Federal Court  Cour fédérale

Date: 20150713

Docket: T-1045-14

Citation: 2015 FC 857

Ottawa, Ontario, July 13, 2015

PRESENT: The Honourable Mr. Justice Gascon

BETWEEN:

JITENDRA KUMAR SOOD

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In February 2014, the applicant Jitendra Kumar Sood accepted a proposal made by the Canada Revenue Agency offering to refund him a portion of a GST/HST new housing rebate that he claimed he had not yet received. This refund represented part of a provincial new housing rebate amount that Mr. Sood was seeking to obtain further to a contract concluded in June 2007 for the purchase of a new residence from a builder.

[2] Following Mr. Sood's acceptance, the Agency attempted to process and implement the settlement agreement but found that it could not. After further verification, the Agency determined that Mr. Sood had already received all tax rebates he was entitled to regarding the purchase of his new residence. Mr. Sood had signed the purchase contract for his new residence in June 2007, and took possession of the residence in June 2011; the Ontario new housing rebate he was claiming did not apply to such situations. The Agency thus reneged on the settlement proposal accepted by Mr. Sood because he was not eligible to benefit from the provincial new housing rebate.

[3] Mr. Sood contends that the Minister of National Revenue cannot resile from settlement agreements reached with taxpayers. He thus filed this application for judicial review pursuant to sections 18, 18.1 and 18.4 of the *Federal Courts Act*, RSC 1985 c F-7 to obtain an equitable remedy of specific performance against the Minister and to enforce the settlement agreement he accepted in February 2014. Mr. Sood also seeks other types of relief including a declaratory remedy that the Minister breached the February 2014 settlement agreement, a writ of mandamus requiring the Minister to reassess Mr. Sood's claim for the provincial new housing rebate, and various other alternative remedies seeking a reconsideration of his new housing rebate claim or damages from the Minister.

[4] The Minister responds that Mr. Sood's application is a disguised attempt to appeal the tax reassessment made by the Agency, denying Mr. Sood's claim for the provincial new housing rebate. The Minister submits that such a matter is beyond this Court's jurisdiction: the Tax Court of Canada has exclusive authority to consider disputes relating to the correctness of tax reassessments, and this Court cannot review any matter that can be appealed to the Tax Court.

Furthermore, as Mr. Sood was not entitled to any provincial new housing rebate based on the facts and the law, the Minister had no choice but to cancel the settlement agreement.

[5] For the reasons detailed hereafter, Mr. Sood's application for judicial review is dismissed as the Court concludes that it does not have jurisdiction to entertain what is in fact an appeal of a tax reassessment, that, in any event, the Agency was required to revoke the settlement agreement as Mr. Sood was not eligible for the provincial new housing rebate, and that there is no basis to grant any of the other remedial measures Mr. Sood is seeking.

II. Background

[6] On June 16, 2007, Mr. Sood signed a contract for the purchase of a new residence located in Toronto, Ontario. Four years later, on June 29, 2011, Mr. Sood took ownership of the residence.

[7] In his final closing statement of adjustments made in June 2011, the builder indicated that the total purchase price charged to Mr. Sood included a GST amount of $22,133.85, calculated at the GST rate of 6%. The builder claimed a GST rebate of $6,131.35, and Mr. Sood received a full credit for that GST rebate amount as part of the final closing statement.

[8] In May 2013, Mr. Sood completed a "GST/HST New Housing Rebate Application for Houses Purchased from a Builder" [the NHR Application] and submitted it to the Agency. In this application, he claimed a total rebate amount of $16,293.84. This amount included a provincial new housing rebate calculated by Mr. Sood at $10,505.12.

[9] In June 2013, Mr. Sood received a second tax rebate credit of $2,771.00 on the purchase of his new residence, referred to as a transitional rebate.

