Federal Court  Cour fédérale

Date: 20251223

Docket: T-961-24

Citation: 2025 FC 2020

Ottawa, Ontario, December 23, 2025

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

JWALANTKUMAR PATHAK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision by a delegate of the Minister of National Revenue [the Minister] dated March 27, 2024 [the Decision], denying the Applicant's request for relief under subsection 220(3.1) of the *Income Tax Act*, RSC, 1985, c 1 (5th Supp) [the ITA], against arrears interest and penalties imposed pursuant to subsection 163(2) of the ITA as a result of the Applicant's failure to report taxable capital gains.

[2] As explained in detail below, this application for judicial review is dismissed, because the Decision is reasonable.

II. **Background**

[3] The Applicant filed his income tax returns for the 2019 and 2020 taxation years within the appropriate timeframe. The Canada Revenue Agency [CRA] assessed these returns as filed, and the Applicant received refunds based on the income and deductions reported.

[4] Following minor reassessments of the returns for the 2019 and 2020 taxation years in February 2022, the CRA again reassessed the Applicant's taxes for those years on March 2, 2023, due to the Applicant having failed to report taxable capital gains in 2019 and 2020 arising from the disposition of shares [the Interim Reassessments]. The Interim Reassessments also imposed arrears interest and penalties pursuant to subsection 163(2) of the ITA (although apparently without identifying at the time the statutory basis for the imposition of the interest and penalties). The Interim Reassessments totalled: (a) $258,234.65 for 2019, composed of tax of $150,643.21, penalties of $75,321.60, and interest of $32,269.84; and (b) $118,533.91 for 2020, composed of tax of $66,122.03, penalties of $35,587.38, and interest of $11,711.75.

[5] The Applicant asserts that he had originally reported his income incorrectly because the financial institutions through which he invested failed to provide him with T5 information sheets for the 2019 and 2020 taxation years, as required by sections 205 and 209 of the *Income Tax Regulations,* CRC 1977, c 945 [the Regulations] and subsection 162(7.01) of the ITA, such that he was unable to report the gains on his investments when filing his tax returns. The Applicant asserts that, because his investments were on a downward trend, he had estimated when filing his returns that there would ultimately be very little or no tax owing.

[6] On March 2, 2023, CRA first assessed the Applicant's return for the 2021 taxation year and, again taking into account taxable capital gains that the Applicant had not reported, assessed the Applicant as owing $86,894.39 for 2021, composed of tax of $69,987.06, penalties of $11,229.93, and interest of $5677.40.

[7] On March 12, 2023, the Applicant submitted to the Minister a request, pursuant to subsection 220(3.1) of the ITA, to cancel or waive the penalties and interest assessed for the 2019 and 2020 taxation years. The Applicant asserted that he had not received the relevant T5s from his stockbroker before filing his returns, that he was a responsible citizen and devoted family man who had been facing financial difficulties due to unforeseen circumstances, and that he was unable to keep up with his tax payments due to a series of unfortunate events including a significant loss in the stock market creating a severe financial setback and the poor health of his father.

[8] On August 4, 2023, the Minister denied this first-level request for relief on the basis that the Applicant should have reported the capital gains he had earned and that it was his responsibility to contact his stockbroker for the information necessary to do so. The Minister also found that the Applicant had given other creditors priority over his tax debt, that he had continued to contribute to his RRSP, and that he been making more than the minimum monthly payments on his credit cards.

[9] In the meantime, the Applicant became aware in 2023 that he had access to his T5 data through the CRA and identified 80 tax slips related to the relevant investments. He then hired an accountant and refiled his tax returns, taking into account large capital losses that he had incurred. As a result, on June 22, 2023, CRA reassessed the Applicant for each of the 2019,

2020, and 2021 taxation years [the Final Reassessments], and the applicable taxes were substantially reduced (such that the total tax assessed for all three years was reduced from $286,752.30 to $26,080.51) and the interest was somewhat reduced. However, the penalties were not adjusted and the bulk of the interest remained applicable.

[10] On August 15, 2023, the Applicant submitted a second-level request for relief under subsection 220(3.1) of the ITA for the 2019 and 2020 taxation years and a request for relief for the 2021 taxation year (as well as for the 2022 taxation year that is not relevant to this judicial review). The Applicant asserted that the major capital losses he had incurred had impacted his well-being and job security and provided further details about his financial circumstances, including being laid off from his job for six months during the COVID-19 pandemic and bearing substantial debt. In addition to his financial situation, the Applicant emphasized that the penalties and interest he had been assessed were calculated based on the tax amounts for which he had earlier been assessed in the Interim Reassessments. The Applicant argued that it would be fair for the penalties and interest to align with the lesser tax amount (totalling $26,080) for which he had subsequently been reassessed in the Final Reassessments.

