Federal Court Cour fédérale

Date: 20240905

Docket: T-850-23

Citation: 2024 FC 1390

Ottawa, Ontario, September 5, 2024

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

AFSANEH SAFFARI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Afsaneh Saffari [Applicant], who is self-represented, seeks judicial review of the March 24, 2023 decision [Decision] of a delegate of the Canada Revenue Agency [CRA] denying the Applicant's request for relief from the tax assessed on excess Tax Free Savings Account [TFSA] contributions for the 2021 tax year.

[2] After considering the submissions, the application for judicial review is dismissed. The Applicant has not satisfied her onus of establishing that the delegate erred in making the Decision.

II. Background

[3] In the 2021 taxation year, the Applicant had a contribution room limit of $75,520.66, but she directed her financial institution to transfer $293,251.04 from an investment account into her TFSA, resulting in an over-contribution of $217,730.38.

[4] On July 26, 2022, the CRA sent the Applicant a 2021 notice of assessment [NOA] informing her that she needed to pay $10,959.89 in tax, penalties and interest for the excess contributions in her TFSA in 2021. In December 2022, the Applicant also contributed $1,800 into her TFSA due to erroneously believing that she could contribute into her TFSA again since it was a new taxation year.

[5] On September 12, 2022, the Applicant wrote to the CRA to request a waiver of the tax, penalty, and interest on her TFSA excess contribution [First Request]. The Applicant explained that she was unaware of her contribution room limit of $75,520.66 when she forwarded all her stocks to her TFSA in 2021. The Applicant lost the stock value of her TFSA contribution, leaving only $81,000 in her TFSA. She attached her recent bank statements as proof of the declining value, as well as documents from her CRA online account showing her TFSA transaction summary, her annual contribution room, and her contribution room as of January 1, 2022.

[6] Around October 2022, a CRA representative informed the Applicant that she should withdraw the entire amount. On October 26, 2022, the Applicant withdrew the entire remaining value of the TFSA at that point, which was $147,033.

[7] On January 23, 2023, a CRA officer [First Reviewer] made a decision on the First Request. The First Reviewer explained that the requests for waiving tax on excess contributions may be granted if the tax arose because of a reasonable error and the individual acted right away to remove the excess contributions. The First Reviewer refused the First Request since the removal of the excess TFSA contributions did not occur. The First Reviewer also noted that investment losses are not considered a withdrawal.

[8] In January 2023, the Applicant requested a second review for reconsideration and removal of the tax charges [Second Request]. The Applicant explained that she was unaware of the TFSA limit when she transferred money to her TFSA from her investment account. The Applicant described that she immediately contacted the CRA upon receiving her NOA, and was informed that she would have to submit a written request, then made the corresponding First Request. She had called the CRA several times since and she spoke with a CRA representative around October 2022 who advised her to withdraw her TFSA funds in full to process the request. The Applicant attached a document dated October 26, 2022 showing a withdrawal and transfer from her TFSA to her investment account. She also noted that she has lost approximately $240,000 on the investment and transaction due to a decline in the market.

[9] In her affidavit, the Applicant states that she withdrew all available funds and closed the TFSA in March 2023 after speaking with a CRA supervisor who advised her to do so. The additional contribution room that becomes available in future years will reduce the remaining excess TFSA amount, but she will have to pay a 1% tax on the excess amount for approximately 10 years. The Applicant has asked the CRA to cancel the 1% tax applied to the excess contributions and to remove the negative TFSA contribution room because the tax arose due to a reasonable error and she had withdrawn all of the funds in the TFSA. The CRA denied the request as the Applicant had funds remaining in her account as of December 31, 2022, but these funds were a result of her lack of knowledge and poor advice from her bank.