[10] The Agency initially disallowed Mr. Sood's NHR Application but, following an objection by Mr. Sood to the Agency's tax reassessment, the Agency sent to Mr. Sood a proposal letter on February 19, 2014. In that letter, the Agency offered to refund Mr. Sood an amount of $7,391.00; this amount represented the difference between Mr. Sood's claimed amount of $16,293.84 in his NHR Application and the two previously credited amounts of $6,131.35 and $2,771.00. The Agency indicated in the letter that it was making the proposal based on its records and the information provided. On February 26, 2014, Mr. Sood accepted the offer of the Agency.

[11] The Agency attempted to process the reassessment of Mr. Sood's new housing rebate application based on the accepted settlement proposal, but it was unable to do so. Following internal verifications, an appeals officer of the Agency determined that Mr. Sood had already been credited the correct amount of new housing rebates available to him for the purchase of his new residence and that he was not entitled to any further reimbursements. According to the Agency's verifications, Mr. Sood had correctly received the federal GST new housing rebate of $6,131.35 and the transitional rebate of $2,771.00 paid to him; however, no legal or factual grounds could support the provincial new housing rebate he was claiming.

[12] On March 18, 2014, the Agency informed Mr. Sood that he had no right to receive the provincial tax rebate since Mr. Sood had signed the purchase agreement for his new residence prior to June 18, 2009, before the Ontario new housing rebate became available. The Agency further indicated that its February 2014 proposal letter was therefore no longer applicable

because it was based upon incomplete information at the time. Mr. Sood disagreed and filed a notice of objection with the Agency.

[13] Mr. Sood and the Agency exchanged email correspondence and telephone calls until, by letter dated March 31, 2014, the Agency informed Mr. Sood that it had disallowed his objection to the tax reassessment. The Agency then told Mr. Sood that, if he disagreed with this decision, he could appeal to the Tax Court.

[14] Mr. Sood did not file an appeal to the Tax Court. Instead, he filed this application for judicial review before the Federal Court.

III. Analysis

A. *Does the Court have jurisdiction over this matter?*

[15] The first issue the Court has to determine is whether it has jurisdiction to hear Mr. Sood's application for judicial review. I agree with the Minister that the Court does not have jurisdiction to consider this matter as it falls within the exclusive powers and appellate jurisdiction of the Tax Court. Mr. Sood's application should be dismissed on this basis.

[16] Section 18.5 of the *Federal Courts Act* precludes judicial review by the Federal Court in respect of a decision or order made by various federal boards to the extent that a statutory right of appeal to one of the courts or bodies specifically identified in the section already exists. Among the courts listed is the Tax Court of Canada. Section 18.5 thus prevents the Federal Court from reviewing any matter that can be resolved by an appeal to the Tax Court (*Sifto Canada Corp v Canada (Minister of National Revenue)*, 2014 FCA 140 at para 21 [*Sifto FCA*]).

[17] Pursuant to subsection 12(1) of the *Tax Court of Canada Act*, RSC 1985 c T-2, the Tax Court has exclusive jurisdiction to consider all issues relating to the correctness of tax reassessments. Only the Tax Court can declare reassessments invalid if they are found to be incorrect. In *Roitman v Canada*, 2006 FCA 266 at para 20 [*Roitman*], the Federal Court of Appeal established the principle that the Federal Court has no jurisdiction to grant any relief sought on the basis of an "invalid reassessment of tax" unless the reassessment has first been overturned by the Tax Court; to allow the possibility of seeking a relief before the Federal Court in such a situation would be to permit a "collateral attack on the correctness of an assessment". The *Roitman* decision has been followed by a consistent line of cases, including *Canada (Minister of National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at para 93 [*JP Morgan*], where the Federal Court of Appeal recently repeated that the Federal Court has no authority to vary, set aside or vacate income tax assessments.