III. **Decision under Review**

[11] In a letter dated March 27, 2024 [the Decision Letter], the Minister denied the second-level review request for the Applicant's 2019 and 2020 taxation years.

[12] The Decision Letter included the following reasoning:

> You stated that you missed providing your capital gain income on your 2019 and 2020 tax returns because your stockbroker did not provide you with any physical documents. Although not having all documents needed to file may cause challenges, you had the option to reach out to your stockbroker to obtain this missing information.

There are no records that indicate you reaching out to your stockbroker, nor to the Canada Revenue Agency (CRA), to request the required information before filing. I have determined that you did not exercise reasonable care to make efforts to obtain your investment income amounts, in order to file accurately.

Also, you stated that you later had capital losses, which is unfortunate. However, it is your choice to invest in the stock market, at your own risk. The loss of value in investments and the lack of effort to resolve any missing information needed to file your return correctly were not completely out of your control. Relief is not warranted on the basis of these circumstances.

Additionally, you told us that you were laid off from your job for six months, from March 2020 to September 2020, during the Covid-19 pandemic. In consideration of the pandemic, the CRA did not charge interest from March 18, 2020 to September 30, 2020, which is the same period of time that you were affected. Therefore, relief cannot be granted under the reason of natural or man-made disasters, for the period of time that interest did not accrue.

Lastly, I have reviewed and taken into consideration the financial documents you submitted to us, the information on our systems, and our telephone conversation from February 15, 2024. I have determined that you earned sufficient income in both years, to be able to pay taxes owing when due and payable. You also had the financial ability to contribute to your Registered Retirement Savings Plan (RRSP) in both years under review. I can also see that you have chosen to prioritize other creditors over your tax debt, by making more than the monthly minimum payment amount required. According to your statements, you have paid the majority of your creditors in full, each month, rather than paying more towards your taxes owing. You also have funds in your RRSP account, available balances in your bank accounts, and assets. Financial hardship is not supported.

Therefore, the relief of the provincial and federal omissions penalties and arrears interest for the 2019 and 2020 tax years, is denied, on the basis of financial hardship/inability to pay, natural or man-made disasters and other circumstances.

Please note that your request for your tax returns to be re-evaluated, based on the updated information and calculations that you provided in your supporting documents for this review, may be addressed by contacting the CRA’s general enquiries line at 1-800-959-8281.

[13] The Minister created a new case for the 2021 and 2022 taxation years and treated the Applicant's request for relief in connection with those years as a first-level review request. In a letter dated March 24, 2024 (separate from the Decision Letter of the same date), the Minister denied that request, for reasons largely consistent with those in the Decision Letter.

[14] Further reasons for the Decision are found in a Taxpayer Relief Fact Sheet dated March 27, 2024 [the Fact Sheet], certain details of which will be canvassed later in these Reasons.

IV. **Law and Policy**

[15] Subsection 220(3.1) of the ITA provides the Minister the following discretion to waive or cancel any penalty or interest otherwise payable under the ITA:

Waiver of penalty or interest	**Renonciation aux pénalités et aux intérêts**
(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty	**(3.1)** Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte

or interest. de pareille annulation.

[16] In his recent decision in *Shirafkan v Canada (Attorney General),* 2025 FC 1351 [*Shirafkan*] at paragraph 20, Justice Michael Manson explains the operation of this section as follows:

> [20] Section 220(3.1) gives the Minister extraordinary discretion to waive or cancel all or part of any penalties or interest otherwise payable by a taxpayer (*Canada Revenue Agency v Telfer*, 2009 FCA 23 [*Telfer*] at para 34). The focus of subsection 220(3.1) of the Act is granting relief where there are extenuating circumstances beyond the control of the person seeking relief, including actions of the CRA and an inability to pay or financial hardship (*Chekosky v Canada (Revenue Agency)*, 2019 FC 841 at para 42 citing *Information Circular IC07-1 Taxpayer Relief Provisions* (the "Circular")). These circumstances should explain the Applicant's inability to comply with the Act (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 [*Stemijon*] at para 50).

[17] The CRA's *Income Tax Information Circular, No. IC07-1R1* [the Circular], a previous version of which was referenced above in *Shirafkan,* is also included in the record now before the Court as Exhibit A to the Affidavit of the Respondent's affiant, Joanne Rivera, dated July 25, 2024. Ms. Rivera was the author of the Fact Sheet and the Decision Letter (although the Decision Letter was signed by her superior, Neesha Brar). Ms. Rivera describes the Circular as representing administrative guidelines to inform the exercise of the Minister's discretion when addressing a taxpayer relief request under subsection 220(3.1) of the ITA.

