Federal Court  Cour fédérale

Date: 20170601

Docket: T-997-16

Citation: 2017 FC 538

Ottawa, Ontario, June 1, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ROSS MATTHEW

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The is an application for judicial review of a decision dated June 1, 2016, of the Assistant Commissioner of the Legislative Policy and Regulatory Affairs Branch of Canada Revenue Agency [CRA], denying Mr. Matthew's request for remission of his outstanding tax debt.

[2] The application named "Minister of National Revenue/Canada Revenue Agency" as the Respondent; however, pursuant to Rule 303 of the *Federal Courts Rules*, SOR/98-106, the

Attorney General of Canada is the proper Respondent, and an Order will be issued amending the style of cause accordingly.

[3] Mr. Matthew filed for bankruptcy in June 1990, at which time his total tax debt was $210,693. In June 2008, his trustee in bankruptcy was discharged; however, Mr. Matthew was not. As of June 17, 2008, his tax debt for the pre-1991 taxation years was $130,555. While he has not been discharged from his legal obligation to pay his pre-bankruptcy debt, CRA is prevented from taking measures to collect on this debt because of the ten-year limitation bar under s 222(4) of the *Income Tax Act*, RSC 1985, c 1. As at April 7, 2016, Mr. Matthew's tax debt for the years 1995, 1996 and 1998, including interest, stood at $282,183. CRA is not taking action to collect this amount other than withholding credits and refunds as they may become payable.

[4] On May 20, 2014, Mr. Matthew made a request for remission. At that time, he was 74 years old and widowed. His request is a one page letter with no attachments, providing details of his circumstances. In his request, he makes several assertions to the effect that CRA is responsible for the debt he now faces. He states that (i) CRA caused him to file for bankruptcy in June 1990; (ii) his trustee in bankruptcy obtained his RRSPs and pensions and, as he understood, also paid substantial income tax to CRA (although he is unsure whether the trustee in bankruptcy actually paid any money to the CRA); (iii) the legal fees he and his wife paid were significant (in one Tax Court of Canada decision his wife's legal fees exceeded $40,000); (iv) they were unable to appeal a decision and his wife paid CRA and court costs; (v) his wife died in 2004 largely because of the stress and financial problems caused by CRA; (vii) since his wife

died, he has had to receive the guaranteed income supplement; (viii) he too became ill and unable to work in the 1990s because of actions of the CRA against him and his wife; (ix) he was fired from his job in 1990 and has since been unable to find work; (x) he was recently required to visit by ambulance the emergency room, is at the end of his life, cannot afford a lawyer and is unable due to his medical condition to appeal any of the court decisions; and (xi) he has extremely high blood pressure and he lives alone on an Indian reserve (although is not Native).

[5] A remission order is an extraordinary remedy that allows the government of Canada to provide full or partial relief from tax, interest, penalty or other debts under certain circumstances when such relief is not otherwise available under the existing laws. Remission orders are governed by subsections 23(2) and (2.1) of the *Financial Administration Act*, RSC 1985, c F-11. They are granted by the Governor-in-Council, on recommendation of the Minister of National Revenue [Minister]. The Minister has delegated this authority to the Commissioner of Revenue [Commissioner], the head of CRA, who in turn has delegated the authority to the Assistant Commissioner.

[6] Upon receipt of a written request for remission, the Remissions and Delegations Section [RDS] may request that the CRA field office with responsibility for the applicant's file conduct an initial review of the case and prepare a field report. RDS officials will review any field reports together with the remainder of the file. Upon a review of the request, RDS officials prepare a recommendation report that is presented to the Headquarters Remission Committee [the Committee]. The Committee is responsible for reviewing the case and making a recommendation. The Assistant Commissioner reviews the Committee's recommendation and

related information and decides whether or not to forward a positive recommendation to the Minister. If the Assistant Commissioner agrees with the Committee's recommendation to deny a request, the Assistant Commissioner must notify the applicant or his or her authorized representative in writing, providing reasons for the denial. If the Committee recommends approving a request, a draft remission order will be approved by the Department of Justice, the Assistant Commissioner, the Commissioner and the Minister. Once approved, the remission order is forwarded to the Governor-in-Council and it has the final discretion on whether to grant remission.

