Federal Court  Cour fédérale

Date: 20220615

Docket: T-758-21

Citation: 2022 FC 904

Vancouver, British Columbia, June 15, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

HANNA YEW

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

[1] Canada Revenue Agency ("CRA") determined that in the 2019 tax year, the applicant made excess contributions to her tax-free savings account ("TFSA"). It assessed a tax liability under the *Income Tax Act*, RSC 1985, c-1 (5th Supp) (the "*ITA*").

[2] The applicant requested that CRA waive the tax. CRA denied her request. The applicant requested a second review. CRA also denied that request.

[3] Now she asks this Court to set aside the second decision. The question is whether that decision was reasonable, applying the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[4] This is a judicial review application. It is not an appeal, so I am not permitted to change CRA's decision if I disagree with it. The legal test I have to apply on this application is not whether CRA's decision was right or wrong. It is whether the decision was "reasonable", which focuses on whether the decision was intelligible, transparent and justified. CRA had to make the decision in compliance with the law that applied to it (particularly the requirements in the *ITA* and applicable court decisions). It also had to take into account and be sufficiently responsive to the applicant's circumstances.

[5] As I will explain in the reasons below, I have concluded that the decision did so and therefore was reasonable. The application will be dismissed.

I. Facts and Events Leading to this Application

A. *The Applicant's Over-contributions to her TFSA in 2015 and 2019*

[6] The applicant is Hanna Yew (also known in the documents as Hua Min Yu).

[7] Ms Yew opened a TFSA in 2009. She made contributions to the TFSA in 2009, 2011 (two contributions), 2014 (two), 2015 (two) and 2016.

[8] By letter dated May 27, 2016, CRA wrote to the applicant concerning excess contributions to the TFSA. That letter, which CRA described as an "education letter", set out

details for 2015 showing a contribution room limit on December 31, 2015 of negative $19,500. The letter stated that the "negative amount means you contributed too much". The letter went on:

> Any time you go over your TFSA contribution room limit, you have to withdraw the excess immediately so that that you don't have to pay any more tax on it. If you don't withdraw the excess, the CRA can review your TFSA later and charge you a 1% tax on your highest excess amount in that month for each month the excess remains in the account.
>
> If you have already removed the excess amount, you don't need to do anything else. If you haven't removed the excess, please remove it immediately.

[9] The letter also provided an example of an over-contribution into a TFSA account within a single year.

[10] About a month later, the applicant withdrew $19,500 from her TFSA.

[11] The applicant made additional contributions to her TFSA in 2018 (two) and 2019 (three).

[12] For the 2019 tax year, the applicant's contribution room limit was $7,849.16. Her total contributions during the calendar year 2019 were $26,001.66.

[13] By letter dated July 14, 2020, CRA advised the applicant that she had over-contributed to her TFSA in the amount of $18,152.50. The Minister of National Revenue ("Minister") assessed the applicant's 2019 taxation year and issued a TFSA Notice of Assessment dated July 14, 2020 (the "TFSA Return") under section 207.02 of the *ITA*.

[14] The TFSA Return assessed a tax liability on the applicant's excess TFSA contributions in the amount of $1,784.34.

[15] On August 4, 2020, the applicant withdrew $10,596.84 from her TFSA. On August 10, 2020, she withdrew an additional $8,119.42.

[16] Subsection 207.06(1) of the *ITA* provides the Minister with a discretion to waive or cancel any TFSA tax liability if the individual establishes to the "satisfaction of the Minister" that the liability arose as a consequence of a "reasonable error", and the withdrawal of the excess contribution is made "without delay".

[17] By letter dated August 7, 2020, the applicant asked CRA to waive the $1,784 tax on the excess TFSA contributions for the 2019 tax year. She advised that she "completely misunderstood the accurate amount I should contribute". She made two contributions, one in January 2019 in the amount of $10,152 and another in February 2019 in the amount of $8,000, based on the amount shown on her "MyAccount" page on CRA's website. She explained that after her tax return for 2019 was processed, her contribution limit was updated to $7,849. She thought that $7,849 was the "extra amount [she] could contribute to TFSA because an agent had told me to refer to the amount after the tax return being assessed, but [she] thought this was the extra that [she] could contribute to the TFSA". The applicant went on to explain that she did not realize that CRA would not receive her 2019 TFSA statement from her bank until April 2020, so she made another contribution of $7,849 in May 2020. She advised that she had spoken with the agent and realized that $7,849 was "supposed to be my entire 2019 whole year TFSA contribution room. This is fully a misunderstanding and unintentional mistake I made."

[18] The applicant's August 7, 2020 letter stated that not knowing she over-contributed in 2019, the applicant contributed $6,000 to her TFSA account in 2020, which would also be an excess contribution.

[19] The applicant's letter also explained that she was under a lot of financial pressure in 2020 because she could not work as much as the previous year. The $1,784 penalty and upcoming 2020 penalty would add more stress to her family. She noted that she had a dependent college student and a disabled mother to support. She noted that she had withdrawn $19,000 from her TFSA account "right after" she received CRA's letter. She therefore requested that CRA consider the situation and waive the tax.

