

Federal Court



Cour fédérale

Date: 20131008

Docket: T-1304-11

Citation: 2013 FC 1015

Ottawa, Ontario, October 8, 2013

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

ALEX KOTEL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This order concerns an application for judicial review of a decision made by Canada Revenue Agency (CRA), Director of the Ottawa Tax Services Office, Janet de Kergommeaux, dated June 16, 2011, where she denied the Applicant further relief from interest and penalties pursuant to subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (ITA).

I. Facts

[2] Between 1999 and 2002, the Applicant earned income in the United States for 45 to 50 weeks per year. On advice from an accountant in the United States, he did not file tax returns in Canada for the 2000 and 2001 taxation years.

[3] On April 3, 2003, the Applicant was assessed late filing penalties for the 2000 tax year of \$9,655.03 and for the 2001 tax year of \$3,322.60.

[4] In that assessment, the Applicant was also reassessed for interest and tax arrears for the following years and in the following amounts :

- 1999- \$3,060.47;
- 2000- \$28,254.13;
- 2001- \$6,544.62; and
- 2002- \$350.42

[5] On June 2, 2003, the Applicant filed Notices of Objection to the reassessments for each of the years between 1999 and 2002.

[6] On January 22, 2008, the Applicant made a request to CRA for taxpayer relief for each of the years of 1999 to 2002, for the interest and arrears as well as the late filing penalties. The reasons supporting his request were financial hardship or inability to pay and CRA delay.

[7] The Appeals officer, Thomas Scott, recommended cancellation of the following arrears of interest for the 1999 to 2002 taxation years at issue. He determined November 17, 2004 as the effective date of the interest relief because that is when the Applicant provided substantially all of the requested information in order for his Notice of Objection to be reviewed:

- 1999 cancellation of interest accruing between November 17, 2004 to November 13, 2007;
- 2000 cancellation of interest accruing between November 17, 2004 to November 13, 2007;
- 2001 cancellation of arrears interest accruing between November 17, 2004 to November 13, 2007; and
- 2002 cancellation of arrears interest accruing between November 17, 2004 to February 1, 2008.

[8] The late filing penalties were not cancelled. The late filing penalties were for T1 Returns not filed within the legislated time period for the taxation years 2000 and 2001. As the penalties were related to the late filing of his 2002 and 2001 tax returns, CRA found that the penalties had nothing to do with CRA delay in reviewing the Applicant's Notices of Objection. Thus the CRA determined the Applicant was not entitled to relief on the penalties.

[9] The acting Chief of Appeals, Suzanne Dionne agreed with the recommendation to waive a portion of the interest. The Applicant was notified he was successful in obtaining partial taxpayer relief on February 4, 2008, when the CRA reduced the interest owed by the Applicant by \$38,156.75.

[10] Cathy Mitchell, Collections officer with the Taxpayer Services and Debt Management (TSDM) Taxpayer Relief Team, then reviewed the Applicant's request for relief on the basis of financial hardship. The Applicant completed the Financial Statement that was his household income and expenses and from that and his file Cathy Mitchell prepared a Fairness Request Summary of Facts Report. She recommended to Ms. J. Kingdon that no further relief for financial hardship be granted. On May 8, 2008, Ms. J. Kingdon, on behalf of the Assistant Director, wrote the Applicant and determined that no further relief be granted on the basis of financial hardship.

[11] The Applicant repaid the outstanding tax debt, interest and penalties of \$149,779.92 on June 23, 2008. Therefore no further interest or penalties are accruing.

[12] On December 4, 2008, the Applicant made another request for taxpayer relief for each of the years 1999 to 2002 on the basis of extraordinary circumstances, CRA error, CRA delay and financial hardship. The request included medical information concerning his February 2008 diagnosis with sinus cancer.

A. First Administrative Review

i. First Level Review

[13] The Peterborough Office assigned Jean Marie Hochu to review the December 4, 2008 request for extraordinary circumstances. The officer completed a Taxpayer Relief Report in which she denied the relief as the Applicant's diagnosis with cancer did not occur until February 2008 and

would not have affected the last taxation year in question, which was 2002. The recommendation was agreed with by the Director of the Peterborough Tax Services Office, Michael Eves.