[18] Relevant portions of the Circular include the following:

> 23. The minister of national revenue may grant relief from penalties and interest where the following types of situations exist and justify a taxpayer's inability to satisfy a tax obligation or requirement:
>
> a) extraordinary circumstances
>
> b) actions of the CRA
>
> c) inability to pay or financial hardship
>
> 24. The legislation does not identify specific situations for which the minister has the authority to waive or cancel penalties and interest. The guidelines in this part of the information circular are not binding in law. They do not give the minister's delegate the authority to deny a request and exclude it from proper consideration simply because the taxpayer's circumstances do not meet a guideline described in Part II of this information circular. The minister's delegate may also grant relief even if a taxpayer's circumstances do not fall within the situations stated in ¶ 23.

[19] Consistent with this explanation in the Circular, the particular situations identified in the above paragraphs thereof are not the only circumstances in which the discretion afforded by subsection 220(3.1) applies. That subsection incorporates a general concept of fairness, and a decision thereunder that has regard to only the three above-referenced situations would represent an improper fettering of discretion (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 17).

[20] Other statutory provisions and jurisprudence relevant to the parties' arguments surrounding the respective jurisdictions of this Court and the Tax Court of Canada [the Tax Court] in relation to taxation matters, and the CRA decision-making authorities that are the subject of these respective jurisdictions, will be canvassed later in these Reasons.

V. **Issues and Standard of Review**

[21] The Notice of Application filed by the Applicant on April 26, 2024, to initiate this application for judicial review, sought review of the Minister's decision to deny the Applicant's requested relief for each of the 2019, 2020, and 2021 taxation years. In relation to the 2021 year, the Respondent has taken the position that this application is premature in seeking judicial review, because the Minister had made only a first-level decision, and recourse to a second-level review remained available to the Applicant. However, at the beginning of the hearing of this application, counsel for both parties advised the Court that, as a consequence of learning the Respondent's position, the Applicant will pursue a second-level review and is no longer seeking relief from the Court in relation to the decision applicable to the 2021 taxation year. Counsel therefore confirmed, and the Court agrees, that the Respondent's prematurity argument is moot and need not be addressed.

[22] Counsel also explained that the CRA has accepted the Applicant's communications with CRA, in support of his request for subsection 220(3.1) relief, as objections for purposes of challenging the correctness of the CRA's assessments of the Applicant in relation to the 2019 and 2020 taxation year and, if necessary, appealing the assessments to the Tax Court. The Applicant had previously been advancing arguments to the effect that, in responding to his request for subsection 220(3.1) relief, the Minister was obliged to decide whether his request constituted a valid objection, consider granting an extension of time to make a valid objection, and/or forward the request to those within the CRA who were charged with considering objections to the correctness of an assessment. As such, the CRA's acceptance of the Applicant's communications with the CRA as objections has further reduced the number of issues to be

determined by the Court in this judicial review, including eliminating a procedural fairness argument that the Applicant had advanced.

[23] Although the Applicant still asserts a number of arguments in challenging the Decision, which I will address below, these remaining arguments all require the Court to assess whether the Decision is reasonable. As suggested by this articulation, the merits of the Decision are to be assessed on the reasonableness standard of review, as informed by *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paragraphs 16 to 17.

VI. **Analysis**

A. *Timing of the Decision*

[24] The Applicant refers the Court to *Shantakumar v Canada (Attorney General)*, 2018 FC 677, in which Justice Shirzad Ahmed allowed an application for judicial review of a subsection 220(3.1) decision on the basis that the Minister's review was selective and made without regard for some of the information before her (at para 21), having focused exclusively upon limited negative aspects of the Applicant's tax history (at para 22). In the course of that analysis, Justice Ahmed commented on the timing of the review, finding it extraordinary that three CRA employees were able to review the second-level report and agree with its conclusions on the same date, particularly taking into account that the review concerned 10 years of the Applicant's tax history (at para 20).

[25] The Applicant argues that the Minister was similarly rushed in the case at hand. The Applicant submits that, although the second-level request was received on August 15, 2023, it was not reviewed until February 15, 2024, and Ms. Rivera authored the Fact Sheet on March 19,

2024, just eight days before the March 27, 2024 Decision. He further submits that Ms. Rivera's superior, Ms. Brar, first reviewed the file on March 25, 2024, and issued the Decision Letter just two days later.

[26] I note that, at the hearing of this application, the parties advanced different positions as to which CRA representative made the Decision as the delegate of the Minister. The Applicant argues that it was Ms. Brar, while the Respondent argues that it was Ms. Rivera. However, it appears that little turns on this disagreement. An instrument submitted by the Respondent at the hearing (entitled *Income Tax Act - Authorization to exercise powers or perform duties of the Minister of National Revenue*, dated April 23, 2024) indicates that the positions held by both Ms. Rivera and Ms. Brar entitled them to exercise the Minister's authority under subsection 220(3.1) of the ITA. Moreover, regardless of whether the Fact Sheet is treated as a recommendation by Ms. Rivera (which contributed to a decision by Ms. Brar as reflected in the Decision Letter) or as an analysis supporting a decision by Ms. Rivera as reflected in the Decision Letter (which happened to be signed by Ms. Brar), it is clear that both documents inform an understanding of the reasons for the Decision.