[18] The Minister contends that Mr. Sood's application for judicial review is a disguised attempt to challenge and appeal the tax reassessment made by the Minister following his application for the provincial new housing rebate; by doing so, Mr. Sood is trying to obtain a result otherwise unreachable in this Court. Mr. Sood, for his part, contends that he is not challenging the correctness of the reassessment and that the Federal Court can, on judicial review, consider matters alleging that the Agency illegally breached an agreement. Mr. Sood claims that his case differs from a challenge of the validity and correctness of a tax assessment.

[19] In support of his position, Mr. Sood relies on the recent decision issued in *Sifto Canada Corp. v Canada (Minister of National Revenue)*, 2013 FC 986 at para 17 [*Sifto*], aff'd 2014 FCA 140, where the Federal Court acknowledged that there is a narrow opening for judicial review of

decisions made by the Minister in the context of tax assessments. However, I conclude that this *Sifto* decision can be distinguished from the current case and that Mr. Sood's application does not fit in the limited window carved by the Court in *Sifto*.

[20] The *Sifto* case related to an appeal of a decision rendered by a prothonotary dismissing the Minister's motion to strike two judicial review applications filed by Sifto. In the applications, Sifto was claiming that the Minister had abused his discretion in issuing a tax reassessment in breach of a binding settlement agreement and in imposing penalties on Sifto. In the motion to strike, the Minister was arguing that Sifto's requests in fact amounted to a challenge of the correctness of a tax reassessment as opposed to a review of an abuse of discretion by the Minister; as such, the requests were thus matters falling within the exclusive jurisdiction of the Tax Court. At this preliminary stage of the proceedings, and in light of the stringent test to meet in order to strike judicial review applications, Justice Rennie concluded that there was sufficient doubt about the Minister's position to dismiss the motion to strike. The Federal Court of Appeal upheld the Federal Court's finding in *Sifto FCA*, as it agreed that a challenge of the Minister's exercise of discretion in imposing penalties could only be achieved by way of an application for judicial review. I pause to note that the Federal Court of Appeal did not consider the portion of the applications regarding the alleged breach of an agreement as it had been discontinued by Sifto and Sifto had appealed the reassessments to the Tax Court.

[21] I have three observations to make on this precedent. First, the *Sifto* decision was issued in a particular procedural context, namely a motion to strike where, to successfully dismiss it, it was sufficient to demonstrate that the judicial review applications were not bereft of any chances of success. In its decision, the Federal Court indeed left open the possibility for the Minister to

advance the jurisdictional argument again at the hearing on the merits. Second, the *Sifto* case dealt with the exercise of a ministerial discretion in imposing penalties, an issue distinct and separate from a question of tax liability within the exclusive jurisdiction of the Tax Court. Third, as the Federal Court indicated at para 21, in circumstances where determining the jurisdiction of the Court depends on the characterization of the allegations, the Court must review carefully the pleadings and materials before it in order "to determine the essential nature of the claim". The Court of Appeal echoed this by stating that the Court must read the application holistically to understand its essential character (*Sifto FCA* at para 25). In *Sifto*, Justice Rennie concluded that the claims could not be reduced to an indirect appeal of a tax reassessment.

[22] In the current case, the Court notes that two of the conclusions in the notice of application and in Mr. Sood's memorandum mention forms of relief requiring the Minister to reassess and reconsider the new housing rebate he claims. In terms of remedies, Mr. Sood is asking the Court not only to declare the Minister bound by the settlement agreement but also to send the matter back to the Agency for reassessment of the new housing rebate claimed by Mr. Sood, or damages in an amount equal to the new housing rebate claim denied in the Minister's tax reassessment. In light of the evidence on the record and the oral representations of the parties, I conclude that the essential nature and character of Mr. Sood's claim in this judicial review application is a collateral attack on the validity of the tax reassessment made by the Minister.

[23] In essence, Mr. Sood is in fact seeking to obtain the refund of a tax rebate for which the Agency has determined he is not eligible; his judicial review application amounts to an indirect means to vary the tax reassessment on the provincial new housing rebate he claimed, without appealing to the Tax Court. This is not an application this Court can entertain. Even though Mr.