[14] A letter dated March 3, 2009, regarding a First Level Review was sent to the Applicant whereby his request for taxpayer relief under extraordinary circumstances was denied. The letter went on to explain, however, that the Applicant's December 4, 2008 request for taxpayer relief was being forwarded for a second level review and re-examination for CRA error and delay, and financial hardship.

ii. Second Level Review

[15] Jason Andrus of the Peterborough Tax Services Office did an administrative review and recommended the Applicant's request for relief be denied on the financial hardship. Kathryn Van Vliet reviewed the decision on the basis of CRA delay, CRA error, and extraordinary circumstances and she recommended it be denied. She then prepared a Taxpayer Relief Report which included her assessment and Jason Andrus's and provided it to Michael Eves, Assistant Director of the Peterborough Tax Services Office. On March 27, 2009 he agreed with the recommendation and determined that that no further relief would be granted, and invited the Applicant to seek judicial review of the CRA's review of the Applicant's request for relief.

[16] On April 27, 2009, the Applicant made a Judicial Review (T-666-09) application of the March 27, 2009 decision by Michael Eves, and contested the remaining interest and penalties owed. Upon consent of the parties, Chief Justice (Lutfy CJ as he then was), allowed the application and

referred the matter back on March 4, 2010, to the CRA “for determination forthwith at the second level by persons not previously involved in the matter.”

B. Second Administrative Review

[17] Jennifer Henry of the Ottawa Office was assigned to do a second administrative review of the decision. In correspondence dated May 20, 2010, she requested further information from the Applicant based on his current circumstances to support his position that relief should be granted. She enclosed a blank Income and Expense Disclosure Statement with a letter that said to fill it out based on his family income and expenses. He was also told that the financial hardship would be reviewed separately by the TSDM Taxpayer Relief Team.

[18] On June 18, 2010, the Applicant provided the Income and Expense Disclosure Statement, various documents, and a response in support of his request for further Taxpayer relief. In his response, he expressed his displeasure with CRA collections officer, Ms. Mitchell, and “her asset stripping tone”, as well as other complaints about CRA's previous denials of the relief.

[19] Jennifer Henry reviewed the request for taxpayer relief on the basis of extraordinary circumstances, CRA error and delay as submitted by the Applicant. The financial hardship basis for relief was reviewed by Irene Chateauvert of TSDM Taxpayer Relief Team.

[20] Jennifer Henry and Irene Chateauvert both reviewed the Applicant's request in accordance with the Canada Revenue Agency, Information Circular, IC07-1, “Taxpayer Relief Provisions” (May 31, 2007) (Taxpayer Relief Provisions).

[21] The financial hardship material requested by Jennifer Henry and provided by the Applicant was turned over to Irene Chateauvert as it related to the financial hardship aspect of the request for relief.

[22] With regards to financial hardship, Irene Chateauvert reviewed the Applicant's CRA file, as well as the information provided by the Applicant concerning financial hardship. She completed a Taxpayer Relief Fact Sheet and recommended that further taxpayer relief be denied as:

- the outstanding debt had already been paid;
- the Applicant had on May 28, 2010 a net worth of \$295,851.58;
- the Applicant has a rental property that could generate additional monthly income.

[23] Jennifer Henry then did her assessment based on CRA error, administrative delay and extraordinary circumstances and completed a Taxpayer Relief Report. A full timeline regarding the Applicant is attached to the Affidavit of Jennifer Henry.

[24] Jennifer Henry summarized the Applicant's request and analyzed the information including the review and recommendation of Irene Chateauvert's financial assessment. She recommended no further relief because of the following:

- the taxpayer had already received taxpayer relief because of CRA delay by way of interest waived for the period. Thus the outstanding interest could not be attributed to CRA delay;
- the penalties' for late filing do not relate to CRA delay;

- the request on the basis of a CRA error is that he made an error in filing late which is not a CRA error;
- the diagnosis of sinus cancer was in 2008 and did not relate to the taxation years in question.

[25] The report and the documents relied on by both Jennifer Henry and Irene Chateauvert were provided to the Team Leader, Michelle McIver; Assistant Director of the Ottawa Tax Services Office, Annie Schwarz and then to Janet de Kergommeaux, the Director of the Ottawa Tax Services Office. She had the delegated authority to make the final decision. Janet de Kergommeaux agreed with the recommendation to deny further relief and she denied the taxpayers request in a letter dated June 26, 2011.

[26] The decision of Janet de Kergommeaux, Director of Ottawa Tax Services dated June 26, 2011, is the subject of the present application for judicial review.

II. Issue

[27] Is the decision of the Minister of National Revenue dated June 16, 2011, to deny the Applicant the penalty and interest relief he sought under subsection 220(3.1) of the ITA reasonable?

III. Standard of review

[28] The power afforded to the Minister under subsection 220(3.1) of the ITA to grant taxpayer relief is discretionary. The standard of review to be applied to the Minister's exercise of this discretion is reasonableness (*Canada (Revenue Agency) v Telfer*, 2009 FCA 23, at para 24). This

court should not interfere with this discretionary decision if it is reasonable (*Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47).

IV. Argument and Analysis

[29] The Applicant's submissions have been grouped under headings for greater clarity. Then the analysis of the decision was grouped to mirror the Applicant's headings.

A. *Applicant's Submissions*

i. Household Income

[30] To make the decision on the Applicant's request for relief, the CRA requested the Applicant's household financial statement. The Applicant submits that the financial hardship analysis should not have included his wife's income and instead, should only have looked at his income. The Applicant strenuously objects to CRA using household income as he submits the tax debt and financial hardship are his alone.

[31] The Applicant's position is that the CRA is wrong in using the full amount of assets as he really only owns half as he is married and his wife owns the other half so his net worth is incorrect. He submits if his wife's share of property is removed from the calculation, then he does not have a positive net worth and he has zero income because of his health. Consequently, he submits that using this calculation he would qualify for hardship.

ii. Date Used

[32] The Applicant submits that the date of November 17, 2004 used by the CRA in granting the initial interest relief is both random and wrong.

[33] He submits that March 17, 2003 is a date that can be justified as it is the date when he gave authority to the CRA to speak to his accountant. The Applicant submits he previously provided financial information in the MYOB (Mine Your Own Business software accounting package) format of a profit and loss statement, on March 17, 2003. CRA did not accept it for a T1 Return and he submits that he should not have been made to hire an accountant to provide it in a format specified by CRA. He says that this time period should be attributed to the CRA delay and thus the interest accrued between March 17, 2003 and March 17, 2004 should also be waived.

iii. Penalties for Late filing

[34] The Applicant worked the tax years of 1999 to 2002 in the United States and was there for approximately 45 to 50 weeks of the year. He sent money to his family to support his wife and three children still residing in Canada. The Applicant submits he followed his United States accountant's advice and filed his taxes in the United States and not in Canada. His argument is that the penalties should be waived as it was the accountant's error. The Applicant submitted that surely the penalty for the late filing should be waived when the totality of the circumstances are looked at.

[35] The Applicant's view is that once he was red flagged by the CRA for late filing that they started looking at every tax year of his and now hound and harass him as well as his wife and children with audits.

iv. Collections & Revenue Property

[36] The Applicant did submit a payment plan to the collections officer and she turned him down as she found he had assets that could be sold or mortgaged to pay the debt.

[37] He is angry that CRA did not care that he had to cash in his RRSP's to pay the assessment or really they did not care how he came up with the "\$160,000.00"[sic] and were ruthless. The Applicant in his Memorandum says that "Financial hardship was created by borrowing \$149,779.92 on June 25, 2008.....This mortgage has creating a long term debt in excess of 25Yrs to discharge."

[38] The documentation shows that the Applicant refinanced a rental property to pay the debt in full.

[39] The CRA collections agents garnished his property rents. This garnishment made the Applicant very unhappy because the garnishment documents disclosed his social insurance number (SIN) to his renters, of which many are on welfare. The Applicant is very unhappy about them having his SIN. He submitted that the officer saying he was a slum landlord as well as other comments amount to bad faith.

[40] The Applicant submitted that the CRA's determination that the revenue property was being under utilized and could earn more income is wrong. The Applicant says that the rental income of \$6,000.00 was for the year not the month.

[41] The Applicant took great offence at the collections officer saying he “claims 3 children in university yet nothing regarding same on I&E”. He says clearly his wife paid for the children to attend private school and now University as he has no income and he is not hiding that fact.

[42] He further submits that he made a payment on November 5, 2002 in the amount of \$6201.31 which has not been offset against his amount owing.

v. Medical Condition

[43] The Applicant submitted that his medical condition was not fully considered as it is quite obvious that he has had numerous serious surgeries. Though the actual diagnosis of cancer came in February 2008 (stated as mid April in the Respondent’s Record at page 66) at the Toronto General Hospital and Princess Margaret Hospital (University Health Network). His submission was that he had been complaining of symptoms before February 2008, starting in mid 2007 and that the hospital in Belleville, Ontario could not diagnosis it. The Applicant received radiation treatment and cranial surgery (December 5, 2008) and then again more extreme surgery in November 2012. The Applicant continues his treatment for the cancer.