[27] Furthermore, the Applicant's submissions do not assert that the Decision was made without the required authority. Rather, focusing on the involvement of both Ms. Rivera and Ms. Brar, the Applicant argues that the timeline demonstrates that neither devoted the time necessary to complete an effective review of the Applicant's request and supporting documentation, which the Applicant submits included at least 20 tabs of the Certified Tribunal Record [CTR].

[28] The portion of the CTR that the Applicant references is approximately 270 pages, Accepting for purposes of this analysis the dates upon which the Applicant relies and the shortest

window the Applicant identifies (two days for review by Ms. Brar), I find no merit to the Applicant's position that it is not plausible that a CRA officer could have reviewed this volume of material in two days.

[29] I also note the Applicant's acknowledgement in his written submissions that the rushed nature of the Decision does not in itself render the Decision unreasonable. Rather, I understand the Applicant's position to be that the timing provides context as to the circumstances in which the Decision was made, intended to support his other arguments as to the unreasonableness of the Decision. As explained above, I am not convinced that the timeline assists the Applicant. I will therefore turn to considering the Applicant's other arguments.

B. *Consideration of incorrect facts and irrelevant factors*

[30] The Applicant argues that the Minister considered irrelevant factors and misunderstood certain facts in arriving at the Decision.

[31] The Applicant notes that, as reflected in the Fact Sheet, the Decision was based in part on conclusions that the Applicant: (a) had knowingly allowed his balance payable to exist; (b) had not exercised reasonable care in conducting his affairs under the self-assessment system; and (c) had failed to act quickly to remedy any delay or omission.

[32] In challenging these conclusions, the Applicant refers to the fact that he did not receive copies of the necessary slips from his financial institutions. He emphasizes that there were 80 missing slips and argues that it was unreasonable to require that he estimate the information on this number of slips in a period during which the stock market was volatile. The Applicant also argues that the Minister ignored the fact that the Applicant made his tax filings with an intention

to amend at a later date, expecting that the eventual outcome would be approximately tax neutral. As explained below, I find that these arguments do not undermine the reasonableness of the Decision.

[33] As both the Fact Sheet and the Decision Letter expressly note the Applicant's submission that he did not receive the necessary documentation from his stockbroker, it is clear that the Minister did not overlook this information.

[34] While the Minister does not expressly reference the precise number of tax slips or the Applicant's intention to amend his tax filings, an administrative decision-maker is presumed to have considered all information placed before it, unless information that is not expressly referenced sufficiently contradicts the decision to support an inference that the information was overlooked (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* 1998 CanLII 8667 (FC) at para 17). It is clear from the Fact Sheet and the Decision Letter that the Minister reasoned that it was the Applicant's responsibility to obtain all necessary documents and information in order to accurately report his income and that the Applicant had failed to do so. The submissions upon which the Applicant relies do not contradict this reasoning in a manner that would support a conclusion that they were overlooked.

[35] I note that the Applicant also argues that this reasoning by the Minister is flawed, in that the relevant provisions of the Regulations and the ITA impose obligations upon third-party financial institutions to furnish taxpayers with the relevant documentation. The Applicant therefore submits that it is inconsistent with the regulatory scheme for the CRA to penalize the taxpayer, rather than the financial institutions, when those obligations are not met. The Applicant has cited no jurisprudential support for these arguments.

[36] The Respondent refers the Court to *Morrison v Canada (Attorney General)*, 2018 FC 141 [*Morrison*], in which the Court considered an application for judicial review of an unsuccessful subsection 220(3.1) request, in which the taxpayer blamed his accountant for failing to include certain T4 income in his tax return. The CRA denied the relief request, on the basis that it was the Applicant's responsibility to exercise care to ensure that all income was reported and to supply evidence that he was prevented from doing so. The Court found this decision to be reasonable (at paras 9-10).

[37] *Morrison* is not perfectly on point, as it does not engage with financial institutions' failure to provide documentation related to investment outcomes. However, that authority does support the broad principle that a taxpayer has the responsibility to ensure all income is reported and that relief can be reasonably denied if the taxpayer is unable to demonstrate that they were prevented from meeting that obligation.

[38] In the absence of authority to support the Applicant's arguments, they represent an assertion that the Minister should have arrived at different conclusions based on his submissions. Such an assertion is not a basis for the Court to interfere on judicial review.

