

Federal Court



Cour fédérale

Date: 20190508

Docket: T-1530-18

Citation: 2019 FC 629

Toronto, Ontario, May 8, 2019

PRESENT: Mr. Justice Campbell

BETWEEN:

QIN JIANG

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The present Application for judicial review concerns a decision of the Canada Revenue Agency [CRA] denying the Applicant's request for relief from non-resident and excess contribution taxes on her Tax-Free Savings Account [TFSA] contributions.

[2] On July 15, 2009, the Applicant opened a TFSA through CIBC. Between 2009 and 2016, she made contributions to this account. She was no longer a resident of Canada during this period.

[3] The *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] limits the amount that can be contributed to a TFSA. An excess contribution tax is a tax on contributions in excess of a taxpayer's contribution limit. Non-resident tax is a tax on a contribution that an individual makes while not a resident of Canada.

[4] On October 26, 2011, the CRA wrote to the Applicant to inform her that she may have to pay tax on contributions to her TFSA that she made while she was not a resident of Canada, as well as on the excess contributions to her TFSA. The letter provided her with three options for addressing this tax owing. The CRA sent similar letters for the 2010, 2011 and 2012 taxation years. The CRA sent all of these letters to the Canadian address that the Applicant used on her 2009 T1 return.

[5] Unfortunately, by 2011, the Applicant was no longer able to receive mail at this address. Therefore, she did not receive these letters. She only became aware of the excess tax issue after June 30, 2017 when she was informed by CIBC that her account was being held by the CRA.

[6] The Applicant made a request for relief from the non-resident and excess contribution tax by letters dated July 20, 2017, August 20, 2017 and September 2017. The CRA denied this request by letter dated February 2, 2018. The Applicant requested a second review. The CRA also denied this request by letter dated July 10, 2018. The second denial is the subject of the present judicial review application.

[7] Subsection 207.06(1) of the *ITA* gives the Minister a discretionary power to waive or cancel an individual's liability for TFSA contributions if:

(a) the individual establishes to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error; and

(b) one or more distributions are made without delay under a TFSA of which the individual is the holder, the total amount of which is not less than the total of

(i) the amount in respect of which the individual would otherwise be liable to pay the tax, and

(ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).

[8] The Applicant requested the relief for two primary reasons. First, she stated that she had received bad advice from a CIBC representative, who did not explain to her the residency requirements for the account. Second, she stated that although the CRA sent her notices about the excess contributions, she only became aware of the issue in June and July 2017. Once she became aware of the issue, she acted without delay to close the TFSA.

[9] In the decision under review, the CRA provided the following reasons for denying her request for relief:

In your letter, you stated that you were not notified about excess and non-resident contributions made in 2009 and that the first your [sic] were informed of excess and non-resident contributions was by your financial institution on June 30, 2017.

A review of your situation and our records show that the Canada Revenue Agency informed you about excess and non-resident contributions that occurred in 2009 by post in 2011. You were also sent notifications in 2012, 2013, 2014 and 2015 for the years 2010, 2011, 2012, 2013 and 2014. Our records show that you continued to make contributions in 2015 and 2016, and that you did not

remove the excess and non-resident contributions in a timely manner. We have to confirm that, after reviewing the documents you sent us and the information we have, no circumstances support cancellation of the tax on your excess TFSA contributions.

[10] The Applicant argues that the CRA erred in assuming that she had received the notifications that it sent her without proof. Further, she argues that the CRA did not take CIBC's error into consideration.

[11] In response, the Respondent argues that there is no obligation on the CRA to demonstrate that a taxpayer has received mail; it only needs to demonstrate that such mail was sent. The Federal Court of Appeal found in *Bowen v Minister of National Revenue*, [1991] FCJ No 1054, 1991 CarswellNat 520 at paragraph 8, that the fact that a taxpayer did not update their address with the CRA "cannot be laid at the feet of the Minister".

[12] Further, the Respondent argues that the internal policy manual in respect of waivers under subsection 207.06(1) of the *ITA* provides that reasonable error does not in and of itself include getting poor advice from financial institutions or misreading notices of the CRA. The Respondent relies on the principle that it is the taxpayer's onus to understand the law (*Kapil v Canada Revenue Agency*, 2011 FC 1373 at para 24).

[13] I accept the Respondent's arguments. In light of the existing case law and the internal policy manual, the CRA's decision not to waive the tax was reasonable.

[14] I wish to commend the Applicant for the capable presentation of her arguments at the hearing of the present judicial review. However, I am unable to grant this application for the reasons mentioned above.

JUDGMENT IN T-1530-18

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

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1530-18

STYLE OF CAUSE: QIN JIANG v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 6, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 8, 2019

APPEARANCES:

Qin Jiang FOR THE APPLICANT (SELF-REPRESENTED)

Cherylyn Dickson FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario