

Federal Court



Cour fédérale

Date: 20140129

Docket: T-817-13

Citation: 2014 FC 100

BETWEEN:

JOHN HIGGINS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

PHELAN J.

I. INTRODUCTION

[1] This is the judicial review of a decision by the Minister's Delegate allowing only partial relief from penalty and interest charged in relation to the 2001 and 2002 taxation years.

II. BACKGROUND

[2] In 2007 the Applicant was assessed for unreported income for the 2001 and 2002 taxation years. The unreported amounts resulted in the assessment of gross negligence penalties in the amount of \$17,101.

[3] In 2009 the Applicant pled guilty to wilfully evading payment of income taxes by failing to correctly report taxable income for the 2001 and 2002 taxation years. He was sentenced in provincial court to a fine and one year of probation.

[4] The Applicant applied for relief from penalties and arrears on the basis of financial hardship and that he had not intended to be grossly negligent in declaring his income for the 2001 and 2002 taxation years.

[5] A 1st level review denied relief. The Applicant filed what became a 2nd level review claiming mistreatment by Canada Revenue Agency [CRA] and personal hardship. A conclusion by CRA that the Applicant had been consistently late in filing his returns was ultimately corrected.

[6] The decision by the Delegate recommended partial relief of \$850 as compensation for correcting the late filing conclusion of a CRA official but otherwise denying the request for relief in the range of \$9,000.

[7] The decision was based on the following factors:

- there were no extraordinary circumstances beyond the Applicant's control related to his failure to report income for the 2001 and 2002 taxation years;
- the abuse of alcohol and prescription drugs from 1989 to 1993 occurred long before the under-reported tax years;
- the Applicant's guilty plea was an admission of a wilful evasion of income taxes;
- there was no mistreatment of the Applicant in respect of the 2001 and 2002 taxation years;
- the error of CRA with respect to alleged "late filing" was corrected and \$850 would compensate the Applicant for the costs of correcting CRA's error; and
- there was no evidence of financial hardship: the Applicant's assets exceeded his liabilities including tax liability; mortgage expenses were overstated; only a small amount of tax liability was paid from a signing bonus; RRSP funds were withdrawn but no amount went to the tax liability; and no information was filed regarding the income of the Applicant's wife and share of household expenses.

[8] The Delegate also considered that the Applicant had allowed a tax liability to exist upon which interest accrued and for which regular payments began only in 2013. The Delegate also considered the failure to accurately report income for 9 of the 13 years between 1991 and 2004.

[9] The Delegate does not appear to have factored into the decision the Applicant's conviction in 1996 for the tax evasion for his 1991 and 1992 tax returns.

[10] The issues that the Applicant appears to have raised are:

- Was there a breach of procedural fairness?
- Was the decision reasonable?

III. ANALYSIS

A. *Procedural Fairness/Natural Justice*

[11] The Applicant's complaint is that CRA took too long to address his 2nd level complaint. He has a litany of complaints about time taken to address his issues between 2010 and 2013.

[12] However, in the time frame at issue, 2011 was taken up with dealings with CRA regarding the Applicant's filing history for which some compensation was granted; 2012 was the period awaiting the Applicant's financial information; and in 2013 the decision was made.

[13] I can find no breach of procedural fairness. Most particularly, the Federal Court of Appeal in *Canada (Minister of Public Safety and Emergency Preparedness) v Prue*, 2012 FCA 108, 352 DLR (4th) 351, held that increased interest charges are not a breach of natural justice. The ratio of that decision governs the circumstances of this case.

B. *Reasonableness*

[14] The Federal Court of Appeal has held in *Telfer v Canada (Revenue Agency)*, 209 FCA 23, [2009] 4 CTC 123, that the Minister's decision is to be assessed on the reasonableness standard.

[15] I cannot find any basis whatsoever for finding that the Minister's decision was unreasonable. The decision addresses all the relevant factors and weighs them in a manner that exhibits

justification, transparency and intelligibility. It would be difficult, if not impossible, to justify granting relief to a taxpayer who had such a record of tax non-compliance and evasion where there was no evidence of significant financial hardship in meeting his tax obligations.

[16] The Applicant's claim that he has accepted responsibility for his past is undermined by his request to avoid the consequences of his past actions.

IV. CONCLUSION

[17] Therefore, this judicial review will be dismissed with costs.

[18] An order to this effect and amending the Respondent by deleting Canada Revenue Agency and substituting the Attorney General of Canada will issue.

"Michael L. Phelan"

Judge

Ottawa, Ontario
January 29, 2014

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-817-13

STYLE OF CAUSE: JOHN HIGGINS v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

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REASONS FOR JUDGMENT:
PHELAN J.

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