III. Decision

[10] On March 24, 2023, a senior assessment processing and resource officer [Second Reviewer] rendered the Decision denying the Applicant's Second Request. The Second Reviewer explained that requests for waiving tax on excess contributions may be granted if the tax arose because of a reasonable error and the individual acted right away to remove the excess contributions. The Second Reviewer summarized the Applicant's submissions in her Second Request and noted that investment losses are not considered a withdrawal and not part of the TFSA contribution room. The Second Reviewer denied the Second Request as the removal of the excess contribution did not occur within a reasonable time frame. As of December 31, 2022, the Applicant had $1,768.65 remaining funds in her TFSA available for withdrawal.

IV. Issue and Standard of Review

[11] The sole issue for determination is whether the Decision is reasonable.

[12] The standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). This matter does not engage any of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (*Vavilov* at paras 16-17).

[13] A reasonableness review is a robust form of review that requires the Court to consider both the administrator's decision-making process and the outcome of the decision (*Vavilov* at paras 83, 87; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 58 [*Mason*]). A reviewing court must take a "reasons first" approach to assess whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justifiable in relation to the relevant factual and legal constraints (*Vavilov* at paras 15, 99; *Mason* at paras 59-61). The onus is on the Applicant to demonstrate the unreasonableness of the decision (*Vavilov* at para 100). A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at paras 85-86).

V. Relevant Provisions

[14] The *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*] provides that tax is payable on excess contributions to a TFSA:

> **Tax payable on excess TFSA amount**
>
> 207.02 If, at any time in a calendar month, an individual has an excess TFSA amount, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of the highest such amount in that month.

[15] The *ITA* also allows for the Minister to waive or cancel the tax payable:

> **Waiver of tax payable**
>
> 207.06 (1) If an individual would otherwise be liable to pay a tax under this Part because of section 207.02 or 207.03, the Minister may waive or cancel all or part of the liability 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).

VI. Analysis

A. *Applicant's Position*

(1) Reasonable Error

[16] The CRA may waive tax under subsection 207.06 when the excess contribution arises due to a reasonable error. The Court has provided guidance that a reasonable error does not include a misunderstanding or misreading of one's contribution room; receiving poor advice; misreading a notice provided by the CRA; or a taxpayer's negligence, ignorance, or mere carelessness (*Yew v Canada (Revenue Agency)*, 2022 FC 904 at para 42 [*Yew*]; *Gekas v Canada (Attorney General)*, 2019 FC 1031 at para 28 [*Gekas*]).

[17] The Applicant distinguishes this scenario from other case law. Similar to *Gekas* and unlike in *Yew*, the excess contributions were outside of the Applicant's control (*Gekas* at para 31; *Yew* at para 59). Her financial institution did not advise her properly when they followed the Applicant's instructions and they transferred more than what she requested. It is unreasonable not to assess fully the extent to which the excess contributions resulted from the mistakes of persons other than the applicant (*Gekas* at para 31).

[18] This matter is further distinguishable from *Yew* as the applicant there continued to make regular contributions after becoming aware of the excess contribution (at para 26). The Applicant only made one addition excess contribution in 2022 due to a misunderstanding regarding whether excess contributions carry over, as she believed excess contributions were only an issue for the 2021 taxation year.

[19] Unlike *Yew*, the Applicant also did not receive an education letter (at para 8). The Applicant learned of the excess contribution through the NOA in July 2022 but it was of little guidance as it only stated to withdraw all excess amounts and contact the CRA with any

questions. The Applicant attempted to follow this guidance by withdrawing the excess contribution but due to the decrease in the value of the stocks, she could only withdraw $146,218.47. She also contacted her bank and the CRA numerous times but was given misleading or contradictory information.

(2) Fundamental Gaps

[20] The Decision contains fundamental gaps. A CRA delegate must engage and explain in analysis of "the applicable legal framework, significant evidence, and submissions in the record that permits the reader to understand the delegate's rationale for the outcome of the case" (*Sangha v Canada (Attorney General)*, 2020 FC 712 at para 26 [*Sangha*]). The Second Reviewer only listed the remaining balance for the reason why the Applicant's request was denied and did not address the Applicant's arguments that the excess contributions were an innocent mistake and reasonable error. Similarly, the Second Reviewer did not address the negative contribution room of approximately $62,000 and that the Applicant cannot withdraw the remaining excess contribution as that value in stocks no longer exists.

