

Federal Court



Cour fédérale

Date: 20210310

Docket: T-336-20

Citation: 2021 FC 222

Ottawa, Ontario, March 10, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

KC

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Request for Anonymity

[1] At the suggestion of the Court, the Applicant asked that he not be identified by name in this Judgment and Reasons. This is because the application for judicial review entails disclosure of sensitive personal information concerning his health. The Respondent did not oppose the request. I am satisfied that the public interest in open and accessible court proceedings will not be unduly affected by identifying the Applicant in the style of cause by his initials, and in these

Reasons as “the Applicant” (*Adeleye v Canada (Citizenship and Immigration)*, 2020 FC 681 at paras 9, 17).

II. Overview

[2] The Applicant seeks judicial review of the refusal by the Minister of National Revenue [Minister] to waive all penalties and interest for the 2009 to 2015 taxation years pursuant to s 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp), as amended [ITA]. In a decision dated February 4, 2020, the Minister’s delegate granted the Applicant only partial relief. The Applicant estimates that he owes approximately \$40,000 in unpaid penalties.

[3] The Applicant has been struggling with complex neurological and other health issues since 2007. He says that these caused him to misinterpret the advice he received from the Canada Revenue Agency [CRA], and he attempted to pay all amounts owing before filing income tax returns for subsequent years. The Applicant argues that the Minister’s delegate misapprehended the evidence, and failed to consider his exceptional financial circumstances.

[4] Based on the record before her, it was open to the Minister’s delegate to conclude that the Applicant’s cognitive issues did not have a significant impact on his capacity to file income tax returns for the 2009 to 2014 taxation years in a timely manner. The waiver of interest on arrears for the 2014 and 2015 taxation years, and from November 25, 2016 to February 4, 2020, was explicitly in recognition of the Applicant’s difficult financial situation. This was in addition to

the relief previously granted in respect of arrears interest, instalment interest and instalment penalties.

[5] The decision of the Minister's delegate to grant the Applicant only partial relief was justified, intelligible and transparent, and was therefore reasonable. The application for judicial review is dismissed.

III. Background

[6] The Applicant has submitted numerous requests for relief from penalties and interest, beginning in 2008. His first request for relief concerned his 2002 to 2007 taxation years, and was granted with the conditions that monthly payments to the CRA continue to be made by the Applicant's employer, and all future income tax returns be filed by their due dates with payment in full.

[7] The Applicant's income tax returns for the 2009 to 2014 taxation years were all filed late. The Applicant was assessed late filing penalties and repeated late filing penalties for the 2009 to 2014 taxation years, and interest on arrears for the 2014 and 2015 taxation years. The Applicant was also assessed instalment interest for the 2009 to 2015 taxation years and instalment penalties for the 2014 and 2015 taxation years, but these were waived in a prior decision.

[8] "Requests to File" and "Demands to File" were sent to the Applicant in respect of his 2010, 2011, 2013 and 2014 taxation years. The Applicant filed his income tax returns only after

receiving the Demands to File. He filed his 2012 income tax return only after being contacted by the CRA's Non-Filers/Non-Compliance Division.

[9] The waiver of penalties or interest is governed by s 220(3.1) of the ITA, which reads as follows:

Waiver of penalty or interest

(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

Renonciation aux pénalités et aux intérêts

(3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[10] The Applicant's request for relief for the 2012 and 2013 taxation years was refused on December 2, 2015. The Applicant's request for waiver of penalties and interest for the 2009 to 2015 taxation years was refused on July 27, 2016.

[11] On November 24, 2016, interest on arrears for the 2013 to 2015 taxation years charged between June 15, 2016 and November 24, 2016 was waived due to the Applicant's medical condition. The Minister's delegate declined to cancel the remaining penalties and interest charges for the 2009 to 2015 taxation years.

[12] On December 18, 2016, the Applicant made a third request for relief supported by additional information. By letter dated June 27, 2017, the Applicant was granted partial relief, as follows:

- (a) instalment interest charged for the 2009 to 2015 taxation years and instalment penalties for the 2014 and 2015 tax years were cancelled;
- (b) arrears interest charged for the 2009 to 2012 taxation years was cancelled; and
- (c) arrears interest charged for the 2013 to 2015 taxation years was cancelled to July 8, 2016.

