

Federal Court



Cour fédérale

Date: 20191115

Docket: T-660-19

Citation: 2019 FC 1435

Ottawa, Ontario, November 15, 2019

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

HAN CHEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Canada Revenue Agency (“CRA”) officer’s decision to refuse the Applicant’s taxpayer relief request. The Applicant was assessed a \$1,297.42 penalty (including interest) for the 2015 tax year because she filed her 2015 foreign income verification form 49 days late.

II. Style of Cause

[2] The Attorney General of Canada is the proper Respondent and the style of cause will be amended to remove the CRA and replace it with the Attorney General of Canada.

III. Background

[3] The Applicant owned foreign property during the 2015 tax year worth more than \$100,000. Because of this, she was required to file a foreign income verification statement (Form T1135) per section 233.3 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) (“the Act”).

[4] On June 28, 2017, the CRA levied a late filing penalty on the Applicant. This was because the Applicant submitted her Form T1135 for the 2015 tax year on June 22, 2016, but it was due on May 2, 2016. The CRA ordered a \$1225 late filing penalty plus \$72.42 arrears interest for a total of \$1297.42. The \$1225 was simply \$25 per day times 49 days in accordance with subsection 162(7)(a) of the Act.

[5] The CRA informed her that no additional interest would accrue if she paid the balance within 20 days. She did not pay within 20 days, and so it appears that the arrears interest increased from \$72.42 to \$144.98. The Applicant paid the balance on July 10, 2018.

[6] About five months after the late filing penalty, on November 20, 2017, the Applicant filed a taxpayer relief request under subsection 220(3.1) of the Act. This section allows taxpayers to seek discretionary relief from late filing penalties and arrears interest. She said she filed late

because she was away from Fredericton from February to May 2016, and did not have the necessary documents to file on time. She also said she filed her 2015 Form T1135 together with her T1 income tax form. When her T1 was assessed, she did not have to pay any tax.

[7] The CRA rendered its first relief decision on October 16, 2018, in reliance on a fact sheet dated September 27, 2018. This decision informed the Applicant that her request for relief was denied. The reasons for the denial were because the circumstances were not beyond the Applicant's control and the Applicant was responsible for making her own arrangements to ensure she met her filing responsibilities.

[8] Unhappy with the result of the first relief request, the Applicant submitted a second relief request on November 7, 2018. She raised a new issue in the second relief request. She now claimed she had called the CRA on the individual tax enquiries phone number in February or March 2016. She was told that she could file a tax return late as long as she "had no tax owing." Relying on this information, she filed her 2015 Form T1135 late.

[9] The CRA rendered its second relief decision on March 21, 2019, after a CRA fact sheet dated March 14, 2019 recommended denying the request. The CRA told her that they had no record of a telephone call but that unless she asked them to pull up her file to have it recorded that is the norm for the general enquiries line. Further, the CRA said she was, the year before, assessed a late filing penalty for the 2014 Form T1135, so she would have known about her filing obligation for the 2015 Form T1135. Without her documents (her being in Toronto and not Fredericton), the CRA said she could have instead filed an estimated 2015 Form T1135 and then

amended it once she had her documents. For these reasons, she was denied the taxpayer relief she had requested. This is the decision under review.

IV. Issue

[10] The issue is whether the decision to refuse the taxpayer relief request was reasonable.

V. Standard of Review

[11] The standard of review for a discretionary decision under subsection 220(3.1) of the Act is reasonableness (*Telfer v Canada Revenue Agency*, 2009 FCA 23 at paras 24–25).

VI. Analysis

[12] The Applicant’s argument to this Court is that the CRA misinformed her about whether there would be a penalty, and this means the refusal of her taxpayer relief request was unreasonable. At the hearing, the Applicant gave a nuanced argument that the T1 and T1135 are what she considers one action. Her submission was:

I filled out the T1135 in 2013 and 2014 taxation years along with T1 income tax return together with a helper (a volunteer or a CPA), Because of that I think filling out the form T1135 (foreign income verification statement) is part of the Income Tax Act during each year.