[7] In this matter, the Vancouver Tax Services Office conducted a review of Mr. Matthew's case and prepared a field report with a recommendation that the remission be denied. Subsequently, a Policy Analyst at RDS prepared a memorandum to the Committee, recommending that the request for remission be denied. On April 14, 2016, the Committee held a meeting and agreed with that recommendation.

[8] The Respondent provided an affidavit by the Assistant Commissioner who rendered the decision under review. In that affidavit, it is confirmed that he was provided with a draft decision letter reflecting the Committee's recommendation, the remission request, and the background materials. The Assistant Commissioner stated that while it is his standard practice to consult with RDS officials if he requires clarification or further information regarding the file or changes to be made to the decision letter, in this case he did not deem it necessary to do so.

[9] By letter dated June 1, 2016, the Assistant Commissioner made the final decision not to recommend remission and that decision is now the subject of this application for judicial review.

[10] The letter outlined the process undertaken by CRA to review the request and also noted some of the circumstances that would typically support remission. It went on to summarize the basis upon which the request was being denied.

[11] In that regard, the letter noted that particular consideration was given to Mr. Matthew's assertion that he did not have the financial resources to hire a lawyer and that due to his health condition he could not appeal the unfavourable Tax Court of Canada decisions. His allegation that he has suffered significant losses due to actions by CRA was also considered. The letter concluded that Mr. Matthew's personal financial difficulties did not constitute extreme hardship.

[12] The letter acknowledged that while the payment of the outstanding tax debt would constitute a financial setback, it found there to be no extenuating circumstances that would warrant remission. Further, it noted that Mr. Matthew had not substantiated that there were circumstances beyond his control that would have prevented him from providing appropriate supporting documentation for claims made on his tax returns, from addressing his tax affairs in a timely manner or from making payment on his tax debt to mitigate the accruing interest.

[13] The Respondent has raised the reasonableness of the decision as the singular issue on this application. In my view, considering Mr. Matthew's affidavit, written argument and the decision

as a whole, this application could be said to raise the following three issues, although I agree that the reasonableness of the decision is the central issue:

1. Is the Assistant Commissioner's decision reasonable?

2. Did the Assistant Commissioner fetter his discretion?

3. Was procedural fairness denied?

[14] Mr. Matthew's submissions are to the effect that the decision is unreasonable because it does not reflect the totality of his unfortunate circumstances, which according to him were also created by actions of the CRA.

[15] In his affidavit, Mr. Matthew essentially reiterates the points made in his remission request. He also identifies several other factors for this Court to consider. Notably, Mr. Matthew takes issue with the amount of his tax debt. In that regard, he states that he does not know how CRA calculated the amounts owed. Further, he alleges that the income amounts shown for him by CRA are incorrect as he was mostly unemployed after 1990.

[16] I agree with the Respondent that the correctness of the tax assessments that caused the tax debt is beyond the jurisdiction of this Court. The Tax Court of Canada has exclusive jurisdiction to review the correctness of an assessment: *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 82. Further, unless varied or vacated on an objection or an appeal, the assessment of tax is deemed to be valid and binding. Accordingly, the argument raised in that regard cannot be considered by this Court.

[17] I also agree with the Respondent that portions of the affidavit of Mr. Matthew contains statements and provides information that was not before the Assistant Commissioner, and therefore it cannot be considered: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19.

[18] Specifically, the information in paragraph 11 of the affidavit about Mr. Matthew's health was not before the decision-maker and could also not have been anticipated by him and is therefore not admissible on this application.

[19] I note that the extent of Mr. Matthew's submissions to CRA were limited to his one page remission request. The materials filed by the Respondent note that during the remission review process, attempts were made by the remission analyst to contact Mr. Matthew but these were unsuccessful. In short, he had the opportunity to provide this information regarding his health but did not do so.