Sood, through artful pleading, tried to frame his case as an application for judicial review, and despite the able efforts by Mr. Sood to portray it differently, I find that the application nonetheless boils down to a disguised appeal of the reassessment made by the Minister. This is precisely the sort of mischief that the Federal Court of Appeal cautioned against in *JP Morgan*, at para 49:

> Armed with sophisticated wordsmithing tools and cunning minds, skilful pleaders can make Tax Court matters sound like administrative law matters when they are nothing of the sort. When those pleaders illegitimately succeed, they frustrate Parliament's intention to have the Tax Court exclusively decide Tax Court matters.

[24] This lack of jurisdiction would be sufficient to dismiss Mr. Sood's judicial review application. In any event, I would also dismiss it on the basis that the Minister was entitled to resile from the February 2014 settlement proposal as there is no basis in the law and on the facts to support Mr. Sood's claim to the provincial new housing rebate.

B. *Was Mr. Sood entitled to the provincial new housing rebate and could the Agency revoke the settlement agreement?*

(1) Legal background

[25] It is true that tax disputes are settled every day by the Agency in Canada. However, going back to *Galway v Canada (Minister of National Revenue)*, [1974] 1 FC 600 (CA) [*Galway*], the case law has consistently established that the Agency cannot make "deals" with taxpayers if there is no factual or legal basis to do so. As recently confirmed by the Federal Court of Appeal in *CIBC World Markets Inc. v Canada*, 2012 FCA 3 [*CIBC*] and *JP Morgan*, the Agency cannot

conclude settlement agreements or implement a compromise with taxpayers, even if it was negotiated in good faith, if it is not defensible on the facts or on the law.

[26] There is no support for the general proposition that settlement agreements with the Minister should be upheld no matter whether they are actually based on facts or soundly anchored in law. On the contrary, the Minister has no choice but to issue an assessment when the facts and the law demonstrate a liability for tax (*JP Morgan* at paras 77-79; *CIBC* at paras 22, 24; *Harris v Canada*, [2000] 4 FC 37 (CA) at para 37; *Cohen v The Queen*, [1980] CTC 318 (FCA) [*Cohen*]). The Minister has no discretion to compromise a tax liability by issuing, pursuant to a settlement agreement, an assessment that is not supported by the facts and the law. The Minister's power to agree to a compromise based on the facts is limited by these principles established by *Galway* and the long line of jurisprudence following it.

[27] In his written and oral submissions, Mr. Sood referred to the Tax Court decision in *1390758 Ontario Corporation v The Queen*, 2010 TCC 572 (CanLII) at paras 35-37 [*1390758 Ontario*]. However, I find that it is distinguishable from the present matter and cannot be applied to the current situation. In *1390758 Ontario*, the Court had no reason to believe that the reassessments made by the Minister were not "justifiable on the facts and the law" (at para 40). The Court had rather found that the compromise agreed to by the Minister was a result that could be arrived at following a trial on the merits. The *1390758 Ontario* decision materially differed from the *Galway* or *Cohen* cases where, in each of them, the reassessments were found to be "not justifiable on the facts and the law". In both of these cases, either the full amount would have been included in the taxable income at issue or no amount would have form part of it; there was no middle ground to justify a compromise settlement. In other words, the case law

distinguishes between situations where it is an all or nothing proposition and one where the factual situation lends itself to some interpretation and room for negotiation. Only in the latter cases can the Crown or the Minister be considered to be bound by a compromise agreement regarding a tax reassessment.

[28] Similarly, the *Sifto* case dealt with an exercise of discretion by the Minister regarding the penalties assessed by the Agency. Conversely, when there is no discretion at play, the Minister and his employees have no choice but to apply the Canadian tax laws and are required to follow them; in such cases, the question is not whether they exercised their powers or discretion properly, but whether they "acted as the law governing them required them to act" (*Ludmer v Canada*, [1994] FCJ No 2007, (1994) 182 NR 125 (FCA) at para 43).