[39] Returning to information that the Applicant asserts the Minister overlooked or misconstrued in concluding that he knowingly allowed a balance to exist and failed to quickly remedy any delay or omission, the Applicant notes the Fact Sheet's reference to notices of reassessment having been issued on February 4, 2022, March 2, 2023 and June 22, 2023, following which only minimal payments were made on the 2019 debt and no payments were made towards the 2020 debt. He submits that these conclusions are inaccurate, as the February 4, 2022 reassessment generated a minor balance that was paid promptly.

[40] However, these Fact Sheet references identify three reassessments, the latter two of which resulted in substantial balances, which I do not understand the Applicant to be suggesting that he has paid. Although these references could perhaps have been better worded to focus on the latter reassessments, any factual inaccuracy identified by the Applicant through this submission is not sufficiently material to affect the reasonableness of the Decision.

[41] The Applicant also argues that, in concluding that the applicable penalties and interest did not represent financial hardship to the Applicant that warranted discretionary relief, the Minister misleadingly considered his ability to pay based on his gross income, rather than net income after taking into account his substantial offsetting losses. However, it is clear from the Fact Sheet and the Decision Letter that the Minister was aware of these losses. Again, the Applicant's argument amounts to an assertion that Minister should have arrived at different conclusions based on his submissions, which is not a basis for the Court to interfere on judicial review. The Minister's reasoning is intelligible, and I find no basis to conclude that it was unreasonable for the Minister to analyse the Applicant's financial hardship based on his gross income, rather than net income calculated for tax purposes following deduction of capital losses.

C. *Failure to consider relevant facts and submissions*

[42] In support of his position that the Minister failed to consider relevant facts and submissions, the Applicant emphasizes that the Minister's discretion to grant relief is not limited to the three grounds identified in the Circular. Rather, subsection 220(3.1) was enacted so that the Minister could administer the income tax system fairly and reasonably by helping taxpayers to resolve issues that arise through no fault of their own *(Bozzer v Canada (National Revenue),*

2011 FCA 186 at paras 22-25). The Applicant asserts that, contrary to that broad discretion, the Minister considered only financial hardship as a ground for relief under subsection 220(3.1).

[43] In particular, the Applicant argues that the Minister failed to consider the following factual background that he submits demonstrates that he faced circumstances beyond his control:

A. the Applicant correctly predicted that his investments were on a downward trajectory, such that capital losses would offset much of his capital income, as reflected in the Final Reassessments issued in June 2023;

B. the COVID-19 pandemic adversely affected the Applicant's employment and investments; and

C. when the CRA imposed penalties upon the Applicant, it did not explain the reason for the penalties or how they had been calculated, such that the Applicant did not learn that the penalties were assessed in respect of false statements or omissions until he received the Minister's first-level relief decision in August 2023.

[44] Related to the Applicant's prediction of the effect of his capital losses, I note that at the hearing of this application both parties made submissions on whether the capital losses were incurred during the 2019 and 2020 taxation years for which penalties were assessed or rather were incurred subsequently and carried back to reduce the income for those years. The Respondent argued that the losses were not incurred until 2022 and that it was the effect of carrying back those losses to earlier years, at the time of the Final Reassessments in June 2023, that significantly reduced the 2019 and 2020 taxable income. The Respondent therefore

submitted that the Applicant did not accurately estimate his taxable income for those years at the time he filed his taxes and that the penalties were imposed accordingly.

[45] The Applicant argued in reply that (other than a reference, in a document described in the CTR as "CRA T1 Application System Income and Deductions Tax Year 2020", to the Applicant having an unspecified amount of capital losses from other years) the record currently before the Court does not identify when the capital losses were incurred.

[46] I note that the Fact Sheet refers to the Applicant having stated that he later had capital losses, not during the years that were the subject of the relief review. This reference appears to be consistent with the Respondent's submission, and the Applicant has not argued that Ms. Rivera erred factually in making that comment in the Fact Sheet. However, it is not necessary for the Court sitting in judicial review to make a finding as to the particular year or years in which the losses were incurred. Rather, the Court's role is to assess whether the Minister's treatment of this aspect of the Applicant's relief request was reasonable.

[47] The Fact Sheet and the Decision Letter indicate that the Decision took into account the fact that the Applicant had capital losses. However, in the absence of a basis to conclude that the ability to obtain the information necessary to accurately file his tax returns was out of the Applicant's control, the Minister concluded that relief was not warranted on the basis of those circumstances. This analysis is intelligible and withstands reasonableness review. Particularly in the absence of evidence and argument by the Applicant supporting a conclusion that the Fact Sheet inaccurately identified that he incurred capital losses subsequent to the years under review, his assertion that he was relatively accurate in estimating his tax obligations when he initially filed does not assist the Applicant in impugning the Decision.