[44] The Applicant confirmed at the hearing that he does not suffer mental illness or incapacity as a result of the brain surgery. Though he said it has affected his whole body and he now has a lethargic look on life.

[45] In initial documentation submitted by the Applicant dated December 4, 2008 (at page 35 of the Respondent's Record), he says his diagnosis of cancer makes his "financial outlook for 2009 to be even more dire".

[46] The Applicant in the document submitted June 18, 2010 says that his illness has "incapacitated me to such an extent that it affected my employability and income and now I am being discriminated by potential employer because of my age to gaining meaningful employment." He had submitted to CRA that since losing his job he has only been able to secure odd jobs with limited income and relies on his wife to support him.

vi. Independent Evaluation

[47] The Applicant submitted the CRA did not do an independent analysis of his complaint. Specifically he submits that where 11 people doing 4 independent reviews arrive at the same conclusion regarding the date, it amounts to evidence that the Applicant's submissions were not fully considered. The Applicant believes that once a conclusion is in the system the CRA just keeps doing the same thing with no independent analysis.

B. Respondent's Submissions

[48] The Respondent pointed out that a Taxpayer Relief Sheet was completed based on the information provided by the Applicant. This included:

- The Applicant had already paid the outstanding tax debt, interest and penalties;
- The Applicant has a net worth of \$295,851.58 as of May 28, 2010;

- The Applicant owns a rental property which appears to have the ability to generate additional monthly income.

[49] The Minister had previously granted relief due to CRA delay. The decision maker denied penalty relief because it determined the Applicant's submissions did not indicate any circumstances that prevented him from filing his 2000 and 2001 income tax returns and that incorrect advice from a United States accountant is not a CRA error.

[50] The Respondent submits that subsection 220(3.1) of the ITA grants broad relief and that the Minister exercised their power reasonably as they considered the Applicant's circumstances.

C. The Law

[51] Subsection 220(3.1) of the ITA (see Annex A of this decision) confers a discretion upon the Minister of National Revenue to waive or cancel all or any portion, of any penalty or interest otherwise payable under that Act by a taxpayer.

[52] A non-exhaustive list of factors that the CRA officer is to consider when assessing applications for tax relief are set out in the CRA, Taxpayer Relief Provisions.

[53] The situations where the Minister may grant relief from Penalty and Interest are found at paragraph 23 of the Provisions and include both (1) extraordinary circumstances, and (2) inability to pay or financial hardship.

[54] Details of what are “extraordinary circumstances” are defined at paragraph 25 “...they result from circumstances beyond a taxpayer’s control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time”. Examples of what amounts to extraordinary circumstances include but are not limited to

- natural or man-made disasters such as, flood or fire;
- civil disturbances or disruptions in services, such as a postal strike;
- a serious illness or accident; or
- serious emotional or mental distress, such as a death in the immediate family.

[55] Situations that amount to inability to pay and financial hardship are also described in the Taxpayer Relief Provisions. Specifically, the Minister may consider cancelling interest the following situation:

- When payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical help, transportation, or shelter, consideration may be given to cancelling all or part of the total accumulated interest.

[56] However, when considering requests to cancel penalties, in particular, the Provisions are clear that inability to pay or hardship alone is not sufficient, but requires the presence of an extraordinary circumstance as described above (Taxpayer Relief Provisions at paragraph 28). Thus to cancel a penalty for financial hardship requires an Applicant to demonstrate that the extraordinary circumstance existed and resulted in such extreme financial difficulty which left the Applicant with insufficient means to provide for their basic necessities outlined above.

[57] Where “extraordinary circumstances” exist to justify a consideration of fairness relief, then paragraph 33 of the Taxpayer Relief Provisions enumerates four factors the Minister will consider in making its decision:

- whether or not the taxpayer has a history of compliance with tax obligations;
- whether or not the taxpayer has knowingly allowed a balance to exist on which arrears interest has accrued;
- whether or not the taxpayer has exercised a reasonable amount of care and has not been negligent or careless in conducting their affairs under self-assessment system.
- whether or not the taxpayer has acted quickly to remedy any delay or omission

D. *Decision*

i. Household Income

[58] I find the decision maker reasonably considered the Applicant’s family income when making the discretionary decision to refuse tax liability relief. As required by the Taxpayer Relief Provisions, the decision maker looked at if the Applicant, after paying the debt, could provide the basic necessities as set out in paragraph 27(c) of those provisions. She determined, with his wife’s income, his rental property income and net worth that the Applicant would be in a position to support his basic necessities. I agree and consider the decision maker’s inclusion of household income amounts to a reasonable application of the Taxpayer Relief Provisions as described.