[29] Mr. Sood's claim for the provincial new housing rebate is not based in law or on the facts of this case. As the proposal agreement accepted in February 2014 was not defensible on the law or on the facts of this case, the Minister was not only entitled but had no choice but to resile from this agreement with Mr. Sood.

(2) The claim for a provincial new housing rebate is not based in law

[30] As far as the law is concerned, I agree with the Minister that Mr. Sood was simply not entitled to a provincial new housing rebate under section 256.21 of the *Excise Tax Act*, RSC 1985 c E-15 [the *ETA*].

[31] Mr. Sood claims that the Minister has not identified what would be contrary to law in providing access to the provincial rebate. I do not agree. The Agency has rather demonstrated that there is no legal basis to support Mr. Sood's claim for a provincial new housing rebate and

Mr. Sood has not identified any legal basis showing how he could be entitled to the rebate he is claiming.

[32] Under the *ETA*, taxes are imposed on sales of new homes. Section 254 of the *ETA* provides a rebate with respect to the tax paid on the purchase of a new home. Subsection 256.21(1) allows for a rebate on the provincial portion of the HST paid; this rebate applies only to homes that were subject to the HST and for which a purchaser has indeed paid a provincial portion of the HST.

[33] The Court notes that the Government of Ontario introduced a HST as of July 1, 2010 in the province. When it came into effect on July 1, 2010, the HST rate in Ontario was 13%, 5% representing the federal part and 8% the provincial part. New homes located in Ontario were therefore taxed at the HST rate of 13% starting on July 1, 2010; prior to that, they were simply taxed at the GST rate of 6%. Sections 123 and 256.21 of the *ETA* refer to the "harmonization date" for Ontario, set at July 1, 2010 as this is the date on which the HST was implemented in the province.

[34] Similarly, section 256.21 of the *ETA* containing the specific provisions referring to the provincial new housing rebate for Ontario came into force on July 1, 2010. All of this was explained to Mr. Sood in the Agency's letter of March 31, 2014.

[35] Furthermore, as explained in more detail in the Agency's information sheets referring to the provincial new housing rebate, the purchase date of a new residence affects the eligibility for the new housing rebate. This is not a situation where an exercise of a discretion by the Agency is

at play; it is rather a situation where the Agency simply has to determine if the law applies, and to apply it if it has to, as was the case in *JP Morgan* (at paras 22-23).

[36] The Agency's GI-077 information sheet entitled "Harmonized Sales Tax: Purchasers of New Housing in Ontario" describes when the provincial new housing rebate can be available. It shows that, considering the June 2007 date of purchase of his new residence by Mr. Sood and the June 2011 date on which he took possession of his home, he was not entitled to receive a provincial new housing rebate. The summary table in Appendix C of the GI-077 information sheet indicates that, for new houses purchased and sold after May 2, 2006 and before October 31, 2007, with ownership and possession transferred after July 1, 2010 – as is the case for Mr. Sood –, a GST new housing rebate and a 2008 transitional rebate are available, but no Ontario new housing rebate is.

[37] The GI-077 information sheet reflects the proposed tax changes announced in the 2009 Ontario Budget, in Information Notice No. 2, *Helping Homebuyers and the Housing Industry with an Enhanced New Housing Rebate, A New Rental Housing Rebate and Transitional Rules* released by the Government of Ontario on June 18, 2009, and in Information Notice No. 4, *Additional Information for Homebuyers and the Housing Industry under Ontario HST* released by the Government of Ontario on November 19, 2009.

[38] I therefore conclude that there is no legal basis to support Mr. Sood's claim to a provincial new housing rebate and a settlement compromise that could be legally accepted by the Minister in that respect.