[48] To the extent the Applicant is arguing that the Minister failed to take into account the effect of the pandemic upon his investments, the above analysis related to the Applicant's capital losses suffices to reject that argument. In relation to the impact of the pandemic upon the Applicant's employment, it is again clear from both the Facts Sheet and the Decision Letter that this was taken into account. The Decision observed that, in consideration of the pandemic, the CRA did not charge interest from March 18, 2022 to September 30, 2020, during the period that the Applicant's employment was affected. While the Applicant would prefer that the Minister had treated the effects of the pandemic differently, his argument does not raise a basis for the Court to interfere on judicial review.

[49] In relation to the Applicant's argument that, when the CRA imposed penalties upon the Applicant, it did not explain the reason for the penalties or how they have been calculated, I have difficulty understanding how this assertion could support his request for penalties and interest relief. At the hearing, the Applicant argued that, without an explanation from the CRA as to the basis for and calculation of the penalties, the Applicant was not in a position to object to the penalties through the process that could ultimately result in a hearing before the Tax Court. I could envision this argument assisting the Applicant if he required relief from an applicable limitation period in order to pursue such an appeal. However, given counsel's explanation at the hearing that the CRA has accepted that the Applicant has filed objections for that purpose, I understand that no such relief is required.

[50] More broadly, in relation to the Applicant's argument that the Minister considered only financial hardship as a ground for relief under subsection 220(3.1), it is clear from the Fact Sheet, the Decision Letter, and indeed from the foregoing analyses of the Applicant's arguments, that the Minister's analysis was not restricted to financial hardship.

D. *Failure to consider the unfairness of disproportionate penalties and interest*

[51] The Applicant's arguments in support of his request for discretionary relief included the submission that the assessments that he faces are unfair or unjust, because of what he asserts to be the disproportionality of the amount of the penalties and interest in comparison to the amount of his tax obligation [the Disproportionality Submission]. The Disproportionality Submission emphasizes that the penalties and interest were originally calculated based on the tax obligations for 2019 and 2020 as reflected in the Interim Reassessments of March 2023. Then, when the CRA performed the Final Reassessments in June 2023, the applicable taxes were substantially reduced and the interest was somewhat reduced, but the penalties were not adjusted and the bulk of the interest remained applicable.

[52] The Applicant argued in his written representations in this application for judicial review that the sheer disproportionality of the penalties and interest to his underlying tax obligation makes the Decision not to grant relief against them unreasonable. This argument, that the disproportionality itself makes the Decision unreasonable, has no merit, as the Decision represents an exercise by the Minister of a discretionary power, and the Applicant's argument suggests that the Minister was obliged to grant the requested relief based solely on the figures involved.

[53] However, at the hearing of this application, the Applicant advanced a different version of this argument, to the effect that the Decision is unreasonable because the Minister failed to consider the Disproportionality Submission. Indeed, at the hearing, both parties devoted considerable attention to this argument, including the Respondent advancing submissions on the respective jurisdictions of the Federal Court and the Tax Court in taxation matters.

[54] In relation to that jurisdictional point, the Respondent clarified at the hearing that, while its written representations raised concerns about this Court's jurisdiction to entertain a number of the Applicant's arguments, those concerns were directed principally at the manner in which the Applicant's written representations had framed his request for relief. In particular, the Applicant's written representations seek: (a) an order setting aside the Decision and substituting a decision removing penalties and reversing arrears interest; or (b) in the alternative, an order setting aside the Decision and referring the Final Reassessments back to the CRA for redetermination.

[55] The Respondent emphasizes that section 18.5 of the *Federal Courts Act*, RSC 1985, c F-7, ousts the jurisdiction of the Federal Court to judicially review matters that can be resolved by an appeal to the Tax Court (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*] at para 27; *Canada (National Revenue) v Sifto Canada Corp*, 2014 FCA 140 [*Sifto*] at para 21). As Justice Denis Gascon explained in *Martineau v Canada (Revenue Agency)*, 2018 FC 595 at paragraph 17, only the Tax Court may vacate a tax assessment. The Federal Court does not have the jurisdiction to address the validity of an assessment.

[56] In contrast, the Federal Court has jurisdiction to judicially review the exercise of discretionary powers by the Minister, including the discretion to grant relief from penalties and interest afforded subsection 220(3.1) of the ITA, because the Tax Court does not have jurisdiction to determine whether a discretionary power was properly exercised (*Sifto* at para 23).

[57] The parties appear to agree on these jurisdictional principles. The Applicant accepts that a challenge to the correctness of the imposition and calculation of the relevant penalties and

interest would be within the exclusive jurisdiction of the Tax Court. However, against the backdrop of these principles, the Respondent takes issue with the relief the Applicant seeks, as set out above. The Respondent argues that an order from this Court setting aside the Decision and substituting a decision removing penalties and reversing interest would amount to the Court determining the validity of the assessment that imposed the penalties and interest. The Respondent also takes issue with the Applicant's proposed alternative relief, in that it seeks an order from this Court referring the Final Reassessments back to the CRA for redetermination, while only the Tax Court has jurisdiction over the tax assessments.