[13] The Minister's delegate declined to waive late filing penalties and repeated late filing penalties for the 2009 to 2014 taxation years, as well as interest on arrears for the 2014 and 2015 taxation years beyond July 8, 2016.

[14] On August 4, 2017, the Applicant sought judicial review of the decision made by Minister's delegate dated June 27, 2017. On February 20, 2019, the application was discontinued

on consent, and the Applicant's request for relief was remitted to the Minister for reconsideration by a different delegate.

[15] On November 29, 2019, the Applicant's lawyer provided the CRA with written submissions and documents in support of the request for relief. By letter dated February 4, 2020, the Minister's delegate informed the Applicant that arrears interest would be cancelled for the 2014 and 2015 taxation years from November 25, 2016 to the date of the letter. However, the Minister's delegate declined to waive late-filing penalties and repeated late-filing penalties for the 2009 to 2014 taxation years.

IV. Issue

[16] The sole issue raised by this application for judicial review is whether the refusal of the Minister's delegate to waive late-filing penalties and repeated late-filing penalties in respect of the Applicant's 2009 to 2014 taxation years was reasonable.

V. Analysis

[17] The decision of the Minister's delegate is subject to review against the standard of reasonableness. This is a deferential standard. The Court will intervene only if "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency" (*Canada (Minister of*

Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 100; *Carpenter v Canada (Attorney General)*, 2020 FC 753 at para 20).

[18] The Applicant disputes the following factual findings made by the Minister's delegate:

- (a) the Applicant had a "pattern" of filing his returns only after receiving Demands to File;
- (b) the Applicant had difficulty making payments due to a "garnishment" in place;
- (c) it could not be determined that the Applicant has Parkinson's Disease;
- (d) despite the Applicant's more recent cognitive issues, he was able to file his 2015 to 2018 returns on time and continued to earn income; and
- (e) the medical assessments provided did not demonstrate that the Applicant's cognitive issues pre-dated 2009.

[19] In my view, each of these factual findings was reasonably supported by the information submitted to the Minister's delegate. The CRA's records confirmed that the Applicant filed his income tax returns for the 2010 to 2014 taxation years only after receiving Demands to File. One can debate whether this constituted a "pattern", but the underlying facts are not in dispute.

[20] It appears that CRA officials sometimes use the term “garnishee/garnishment” to describe transfers of funds between accounts, set-offs and requirements to pay. While this may not be strictly accurate, nothing turns on this choice of phrase.

[21] The Applicant’s remaining arguments concern his complex neurological and other health issues, and the extent to which they interfered with his capacity to file his income tax returns on time.

[22] The Applicant submitted several medical reports and prescriptions, including for drugs used to treat Parkinson’s Disease. A report from his doctor dated December 7, 2016 included the following observations:

[The Applicant] has a long history of complex neurological symptomatology which has been investigated repeatedly in the past with negative results. There has been no evidence of serious underlying neurological disease related to his long-standing symptoms. In my judgment he has some features on examination that are unequivocally functional in nature. [...] Functional disorders can [be] characterized by real impairment of neurological function, sometimes with quite marked disability, that occurs in the absence of specific underlying neurological pathology.

[23] The doctor’s report continued:

It should be noted that [the Applicant] was able to continue to work as an investment adviser up until the spring of this year. However in about May of this year he experienced subacute worsening of his symptoms and the new development of tremor. [...] He has noted significant change in his cognition and I understand this was the reason that he discontinued work.

[24] In a subsequent report, the Applicant's doctor wrote the following:

As I have felt before I think that [the Applicant] has a long-standing complex functional neurological disorder. He also has features of Parkinson's with right-sided predominance which remain mild and in fact less apparent today than they have been in the past perhaps because of the increase in Sinemet. [...] I think the majority of his disability is related to the functional neurological disorder. I continue to follow him as a "Parkinson suspect" but any Parkinson's is mild and stable.

[25] A Cognitive Linguistic Quick Test of the Applicant conducted in February 2017 found that his executive functions were within normal limits. His score was in the moderate category for the memory and language portions of the test, and in the mild category for attention and visuospatial skills.