(3) The claim for a provincial new housing rebate is not supported by the facts

[39] If the Minister maintained the proposal agreement accepted by Mr. Sood, it would not only be contrary to law, but it would also not be supported by the facts.

[40] The evidence on the record shows that Mr. Sood did not pay the HST for which he was claiming a provincial new housing rebate and which forms the basis of the February 2014 proposal agreement.

[41] In his NHR Application, Mr. Sood claimed a provincial new housing rebate amount of $10,505.12. According to the application form and to the calculations prescribed for the rebate, this amount was based on a "provincial part of the HST" paid on the house, which Mr. Sood reported as being the addition of $22,133.85 and $627.24. These two amounts originated from the builder's final closing statement of adjustments attached to Mr. Sood's NHR Application; however, in that final closing statement, these two figures were respectively reported as "GST" on the sale price and "GST calculated at 6.00%" on upgrades ordered. There was no reference to any HST amount covered by either of those two tax figures.

[42] Conversely, when the HST applied, the builder's final closing statement referred to "HST calculated at 13.00%"; it did for items such as "Electronic Registration Fee", "Status Certificate" or "Water, Gas and Hydro Connections", for which the builder indeed credited Mr. Sood in the statement.

[43] There is therefore no indication on the record nor evidentiary support showing that there was a total "HST paid on the house" in the amounts of $22,133.85 and $627.24 as indicated by Mr. Sood in his NHR Application. The evidence rather points to those two amounts referring strictly to the GST paid on the house. The claim for the Ontario new housing rebate amount of

$10,505.12 is therefore not supported by the facts on the record, a fact that the Agency conveyed to Mr. Sood by telephone in March 2014.

[44] Since no provincial tax was paid on the new house, there can be no rebate refunded to Mr. Sood. Stated differently, there cannot be a tax rebate if there is no tax to be rebated.

[45] The proposal had been made to Mr. Sood based on the factual information available to the Agency officer in February 2014. It was later discovered that the Minister had made an error because the record was incomplete and the proposed reassessment had not yet been processed in accordance with the procedure at the Agency. The evidence indicates that the Agency was not able to give effect to the proposal agreement because no legal or factual basis existed for the provincial new housing rebate claimed by Mr. Sood.

[46] Mr. Sood contends that the Agency did not properly exercise its discretion and argues that the officer who actually sent the proposal letter was acting under the dictation of the other officer who reviewed the claim when the Agency was not able to process it. Mr. Sood also contends that the officer had all the information he needed when he negotiated and proposed the settlement and that he was, or should have been, deemed to have knowledge of the information. I see no basis for these arguments: there was no exercise of discretion at play in this case and the Agency had a legal obligation, when it found out that the settlement proposal could not be supported by the law and on the facts, to revoke the proposed agreement.

[47] For these reasons, I conclude that Mr. Sood's claim for a provincial new housing rebate amount is not supported by the law or by the facts on the record and that, in those circumstances, the Minister was required to resile from the accepted proposal agreement.

C. *There is no basis to grant the other remedies claimed by Mr. Sood*

[48] Mr. Sood describes this judicial review application as one "to enforce a settlement agreement made by the Minister of National Revenue". In addition to seeking relief in the form of a declaration that the Minister be bound by the February 2014 settlement agreement, Mr. Sood also requests a writ of mandamus forcing the Minister to reassess the new housing rebate that he claims and, in the alternative, a writ of certiorari requiring the Minister to reconsider the new housing rebate, an order for damages in an amount equal to his claim, or a direction from the Court to treat this application as an action. There is no basis to grant any of these reliefs.