[59] The decision maker in her reasons said:

These are unfortunate events: however this is not considered an extraordinary circumstance under the Taxpayer Relief Provisions.

According to the financial information you provided to the CRA, your net worth remains positive and household income appears sufficient to support your basic needs.

[60] The submission that the Applicant lost his job and can only find odd jobs, was also addressed in the decision:

These are unfortunate events; however this is not considered an extraordinary circumstance under the Taxpayer Relief Provisions. According to the financial information you provided to the CRA, your net worth remains positive and household income appears sufficient to support your basic needs.”

[61] In her reasons the decision maker considered that the Applicant has three children attending University in Ontario and Quebec and found :

It is commendable that you would like to support your children in their educational endeavours; however, the costs of providing post-secondary education is not considered a basic necessity, and therefore is not considered in determining financial hardship for the purposes of the Taxpayer Relief Provisions.

[62] The decision maker clearly articulated in her reasons based on the Taxpayer Relief Provisions why she found the Applicant did not meet the criteria for relief under inability to pay or financial hardship.

ii. Date Used

[63] This was an argument that the Applicant raised only at the hearing and not specifically in his materials. Though not articulated as the wrong date before the decision maker, the Applicant submitted he had given the necessary information to the CRA, but that CRA was at fault for not accepting the information in the financial form he provided. Therefore the CRA delay started before November 17, 2004.

[64] I find the date of November 17, 2004 is not an arbitrary date that the CRA chose to grant the initial interest relief on. Rather, November 17, 2004 was the effective date of the interest relief because that is when the Applicant provided substantially all of the requested information in order for his notice of objection to be reviewed. The decision maker reviewed the Applicant's entire file and also used the date of November 17, 2004 to say that the cancellation of the interest that was already given was the correct amount due to CRA delay and that no more was warranted.

iii. Penalties for Late Filing

[65] In considering the factors within the Taxpayer Relief Provisions by which the fairness provisions operate, any errors attributable to third parties are not considered extraordinary circumstances (*Quastel v Canada Revenue Agency*, 2011 FC 143 at para 29). Thus the advice received from the United States accountant does not qualify as an extraordinary circumstance which would justify relief of his tax liability.

[66] The decision maker addressed the Applicant's complaint that he had to hire an accountant. Her reasoning was:

It is ultimately your responsibility and decision to determine whether you need to acquire the services of an accountant or lawyer. This does not fall within the Taxpayer Relief Provisions.

[67] In considering the factors within the Taxpayer Relief Provisions by which the fairness provisions operate, any errors attributable to third parties are not considered extraordinary circumstances (*Quastel v Canada Revenue Agency*, 2011 FC 143 at para 29). Thus the advice

received from the United States accountant does not qualify as an extraordinary circumstance which would justify relief of his tax liability.

[68] In order to qualify for taxpayer relief under the legislation, an extraordinary circumstance must be presented by the taxpayer to indicate that he was prevented from filing his tax returns. The decision maker's conclusion that based on the facts this did not occur is reasonable.

iv. Collections & Revenue Property

[69] The decision maker addressed the collection officer's refusal to accept his payment plan as follows:

...The payment plan that you presented to the Collections Officer in May 2008 was not accepted, as the plan you submitted proposed to only pay the tax liability of approximately \$87,000 and not the entire balance that was outstanding including interest and penalties. The amount you proposed to pay represented only 58% of the total balance that was outstanding, therefore it was not accepted. If you had presented a plan that would have covered the entire balance, this plan may have been accepted and the interest may have stopped accruing from the date that payments commenced, as long as payments were made on time and compliance with the ITA was maintained."

v. The Payment

[70] The decision maker explained in the decision that:

... a payment of \$6,201.31 November 5, 2002 and this payment was applied against the debt that was outstanding for the 1999 taxation year. When you initially filed your return for the 1999 taxation year, you received a refund and were later reassessed on December 4, 2000, resulting in an amount owing of \$5,290.25, including \$256.59 of arrears interest. This balance was requested to be paid several times over approximately two years until it was paid on November 5, 2002. The payment noted above was applied to this balance outstanding and was not absorbed as an interest payment.