[26] The onus was on the Applicant to demonstrate that his medical condition prevented him from complying with his tax obligations. It was necessary for the Applicant to show a causal link between his complex neurological issues and his failure to file his income tax returns on time (*Stover v Canada (National Revenue)*, 2019 FC 1599 at para 37).

[27] The Minister's delegate acknowledged the Applicant's complex neurological issues, but found that they did not sufficiently explain the Applicant's repeated failures to file his income tax returns on time. The medical documentation suggested a worsening of the Applicant's symptoms in 2016, but there was little evidence to indicate that the Applicant's medical condition prevented him from filing his income tax returns for the years that were subject to late filing penalties.

[28] The Applicant said that he filed his income tax returns late because he was afraid of owing taxes. He therefore attempted to pay the previous year's taxes paid before filing the next year's tax return. It was open to the Minister's delegate to conclude that the Applicant's decision to late-file his returns arose from his concern about his increasing tax debt, and not confusion about when he was required to file his tax returns.

[29] The Minister's delegate noted that the Applicant was able to file his 2015 to 2018 income tax returns on time. The Applicant earned income of \$135,768 in 2015, \$99,138 in 2016, \$92,374 in 2017 and \$77,998 in 2018. The Applicant says that any income he received after 2016 related to unpaid commissions.

[30] The Applicant argues that he was able to file his 2015 to 2018 income tax returns on time only with the assistance of an accountant. He retained a lawyer to assist him in dealing with the CRA's attempts to collect unpaid taxes, and in requesting taxpayer relief. However, the Minister's delegate did not suggest that the Applicant was performing these tasks on his own, but rather that he was able to accomplish them despite his health issues. These health issues did not prevent the Applicant from recognizing the need to retain professionals to assist him in managing his financial affairs, even after his condition worsened in 2016.

[31] The Minister's delegate concluded that some of the Applicant's medical issues had been ongoing since before 2009. However, the Minister's delegate could not determine how these may have prevented the Applicant from filing his 2009 to 2014 income tax returns on time. Based on the record before her, this conclusion was reasonably open to the Minister's delegate.

[32] The Applicant also argues that the Minister's delegate failed to consider the exceptional financial situation he faces as a result of his declining health. However, it is clear from the letter of the Minister's delegate dated February 4, 2020 that the Applicant's financial information, including his assets, liabilities, income, debt payments and CRA arrangements, was all considered.

[33] A Taxpayer Relief Fact Sheet prepared in relation to the Applicant noted that he owed taxes in the amount of \$123,582.87 as of November 18, 2019. The document estimated the Applicant's net worth to be \$217,354.00, without taking into account the unpaid arrears. The analysis of the Applicant's financial hardship and ability to pay included the following:

The TP's 2017-2019 household levels are fairly high, however, our records show that the TP made a total of \$105,625 in payments towards his tax debt during 2017, 2018, and 2019, and the current outstanding balance on the TP's account is \$123,582.87. It appears that the TP has paid as much as he could towards this debt, yet still has a significant arrears balance. The interest relief should assist him in paying the full balance sooner.

[34] The waiver of interest on arrears for the 2014 and 2015 taxation years, and from November 25, 2016 to February 4, 2020, was explicitly in recognition of the Applicant's difficult financial situation. This was in addition to the relief previously granted in respect of arrears interest, instalment interest and instalment penalties.

[35] The Minister's delegate was not required to provide the Applicant with a specific level of relief (*Syal v Canada (Attorney General)*, [1999] FCJ No 1065 at para 2). The decision of the

Minister's delegate to grant the Applicant only partial relief was justified, intelligible and transparent, and was therefore reasonable.

VI. Conclusion

[36] The application for judicial review is dismissed. In light of the Applicant's declining health and difficult financial circumstances, I exercise my discretion not to award costs against him.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-336-20

STYLE OF CAUSE: KC v CANADA REVENUE AGENCY

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
HALIFAX, NOVA SCOTIA AND OTTAWA,
ONTARIO

DATE OF HEARING: FEBRUARY 10, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MARCH 10, 2021

APPEARANCES:

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(on his own behalf)

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