Federal Court Cour fédérale

Date: 20220607

Docket: T-1361-20

Citation: 2022 FC 836

Ottawa, Ontario, June 7, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

GORDON STEINBACH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant is a self represented litigant who has applied for judicial review of a decision (the Decision) made on October 26, 2020 by the Minister of National Revenue (the Minister) under subsection 207.06(1) of the *Income Tax Act*, RSC 1985, c1 (5th Supp) [*ITA*].

[2] The Minister refused the Applicant's request for a second review of his request for cancellation of tax on excess TFSA contributions he made for the 2019 tax year.

II. **Background Facts**

[3] In 2018, the Applicant had contribution room of $42,500 available. However, he contributed a total of $52,500 in 2018, which resulted in an over contribution of $10,000.

[4] On May 9, 2018, the Applicant deposited $20,000 and withdrew it the same day.

[5] On January 1, 2019, the annual contribution room of $6,000 was recognized and the over contribution became $4,000. However, on February 19, 2019 the Applicant contributed the annual $6,000.

[6] On July 16, 2019, the Applicant was assessed tax under subsection 207.02 of the *ITA* because of his excess contribution in 2018. At that time, the Applicant was advised that if there was any excess amount in his TFSA he should withdraw immediately to limit any future tax.

III. **The 2018 Taxpayer Relief Request**

[7] On July 25, 2019, the Applicant requested a cancellation of the tax on the excess TFSA contributions for both the 2018 and 2019 years. The request was made on the basis that the initial deposit was a result of misinformation from his bank and the $20,000 amount that was deposited and withdrawn on the same day was a transfer between his accounts that was made by mistake.

[8] On October 7, 2019, the Applicant's request for relief was granted for the 2018 taxation year.

[9] On October 29, 2019, the Applicant's excess contribution of $10,000 was withdrawn from his TFSA.

[10] On August 21, 2020, the Applicant's request for relief was denied for the 2019 taxation year.

[11] On August 28, 2020, the Applicant requested a second review. This was denied on October 26, 2020. This second review denial is the decision under review before this Court.

IV. **Preliminary Issue**

[12] The Respondent requests an amendment to the style of cause in this application to name as the respondent the Attorney General of Canada rather than the Canada Revenue Agency.

[13] I agree that the Attorney General of Canada is the proper Respondent under Rule 303 of the *Federal Courts Rules.* It will be so ordered.

V. **Issue and Standard of Review**

[14] The only issue to be determined is whether the Decision is reasonable.

[15] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a new analysis or seek to determine the "correct" solution to the problem: *Canada (Minister of Citizenship & Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 83.

[16] Reasonableness review is not an appeal. Absent exceptional circumstances, a reviewing court will not interfere with a decision maker's factual findings. As the reviewing court, I must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

VI. **Analysis**

[17] The question before this Court is whether the Minister's decision to deny the Applicant's request for relief of the tax on his excess TFSA contributions for 2019 was reasonable.

[18] The Applicant argues that the 2019 excess contribution was an honest mistake, which he rectified immediately upon being notified of it.

[19] He submits that the decision for the 2019 excess contribution flies in the face of the decision in 2018, as it is the same $10,000 amount that is in question. He has already paid the $940 penalty tax for 2019 and is requesting consistency in the decision from 2018 to 2019.

[20] The Respondent states that the decision to cancel the taxes in 2018 was, in fact, wrong in law. At the time the 2018 decision was made, the Applicant had not withdrawn his 2018 excess contributions. The Applicant only requested relief for the 2018 tax year on July 25, 2019.

[21] I understand the positions of the parties concerning the 2018 decision and the Applicant's submission regarding the need for consistency. Regarding consistency, *Vavilov* at paragraph 129 states:

> [. .] Those affected by administrative decisions are entitled to expect that <u>like cases</u> will generally be treated alike and that outcomes will not depend merely on the identity of the individual decision maker — expectations that do not evaporate simply because the parties are not before a judge.
>
> (My emphasis)

[22] Although the Applicant submits it was "the same $10,000" in 2019 as in 2018, that is not correct.

