised the applicant, in writing and in a telephone call, that the applicant's objections for the 2002 and 2003 taxation years remained active and under review; and
- on June 24, 2011, the applicant served second objections for his 2002 and 2003 taxation years.

[39] The Applicant received partial relief for interest in respect of the 2002 taxation year, from June 24, 2011 to March 5, 2013.

[40] Pursuant to the second level review of his second request for relief, the Applicant received relief for interest for the 2002 and 2003 taxation years, from May 2, 2008 to June 24, 2011.

[41] The affidavit of Ms. MacGregor refers to the report prepared by Mr. John Asche, an officer with the Taxpayer Relief Centre of Expertise, Appeals Board at the Vancouver Tax Services Office. The report is an exhibit to the MacGregor affidavit.

[42] Ms. MacGregor also refers to the decision of Ms. Shelley O'Connor, a team leader with the Taxpayer Relief Centre of Expertise, Vancouver Tax Services Office. Ms. O'Connor made the decision upon the Applicant's first request for taxpayer relief. Her decision, dated December 5, 2016, is attached as an exhibit to the affidavit of Ms. MacGregor and granted partial relief.

[43] Ms. MacGregor, according to her affidavit, reviewed various letters and submissions filed by the Applicant seeking further relief. She identifies the documents in paragraph 9 of her affidavit. The materials that she considered include reassessments, filing history and correspondence.

[44] The principal complaints raised by the Applicant in the within application are unreasonable findings of fact by Ms. MacGregor and an unreasonable finding that delay was not caused by the CRA in responding to his requests.

[45] I am not persuaded that Ms. MacGregor made unreasonable findings of fact.

[46] In her report dated July 17, 2017, attached as an exhibit to her affidavit, Ms. MacGregor clearly described the materials she had consulted. She clearly set out the framework of her analysis. She clearly set out her recommendation, that relief be granted for the 2002 and 2003

taxation years for May 2, 2008 to June 24, 2011, on the basis of delay by the CRA. She recommended denying further relief, whether due to delay by the CRA or other circumstances.

[47] Ms. MacGregor gave reasons for her recommendation that no further relief be granted as follows:

I recommend no further relief as per the following:

Taxpayers are generally considered to be responsible for errors made by third parties acting on their behalf for income tax matters. A third party who receives a fee and gives incorrect information to their client, is usually regarded as being responsible to their client for any penalty and interest charges that the client has because of the party's action. However, there may be exceptional situations, where it may be appropriate to provide relief to taxpayers because of third-party errors. It may be appropriate to consider granting relief from penalties and interest, in whole or in part, where an extraordinary circumstance beyond the relief of a taxpayer's representative have [*sic*] prevented them from complying with an obligation or requirement under the "Income Tax Act". A review of this case did not demonstrate that your accountant was prevented from complying with his obligations due to circumstances beyond his control.

[48] Although the Applicant argues that there were CRA delays between March 6, 2013 and May 5, 2014 for the 2002 taxation year, and between June 24, 2011 and December 6, 2013 for the 2003 taxation years, Ms. MacGregor did not agree.

[49] Ms. MacGregor acknowledged delay on the part of the CRA for some periods of time. She did not agree that there was evidence of other delays, as alleged by the Applicant. She noted that delays occasioned by the actions of the Applicant's accountants are attributable to the Applicant and not to the CRA.

[50] In my opinion, Ms. MacGregor's factual findings are supported by the evidence before her. Her recommendation meets the requirements of justification, transparency and intelligibility in accordance with *Dunsmuir, supra*.

[51] In the result, I see no reviewable error in the manner in which the Applicant's request for relief was decided. There is no basis for judicial intervention and this application for judicial review will be dismissed.

[52] In the exercise of my discretion pursuant to the Rules, I make no Order as to costs.

JUDGMENT IN T-1238-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

In the exercise of my discretion pursuant to the *Federal Courts Rules*, SOR/98-106, I make no
Order as to costs.

“E. Heneghan”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1238-17

STYLE OF CAUSE: ROBERT JEWETT v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JULY 18, 2018

JUDGMENT AND REASONS: HENEGHAN J.

DATED: FEBRUARY 18, 2019

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