[21] The Second Reviewer also failed to address the additional excess contribution in 2022. The Applicant only made one excess contribution in a new tax year due to her belief that she would be entitled to a contribution room of $6,500 in her TFSA. The CRA did not inform the Applicant in their communications that she could not make future contributions, as it was impossible for her to remedy the approximately negative $62,000 contribution room. The CRA also did not explain the adverse effects of future contributions.

B. *Respondent's Position*

(1) Reasonable Error

[22] The Second Reviewer reasonably applied the criteria set out in subsection 207.06(1) of the *ITA* in denying the Applicant relief, namely whether the tax arose because of reasonable error and the individual acted without delay to remove the excess contributions from their TFSA. The Second Reviewer addressed the submissions made by the Applicant concerning the reasons for over contribution and delay in removing the excess contribution.

[23] In considering the Applicant's submission that she was unaware of the excess contribution, the Second Reviewer concluded that it is the taxpayer's responsibility to ensure they keep accurate records to remain within their contribution room, as well as that any losses are not considered a withdrawal and do not form part of the contribution room. Submissions limited to one's general ignorance of the law cannot, by themselves, demonstrate that an error was reasonable (*Connolly v Canada (National Revenue)*, 2019 FCA 161 at para 69 [*Connolly*]). Reasonable errors are limited to situations where the excess contribution occurred for reasons outside the Applicant's control, such as bank errors, physical disasters, civil disruptions, a serious illness or accident, or distress (*Badesha v Canada (Attorney General)*, 2021 FC 215 at para 18 [*Badesha*]; *Gekas*; *Connolly* at para 30).

[24] Receiving poor advice from a financial institution or misreading notices of the CRA are not in and of themselves reasonable errors (*Jiang v Canada (Attorney General)*, 2019 FC 629 at para 12 [*Jiang*]). Similarly, innocence and lack of intent are not determinative of reasonableness

(*Dimovski v Canada (Revenue Agency)*, 2011 FC 721 at para 16). The case law makes it clear that it is the taxpayer's onus to understand the law (*Jiang* at para 12). The Court has rejected the argument that a reasonable error existed where the taxpayer did not know the bank had given the taxpayer the wrong advice (*Singh v Canada (Attorney General)*, 2022 FC 346 at para 34). The Court has only found that an error arising from miscommunications between the financial institution and taxpayer was reasonable when the error was beyond the taxpayer's control (*Gekas* at paras 5, 30). This matter is not analogous to *Gekas* as there is no evidence that the financial institution did not follow directions or that there was a banking error in some way.

(2) Without Delay

[25] Rather than addressing the Applicant's topic of the existence of fundamental gaps in the Decision, the Respondent submitted that the information provided by the Applicant reasonably led the Second Reviewer to determine that the excess contributions were not withdrawn from her TFSA within a reasonable timeframe. The CRA notified the Applicant of the excess contribution by the NOA on July 26, 2022, which was a valid method of notification as the CRA is not obligated to provide an education letter, or a warning letter as submitted by the Applicant. The NOA provided sufficient detail concerning the excess contribution as it indicated that there was an excess contribution, showed the tax payable, timing of the excess contribution, and stated that "[i]f there is currently an excess amount in your TFSA, you should withdraw it immediately to limit any future tax."

[26] The Applicant withdrew excess contributions on October 26, 2022, which was approximately three months after receiving the NOA, without a valid explanation for the delay.

The Decision noted that the Applicant was advised of the excess contribution when the NOA was sent on July 26, 2022 and the failure to withdraw until October 26, 2022 was outside a reasonable timeframe. This determination is consistent with relevant case law.