[20] I conclude that the decision was reasonable and consistent with guidelines CRA [Guidelines] has prepared to assist those making remission requests (see CRA Remission Guide for the Remission of Income Tax, GST/HST, Excise Tax, Excise Duties or FST under the *Financial Administration Act*).

[21] Specifically, and with respect to extreme hardship, the Guidelines state that extreme hardship is generally considered to exist if the person's annual income (including that of his or her spouse) for the year for which remission is requested and each subsequent year is less than

the low-income cut-offs [LICO]. In this case, the Assistant Commissioner noted that with the exception of three years, Mr. Matthew's income since 1987 has exceeded the LICO.

[22] The Assistant Commissioner also noted that a fall 2014 credit report obtained by CRA indicated that he did not have any difficulties meeting his financial obligations at that time and that he had purchased a home in 2010 valued at $418,000 without a mortgage. This again confirms that extreme financial hardship is not apparent.

[23] Mr. Matthew says in his affidavit that the purchase price of his home was in effect prepaid rent. This information was not before the Assistant Commissioner, nothing in the remission request speaks to it and the Court can't speculate as to whether and how this factor might have impacted the outcome.

[24] The background information notes that the 2014 credit report also showed that Mr. Matthew had a good credit rating, his credit cards had been paid on time, that he would have had approximately $150,000 remaining in his RRIF after a withdrawal in 2014, and while his 1995, 1996 and 1998 tax years arrears have been classified as recoverable, the CRA is not taking collection measures.

[25] In my view, on this evidence, and given the Guidelines, it was not unreasonable for the Assistant Commissioner to have concluded that extreme hardship does not exist.

[26] In his affidavit, at paragraph 12, Mr. Matthew appears to essentially say that the Assistant Commissioner fettered his discretion, without quite saying that.

[27] In my view, there is no evidence in this case that the Assistant Commissioner applied the Guidelines mechanically and failed to appreciate the totality of the circumstances. It bears emphasis that the submissions made by Mr. Matthew to the Assistant Commissioner were very limited. The Assistant Commissioner considered all of the circumstances he advanced. In my view, given the limited information that was provided, the Assistant Commissioner was hardly given an opportunity to fetter his discretion, nor did he.

[28] There are several assertions in Mr. Matthew's affidavit and written argument which appear to properly fall under the rubric of procedural fairness. He stated in his written argument that he made his remission request before he became too ill to require medical care and/or relocation to a health care facility and that he was under the impression that his request would not be reviewed until a later date when more facts about his situation were known. In his affidavit, he also faults CRA for not providing him with certain legislation and court decisions that concern the exercise of discretion when denying remission requests, and he makes several other assertions concerning CRA's disclosure of information in the Certified Tribunal Record and otherwise.

[29] The concept of procedural fairness is variable and its content is to be determined in the specific context of each case and considering all of the circumstances: *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-22. In *Waycobah First*

Nation v Attorney General, 2010 FC 1188 (affirmed in 2011 FCA 191), Justice de Montigny confirmed that a procedure similar to that followed in the present case met the requisite duty of fairness. This is sufficient to dispose of the complaints raised regarding Mr. Matthew's numerous procedural expectations, none of which are contemplated by the remission process that is explained in the Guidelines. It is further noted that the CRA in the present matter did not create any reasonable expectations that a certain procedure would be followed.

[30] In conclusion, I find that the decision under review was reasonable, the decision-maker's discretion was not fettered, and that the procedural process and steps followed were fair. This application is dismissed, with costs payable to the Respondent by Mr. Matthew of $500, all in.

JUDGMENT

THIS COURT'S JUDGMENT is that the Attorney General of Canada is substituted as the Respondent, and the application is dismissed with costs payable to the Respondent by the Applicant in the amount of $500.00.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-997-16
STYLE OF CAUSE:	ROSS MATTHEW v ATTORNEY GENERAL OF CANADA
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Max Matas	FOR THE RESPONDENT

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