[23] In 2018, the Applicant first deposited $52,500 to his TFSA. He later added $20,000, which was immediately withdrawn, in a separate transaction.

[24] The Applicant states that the $52,500 deposit was a result of misinformation from the bank and the $20,000 deposit was a transactional mistake that was corrected immediately. In any event, the result was that the Applicant's total over contribution amount at the end of the 2018 taxation year was $10,000.

[25] In 2019, the over contribution amount was only $4,000 due to the 2019 annual contribution limit increase of $6,000.

[26] The Applicant contributed $6,000, being the maximum amount allowed for that tax year. Unfortunately, that deposit created a new over contribution of $10,000. This new over contribution meant that the total amount was not “the same $10,000” as in 2018.

[27] This is an important fact to the Minister. The Decision noted that “[a]ny portion of a withdrawal that does not reduce or eliminate a previously determined excess TFSA amount is not a qualifying portion of the withdrawal and cannot be used to reduce or eliminate any future excess TFSA amount in that month.”

[28] The Decision noted that the Applicant is responsible for making sure that all contributions are made within the guidelines set out in the legislation for TFSA contributions.

[29] The Minister appropriately noted that the Applicant was notified of their TFSA over contribution and the resulting tax on July 16, 2019. When the Applicant only withdrew the excess amount on October 29, 2019, that was found to be an unreasonable delay.

[30] The Minister also acknowledged that although the Applicant’s TFSA excess contributions were unintentional, misinterpretation of the TFSA contribution limit is not considered a reasonable error. This reasoning is consistent with other decisions addressing TFSA over-contributions.

[31] Paragraph 207.06(1)of the *ITA* provides that the Minister's discretion may be exercised if the taxpayer establishes to the satisfaction of the Minister's delegate that the tax liability arose as a consequence of a reasonable error and the excess TFSA amounts are removed from the TFSA without delay (*Sangha v Canada (Attorney General)*, 2020 FC 712 at para 19.

[32] Mr. Justice Rennie, a member of this Court at the time, explained the test for receiving relief in *Kapil v Canada (Revenue Agency)*, 2011 FC 1373 at para 28:

> The test in section 204.1(4) is conjunctive, meaning both prongs must be established to the satisfaction of the Minister before a taxpayer will be considered for relief. Even if both prongs are met, the discretion to waive remains with the Minister. In other words, meeting the two prongs does not make a waiver a *fait accompli*. The question is whether the Minister's finding that the applicant had taken reasonable steps to eliminate the excess contributions was reasonable or unreasonable. The applicant contends that he acted in good faith and took reasonable steps to eliminate the excess contributions. The Minister felt he did not, and again, that conclusion falls squarely within the frame of a reasonable decision.

VII. **Conclusion**

[33] While I am sympathetic to the Applicant's argument, I find that the analysis in the Decision allows the Applicant to understand how and why he did not receive taxpayer relief for the tax year 2019.

[34] The Minister presented an internally coherent and rational chain of analysis based on the legislation. When the Decision is justified in relation to the facts and law, I am *required* to defer to it: *Vavilov* at para 85.

[35] On considering the arguments, both written and oral, and based on the record before me, I find for all the reasons given above that the Decision is reasonable.

[36] Therefore, the application is dismissed.

JUDGMENT in T-1361-20

THIS COURT'S JUDGMENT is that:

1. The style of cause is hereby amended to reflect the Attorney General of Canada as the Respondent.
2. The application is dismissed.

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1361-20
STYLE OF CAUSE:	GORDON STEINBACH v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	HELD BY WAY OF VIDEOCONFERENCE
DATE OF HEARING:	JUNE 6, 2022
JUDGMENT AND REASONS:	ELLIOTT J.
DATED:	JUNE 7, 2022

APPEARANCES:

Mr. Gordon Steinbach	FOR THE APPLICANT (ON HIS OWN BEHALF)
Mr. Alexander Millman	FOR THE RESPONDENT

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