[13] For support of her above argument, she checked Turbo Tax Online 2018, Studio Tax 2018 and Ufile2018, and when filing your T1 they ask questions such as “Did you own foreign property in 2018 with a total cost over CAN\$100,00 (sic)”?

[14] She summarised in writing her position as:

From the above two points, how could one think that filling out the form T1135 is part of the Income Tax Act during each year? And also, my question is: how many people fills T1135 separate time from T1 income tax return in each tax year?Filling T1135 and T1 income tax return is one tax action in each tax year. It is troublesome to the people who doesn't know the tax system well and relies on a helper (either volunteer or an accountant) to fill out the income tax return each year (sic).

[15] Her argument concluded with her statement that:

I am aware of having to fill the form T1135 by the due date, or I would get a penalty. I took actions to find a solution in order to avoid getting a penalty, before the end of taxation season. I called CRA inquire line. I also asked a CPA, and so on. All answers I received are that if I don't owe any money from the government, then I would be fine. So, I did income tax return as soon as I came back from my trip. I am someone who take responsibility of my behaviours, and also take responsibility for the mistakes I made, even though getting a penalty. But this time I don't think I should get a penalty.

Speaking about filling an estimated form. I have a question, if I don't owe any money from the government, what is the point to fill an estimated form, and when information is available, then fill an amended form? Just to avoid penalty?

[16] She agreed that she asked the CRA individual on the telephone information line about filing the T1 tax return and not specifically about the T1135 return. She suggests that unless you hired someone to do your T1135 form you would think the forms are treated the same or at least not something you would file without the other. She relied on the advice given over the phone that she would not be assessed a penalty if she filed her tax return late if she did not owe money. She said that because she had been levied a penalty the year before she wanted to make sure she was not wrong two times so she called the CRA.

[17] I heard her argument that the two forms (T1 and T1135) are the same and that it makes no sense in her opinion to file an estimate. However, those arguments were not squarely before the decision-maker. More importantly, given that she experienced the same problem the year before it is inconceivable that she did not understand that the two documents being filed late have different consequences and are not the “same thing.”

[18] Though I agree with her that the tax system is difficult for a layperson, I stand with the decision-maker that she had been given the roadmap regarding filing the T1135 the year before. I do not accept her argument that the decision to refuse her relief request was unreasonable because of advice given about the filing of a T1 return. When she called the CRA, rather than asking about the T1 return, she could have asked about the treatment of a late T1135. Clearly she is a bright individual and conscientious enough to call CRA and also to speak to an Certified Public Accountant but she chose not to ask the right question. Had she then she would have been advised that a late filing of the T1135 would incur a penalty whether you owed money on T1 for the tax year.

[19] It was reasonable for the CRA not to grant a waiver of the penalty for the late filing of the same form two years in a row. According to Information Circular IC07-1R1, which instructs the Minister’s decision on whether to waive a penalty under section 220(3.1) of the Act, one of the factors is whether she had complied in the past. Given that she had not and then applied for and received penalty relief just the year before, this should have illuminated to her the importance of filling the T1135 on time because she had the teaching moment the year before.

[20] She did not meet the test of extraordinary circumstances given she knew she would be away and could have had mail forwarded to her or otherwise obtained the information so she could meet the filing deadline. Doing an estimate based on previous years filings until she returned to Fredericton and could obtain the exact figures would also have been a prudent option.

[21] The application is dismissed.

[22] Costs were sought by the Respondent but given the Applicant is self-represented and has paid the penalty already, no costs are granted.

JUDGMENT in T-660-19

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to replace the Respondent "Canada Revenue Agency" with the "Attorney General of Canada";
2. The Application is dismissed;
3. No costs are awarded.

"Glennys L. McVeigh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-660-19

STYLE OF CAUSE: HAN CHEN v CANADA REVENUE AGENCY

PLACE OF HEARING: FREDERICTON, NEW BRUNSWICK

DATE OF HEARING: NOVEMBER 6, 2019

JUDGMENT AND REASONS: MCVEIGH J.

DATED: NOVEMBER 15, 2019

APPEARANCES:

Han Chen

FOR THE APPLICANT,
ON HIS OWN BEHALF

Maeve Baird

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Halifax, Nova Scotia

FOR THE RESPONDENT