[27] The Applicant also made an additional excess contribution on December 29, 2022 after she was notified of the implications of excess contributions through the NOA. Relief procedures explicitly prevent relief from being granted where a taxpayer continued to make excess contributions after receiving relief (*Ruiz Rodriguez v Canada (Attorney General)*, 2022 FC 1617 at para 16). After making an error, a taxpayer should increase their vigilance and compliance (at para 16).

C. *Conclusion*

[28] The Decision was reasonable. As analyzed below, the Second Reviewer did not err on the two points raised by the Applicant.

(1) Fundamental Gaps

[29] The Applicant submits that the Second Reviewer failed to address two arguments and only lists the remaining balance for the reason why the Second Request was denied. The Second Reviewer summarized the Applicant's submissions in the Second Request, to which the Decision was in response. The Second Request focused on the Applicant's steps to remedy the excess contribution since receiving the NOA and the loss of value of her TFSA. The Second Request did not include submissions on innocent mistake or reasonable error leading to the excess

contributions but the First Request did. The Second Reviewer is presumed to have considered all evidence before her but was not required to respond to every argument, particularly if it were not central to the Second Request (*Vavilov* at para 128). There were also no submissions on the December 29, 2022 contribution before the Second Reviewer.

[30] Similarly, the Applicant submits that the Second Reviewer did not address the negative contribution room, as she cannot remedy the mistake further due to the loss of value of her TFSA. The Applicant did make submissions on this issue in the Second Request and the Second Reviewer acknowledged these submissions. However, the Second Reviewer did not deny the request because the Applicant had not rectified the excess contribution entirely without regard to the significant loss of value of the Applicant's TFSA. The Applicant's request was denied because she had $1,768.65 remaining in her TFSA as an excess contribution that she could have withdrawn. As a result, it was reasonable for the Second Reviewer to conclude that the Applicant had not withdrawn all of the excess contribution in a reasonable time frame and without delay.

(2) Reasonable Error

[31] Furthermore, the Applicant submits that this matter is analogous to *Gekas* where the excess contribution occurred due to miscommunications between the applicant and his financial institution and were outside of his control (at para 30). The Applicant submits that the excess contribution was due to the bank representative transferring a substantially more significant sum than was requested, which arose due to a misunderstanding and difficulty communicating.

[32] However, this argument was not before the Second Reviewer. In the Second Request, the Applicant reiterated the explanation from her First Request that she was unaware of her TFSA limit when she made the excess contribution. There was no evidence in the record before the Second Reviewer that the excess contribution was outside of the Applicant's control. This matter is distinguishable from *Gekas* and the Second Reviewer was not required to determine whether the excess contribution was outside the Applicant's control.

[33] The Second Reviewer did not make an explicit finding on whether the Applicant's excess contribution was a reasonable error. Instead, the Decision focuses on the second element required to grant relief, which is whether the Applicant withdrew the excess contribution without delay.

[34] Subsection 207.06(1) is a conjunctive test which enables a delegate of the Minister to grant relief from the tax payable on an excess contribution in a TFSA if the liability arose as a reasonable error and the taxpayer removes the excess amount without delay (*Badesha* at para 18). The Second Reviewer identified the correct test but focused on the second element of without delay. In my view, as the test for obtaining relief under subsection 207.06(1) is conjunctive and the Second Reviewer reasonably found that the Applicant did not meet the second element of without delay, it is not a fatal flaw that the Second Reviewer did not explicitly consider whether the tax liability arose because of a reasonable error (*Vavilov* at para 102).

VII. Conclusion

[35] For the reasons above, the application for judicial review is dismissed.

JUDGMENT in T-850-23

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed. The Decision is reasonable.

2. There is no order as to costs.

3. The style of cause is amended to reflect the Attorney General of Canada as the Respondent.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-850-23
STYLE OF CAUSE:	AFSANEH SAFFARI v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	APRIL 8, 2024
JUDGMENT AND REASONS:	FAVEL J.
DATED:	SEPTEMBER 5, 2024

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