[58] On the alternative relief, the Applicant explained at the hearing that his written representations' reference to sending the Final Reassessments back to the CRA for redetermination was a drafting error. Consistent with the manner in which his Notice of Application is drafted, the Applicant explained that the proposed alternative relief is to have the Decision (not the Final Reassessments) referred back to the CRA. I accept this explanation, which addresses the Respondent's concern with respect to the alternative relief, as this Court clearly has the jurisdiction to judicially review the discretionary Decision and, in the event of the Applicant's success, to order the Decision set aside and referred back to the CRA for redetermination.

[59] Indeed, such an order would be the usual relief to grant in the event of the Applicant's success. It would be more unusual to grant the principal order that the Applicant seeks, which would involve substituting the Court's decision for that of the Minister on the application for discretionary relief from penalties and interest (*Vavilov* at para 142). However, as explained in these Reasons, my decision is to dismiss the Applicant's application. I will therefore not need to consider the form of relief that it would be appropriate to impose as a result of a successful

application. Accordingly, I need not consider the application of the principle from *Vavilov* identified above or the Respondent's concern that the principal form of relief sought by the Applicant would be outside this Court's jurisdiction.

[60] I will nevertheless return shortly to the jurisdictional jurisprudence, as I agree with an additional submission by the Respondent (explained in further detail below) that the explanation therein of the dividing line not only between the jurisdictions of the Tax Court and the Federal Court, but also between the decision-making authorities within the CRA that feed into those jurisdictions, is relevant to adjudication of the parties' arguments surrounding the Disproportionality Submission.

[61] I accept that the Disproportionality Submission represented a significant argument advanced by the Applicant in support of his request for discretionary relief. Indeed, he supported his request with two letters, the first of which focused principally upon matters of financial hardship and the second of which focused upon the Disproportionality Submission. That (undated) second letter explained that the Applicant wished to elaborate not upon his financial situation but upon his request for recalculation of, or relief against, the penalties and interest as calculated by the CRA. As I read the letter, the Applicant asked the CRA, in the interest of fairness, to reduce the penalty and interest to correspond with the reduced tax amount imposed under the Final Reassessments.

[62] However, I agree with the Respondent's position that it is clear from the record before the Court that the Minister did not overlook this request. As recited earlier in these Reasons, the Decision Letter notes the Applicant's request for his tax returns to be re-evaluated, based on the updated information and calculations that he had provided. As a means of addressing that

request, the Decision Letter directed the Applicant to contact the CRA's general inquiries line at a phone number provided. Similarly, the Fact Sheet refers to a telephone conversation between Ms. Rivera and the Applicant on February 15, 2024, in which the Disproportionality Submission was discussed and Ms. Rivera advised the Applicant to contact the CRA's general inquiries line to explore a path to have his tax returns reassessed.

[63] While the record demonstrates that the Minister did not overlook the Disproportionality Submission, I appreciate that the Minister did not perform a substantive analysis as to whether it was unfair that the penalty and interest amounts were not proportionately reduced, from the figures imposed in the Initial Reassessments, when the tax amounts were reduced in the Final Reassessments. Rather, I interpret the Decision as demonstrating that the Minister referred the Applicant to the CRA's general inquiries line for reassessment of his returns based on a conclusion that the Disproportionality Submission sought relief that was appropriately addressed through a reassessment rather than under subsection 220(3.1) of the ITA.

[64] Conscious of the focus upon an administrative decision-maker's reasons in the conduct of judicial review (*Vavilov* at para 84), I note that the Decision does not expressly set out reasoning by the Minister leading to this conclusion. However, I agree with the Respondent's submission that it is implicit in this aspect of the Decision that the Minister was affording attention to the statutory and jurisprudential constraints applicable when exercising authority afforded by the ITA. As explained in *Vavilov*, reasonableness review of administrative decision-making must be concerned with relevant constraints upon the decision-maker, including those represented by the governing statutory scheme (at para 68).

[65] The Respondent emphasizes the distinction between the ability of a taxpayer to object to an assessment of a tax liability, which the Minister must perform correctly in accordance with the applicable legislation and without any exercise of discretion (and which can be appealed to the Tax Court), and the taxpayer's ability to seek an exercise of discretion by the Minister where a discretionary authority is afforded by applicable legislation (a decision on which can be judicially reviewed in the Federal Court). An assessment by the Minister and an exercise of discretion by the Minister are two different statutory roles that are qualitatively and practically distinct (*JP Morgan* at paras 22-24, 77-79; *Dow Chemical Canada ULC v Canada*, 2024 SCC 23 at paras 39, 64).