[71] According to the Provisions, when making a request for tax payer relief under financial hardship, taxpayers have the burden of providing the CRA with a complete and accurate description of their circumstances. This includes providing “a meaningful payment arrangement that covers at least the tax and the penalty” (see Taxpayer Relief Provisions Guideline at paragraph 32(g)). The collections officer found that the Applicant had not submitted such a plan covering the full amount of interest and penalties owed. Where the Applicant has failed to provide this information required to the collections officer, it is not unreasonable of the decision maker to uphold the collection officer’s decision that was based on the information the Applicant provided. The decision maker did not give the negative comments any weight.

[72] The collections officer providing the Applicant’s SIN number to his tenants was not before the decision maker, and consequently is not at issue in this judicial review.

v. Medical Condition

[73] The Applicant has a very compelling medical story and has exhibited great courage in his fight to stay alive. However, the decision maker’s finding that the tax years in question were not affected by this medical condition since his condition arose after the fact is reasonable.

[74] When deciding the extraordinary circumstances the decision maker said, in her decision of June 16, 2011:

In regard to extraordinary circumstances, you submitted documentation to show that you were diagnosed with sinus cancer in April 2008 and that your treatment started shortly thereafter and is still ongoing. It is unfortunate that you are dealing with this illness; however, I regret to inform you that since your illness occurred after

al the tax returns in question had been filed; your illness did not prevent you from meeting your filing obligations.

...

Your diagnosis and treatment came about shortly after the Appeals reassessments in November 2007. After these reassessments Collections was in contact with you on a frequent basis in trying to arrange for collection of the balances outstanding. You presented a payment plan to the collections officer dated May 3, 2008. The final balance outstanding was paid in full on June 23, 2008. You had several medical appointments beginning in April 2008. It is understandable that you were stressed by your diagnosis; however, no record of your illness is mentioned until the taxpayer relief request dated December 4, 2008. This issue was also addressed previously in this letter under Extraordinary Circumstances.

[75] The Applicant's inability to earn income was considered by the decision maker and she determined that no further relief would be granted.

[76] While the decision given to the Applicant may seem harsh given his current condition, the role of a reviewing judge on judicial review is limited to determining whether the decision falls within the range of possible and acceptable outcomes (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, at para 59 (*Khosa*)). In this situation, I find the decision maker's application of the facts to the criteria for granting relief is reasonable when the timeline is considered.

vi. Independent Evaluation

[77] The fact that all of the decision makers came to the same conclusion does not mean (as the Applicant submits) that they are all wrong. In this instance, the decision maker requested from the Applicant updated household financial information that would support his request for relief. I do not see in the many decisions made at the various levels that the CRA officers did not look at the matter

with fresh eyes and make an independent review. Thus I find the Applicant has failed to establish that no independent review was provided and I find the decision maker was reasonable in the exercise of their discretion.

V. Conclusion

[78] The taxpayer had cancellation of the following arrears of interest for:

- The taxation years 1999 (Cancellation of interest for the period November 17, 2004 to November 13, 2007);
- Year 2000 (Cancellation of interest for the period November 17, 2004 to November 13, 2007);
- 2001 (Cancellation of arrears interest November 27, 2004 to November 13, 2007);
- 2002 (Cancellation of arrears interest assessed November 17, 2004 to February 1, 2008).

[79] This amounted to interest cancelled in the amount of \$39,886.55. The late filing penalties were for T1 Returns not filed within the legislated time period for the taxation years 2000, 2001 however remained.

[80] Though this may not have been the decision that I reached, but on judicial review, where the process and the outcome fit comfortably within the principles of justification, transparency and intelligibility, it is not open to me as a reviewing judge to substitute my own view of the preferred outcome (*Khosa*, above, at para 59).

[81] Here the decision maker followed a transparent process and the reasons are clear and detailed. While the Applicant may not agree with the decision maker, he has been given justification as to why the decision maker decided that way.

[82] Applying the reasonableness standard, I find that the decision amounts to a reasonable exercise of discretion. Consequently, I will dismiss this application.

[83] The facts of this case do not justify that costs should be awarded against the Applicant. There will be no costs awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No costs are awarded.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1304-11

STYLE OF CAUSE: Kotel v. AGC

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: June 18, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** Justice McVeigh

DATED: October 8, 2013

APPEARANCES:

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FOR THE APPLICANT
(ON HIS OWN BEHALF)

Ms. Vujnovic

FOR THE RESPONDENT

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