[49] A mandamus is an extraordinary remedy. The basic principal factors for the issuance of a writ of mandamus are well settled and have been outlined in *Apotex Inc v Canada (Attorney General)*, [1994] 1 FC 742 at para 55, aff'd [1994] 3 SCR 110. These conditions are cumulative and they all need to be satisfied before this Court can consider issuing a writ of mandamus (*Rocky Mountain Ecosystem Coalition v Canada (National Energy Board)* (1999), 174 FTR 17 (FCTD) at para 16). These conditions include the existence of a public legal duty to act, a clear right of the applicant to the performance of that duty, and the absence of any other adequate remedy.

[50] These conditions are not met by Mr. Sood. There is no public legal duty on the part of the Agency to accept a settlement agreement or to pay Mr. Sood a tax rebate amount when it is not mandated by statute or by the facts. On the contrary, as discussed above, the Minister is obligated to assess the amount of tax payable on the basis of the facts and in accordance with the law and cannot implement a compromise settlement divorced from such facts and law (*Galway*, *1390758 Ontario, CIBC*). In addition, Mr. Sood has an alternative remedy available, in the form

of an appeal to the Tax Court to challenge the tax reassessment by the Minister. This suffices to dismiss the request for the issuance of a mandamus in this case.

[51] Similarly, the request for certiorari amounts to a request to set aside and reconsider the new housing rebate claim made by Mr. Sood, and to an indirect appeal of the tax reassessment made by the Minister in that respect. As they are remedies of last resort, this Court cannot entertain applications for judicial reviews in the face of adequate, effective recourse elsewhere (*Harelkin v University of Regina*, [1979] 2 SCR 561; *JP Morgan* at paras 84-85).

[52] Nor is there any reason to award damages under section 18.1 of the *Federal Courts Act* in the current situation. Mr. Sood is seeking damages equal to the amount he is claiming in his NHR Application. Once again, the invalidity of the tax reassessment made by the Minister is at the core of this requested relief and Mr. Sood cannot obtain damages unless he demonstrates this invalidity. This is something on which the Tax Court has exclusive jurisdiction and the Federal Court has no jurisdiction to award damages based on an incorrect tax reassessment until the Tax Court has overturned and revised such reassessment.

[53] Finally, subsection 18.4(2) of the *Federal Courts Act* gives the Court the authority to turn an application for judicial review into an action for breach of contract. However, this avenue of redress is discretionary. In *Meggeson v Canada (Attorney General)*, 2012 FCA 175 at paras 31-38, the Court specified that, though considerations which may lead to the exercise of this discretion are not limited, it has been done when, for example, an application does not provide appropriate procedural safeguards where declaratory relief is sought or when the facts underlying the application cannot be properly determined through affidavit evidence. In essence, this discretion is exercised where proceeding by an action is "necessary to alleviate the inadequacies

of the relief available on judicial review" (at para 33), and "to promote and facilitate access to justice" (at para 37).

[54] This case is not a situation which calls for the exercise of this discretion, and Mr. Sood has not referred the Court to precedents supporting his position on this front or to any basis on which the Court could be justified to exercise its discretion in that respect. Furthermore, the established jurisprudence repeatedly states that an applicant cannot seek a relief before this Court on the basis of an invalid reassessment of tax unless such reassessment has been overturned by the Tax Court. As Mr. Sood's application is an indirect challenge of the Minister's tax reassessment and refusal of his new housing rebate claim, the jurisdiction falls under the Tax Court (*Newcombe v Canada*, 2013 FC 955). There is no valid cause of action against the Minister potentially supporting a claim for damages equal to the amount of the new housing rebate denied by the Minister, and I thus decline to direct that Mr. Sood's application be treated as an action.

IV. Conclusion

[55] Mr. Sood's application for judicial review is dismissed as the Court concludes that it does not have jurisdiction to entertain what is in fact an appeal of a tax reassessment, that the Agency was required to revoke the settlement agreement since no legal or factual basis supports Mr. Sood's claim to the provincial new housing rebate, and that there is no basis to grant any of the other remedial measures Mr. Sood is seeking.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed, with costs.

"Denis Gascon"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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