[66] In addition to these general principles, the Respondent advanced at the hearing submissions on the operation of subsection 163(2) of the ITA, pursuant to which the impugned penalties were imposed upon the Applicant as a result of his failure to report taxable capital gains. Subsection 163(2) sets out a formula for the calculation of a penalty for which a taxpayer is liable where the taxpayer has, knowingly or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of, a false statement or omission in a return filed in respect of a taxation year.

[67] The Applicant has asserted in this application that the Minister did not correctly assess the penalties that were imposed against him in respect of the 2019 and 2020 taxation years. As such, the details of the subsection 163(2) formula may be relevant to the Applicant's objection to the penalties that have been assessed against him for the 2019 and 2020 taxation years and, further to that objection, may in due course be examined by the Minister on reassessment (and/or by the Tax Court if the Applicant pursues an appeal to that Court) in considering whether the formula has been correctly applied to the Applicant's situation. The Minister (and/or the Tax

Court) may also be called upon, further to the Applicant's objection, to examine whether the mental element (knowingly or under circumstances amounting to gross negligence) and other circumstances necessary for the imposition of penalties under subsection 163(2) have been met.

[68] The requirement for such examination by the Minister, in the role of tax assessor in applying the provisions of the ITA, lends support to the conclusion that the Minister should not in effect be examining the same questions in the Minister's distinct discretionary role under subsection 163(2). It is difficult to characterize the Disproportionality Submission, which focuses on the amount of the penalties and the fairness or justice of their imposition, other than as disagreements with the calculation of the penalties and whether the Applicant deserves to be subjected thereto. Those disagreements engage the same considerations as do the formula and mental element and other circumstances set out in the legislation. Parliament has prescribed the manner of calculating applicable penalties and the circumstances in which a taxpayer should face those penalties.

[69] In examining the respective jurisdictions of the Federal Court and the Tax Court, the jurisprudence emphasizes the need to examine an application holistically to determine its essential character (*Sifto* at para 25). For instance, for the Federal Court to have jurisdiction over a matter requires an administrative law claim arising from the wrongful conduct of the CRA and not a collateral attack on the validity and correctness of an assessment (*Cybernius Medical Ltd v Canada (Attorney General)*, 2017 FC 226 at para 25). It follows that in fulfilling the two qualitatively and practically distinct statutory roles that are imposed by the ITA, delegates of the Minister should be similarly alert to such concerns.

[70] Of course, the Minister clearly has the authority under subsection 220(3.1) to consider whether circumstances exist that support a discretionary decision to reduce or waive penalties that have been imposed under subsection 163(2). The Minister exercised that discretion in considering various arguments advanced by the Applicant in his request for relief. However, the Minister's decision to decline to substantively adjudicate the Disproportionality Submission, in the context of a request for discretionary relief, is consistent with a recognition of the constraints represented by the two distinct statutory roles occupied by the Minister under the ITA.

[71] As previously noted, neither the Fact Sheet not the Decision Letter sets out an express analysis of the sort canvassed above in support of the decision to direct the Applicant to contact the CRA's general inquiries line. However, the reasons given by an administrative decision-maker must not be assessed against a standard of perfection, and judicial review cannot be divorced from the institutional context in which the administrative decision is made (*Vavilov* at para 91). Examining the Minster's treatment of the Disproportionality Submission in the context of the well-defined statutory and jurisprudential constraints of which the administrative decision-maker is presumed to be aware, I find the Decision intelligible and reasonable, such that this Court will not interfere on judicial review.

VII. **Costs**

[72] At the hearing of this application, counsel spoke to a costs process for the adjudication of costs of the application. The Applicant advised that, depending on the outcome of the application, he may wish to make submissions relevant to previous settlement discussions, the details of it would be inappropriate for the Court to hear prior to making a decision on the merits. As such, both parties agreed, and the Court concurred, that all submissions on costs would be

made in writing following release of the Court's Judgment on the merits of the application. My Judgment below reflects such a process, consistent with discussions with counsel at the hearing.

JUDGMENT IN T-961-24

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. The Court's decision on costs of this application is reserved, with costs to be adjudicated upon completion of the following process:
    a. no later than January 8, 2026, the Respondent shall serve and file written submissions on costs, limited to five pages in length plus any supporting material;
    b. within seven days of the date of service of the Respondent's submissions, the Applicant shall serve and file written submissions on costs, limited to five pages in length plus any supporting material; and
    c. within five days of the date of service of the Applicant's submissions, the Respondent may serve and file reply submissions, limited to three pages in length plus any supporting material.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-961-24
STYLE OF CAUSE:	JWALANTKUMAR PATHAK v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 13, 2025
JUDGMENT AND REASONS:	SOUTHCOTT J.
DATED:	DECEMBER 23, 2025

APPEARANCES:

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