[20] By letter dated October 19, 2020, CRA (acting on behalf of the Minister) denied her first request to waive the tax. CRA advised the applicant that she had continued to make excess contributions in 2019 after being notified about excess contributions previously made in 2015. CRA determined that it could not grant the applicant's request for cancellation of the tax in her particular situation.

[21] By letter dated November 1, 2020, the applicant requested an independent review of the denial of her first request to cancel the tax. The applicant's letter advised that she contributed amounts to her TFSA based on the numbers shown in her MyAccount. The applicant stated that she "misunderstood tax years". She stated that the information from MyAccount was "very confusing and I did not fully understand it although it had happened in 2015."

[22] The applicant's letter reiterated that she lost her job in August 2020 during the pandemic and that she was financially supporting her child who was a full-time university student, who had also lost his job due to the pandemic. The applicant advised that her disabled mother lived with her and was fully dependent on her financially as well.

[23] The applicant stated that she withdrew the over-contribution amount immediately after receiving CRA's assessment and was willing to repay the total interest gained from the over-contribution. She emphasized that the over-contribution has been done mistakenly and unintentionally.

B. ***The Decision under Review***

[24] By letter dated April 8, 2021, a Senior Assessment Processing & Resource Officer in the TFSA Processing Unit of CRA denied the applicant's second request to cancel tax arising from the over-contributions to her TFSA.

[25] CRA's letter to the applicant stated in part:

> In your letter, you stated that you contributed to your TFSA based on the numbers shown on your MyAccount on the CRA website but that you misunderstood the tax years. You explained that the information on your MyAccount is confusing and you did not fully understand it. You further explained that you lost your job in August 2020 due to the COVID–19 pandemic, that you have been financially supporting your child who is a full time university student and also lost his job due to COVID-19, as well as supporting your mother who lives with you and is fully dependent on you financially. You stated that you withdrew the excess contributions immediately after receiving the TFSA Notice of Assessment and that you did not earn much from the total interest gained on these funds.

[26] CRA's letter stated that after a thorough review of the information submitted and the facts, CRA had determined that the applicant continued to make excess contributions to her TFSA in 2019 and 2020, after she was notified about the implications of excess contributions. The letter noted that CRA sent the applicant an "education letter" dated May 27, 2016, regarding excess contributions made in her account in 2015.

[27] The letter further advised:

> Even though your TFSA excess contributions were unintentional, we do not consider misinterpreting your TFSA contribution limit to be a reasonable error. Under Canada's self-assessment taxation system, individuals are responsible for understanding their TFSA accounts and their limits, to review their notice of assessment or reassessment to verify the information, and to ask for information from us when needed.
>
> You are responsible for making sure that you make all contributions within the guidelines set out in the legislation for TFSA contributions.

[28] The letter went on to explain that if, at any time in a month, the applicant had an excess TFSA amount, she would be liable to a tax of 1% on her highest excess TFSA amount in that month.

[29] CRA's letter concluded that the initial assessment was correct and therefore CRA would not be changing the applicant's TFSA Return.

II. Legal Analysis

A. *Standard of Review*

[30] The Supreme Court described the legal principles for reasonableness review in *Vavilov*, and in *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67.

[31] Reasonableness is the usual standard of review on judicial review applications and it applies here: *Posmyk v Canada (Attorney General)*, 2021 FC 393, at para 15; *Weldegebriel v Canada (Attorney General)*, 2019 FC 1565, at para 5; *Gekas v Canada (Attorney General)*, 2019 FC 1031, at para 12; *Jiang v Canada (Attorney General)*, 2019 FC 629, at para 13; *Dimovski v Canada (Revenue Agency)*, 2011 FC 721, at para 13.

[32] The application of a reasonableness standard of review does not permit the Court to set aside an administrative decision if it disagrees with it. Instead, the Court's review is a deferential and disciplined evaluation of whether the decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[33] The Court examines the reasons provided by the decision maker holistically and contextually, and in conjunction with the record that was before the decision maker, to determine whether the decision was reasonable: *Vavilov*, at paras 85, 91-96, 97, and 103; *Canada Post*, at paras 28-33.

[34] A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 99-101, 105-106 and 194.

B. ***Analysis and Decision***

[35] The applicant's position was that she made the over-contributions to her TFSA based on information on CRA's website, where taxpayers can access information about their TFSA on a webpage known as "MyAccount". She argued that doing so gave rise to a "reasonable error" and that she rectified the situation by withdrawing the over-contributed amounts right away after she learned about them, and therefore met the requirements for the Minister to waive the $1,784 in tax liability under *ITA* section 207.06.

[36] In particular, the applicant submitted that the over-contributions were caused by her confusion when she read the information on MyAccount. In her written submissions, the applicant stated that when she went to the website, the information displayed showed that she had enough room to make the contributions to her TFSA. So she made two contributions in January and February 2019. The applicant submitted that she made a "reasonable error" because her over-contributions were based on the information displayed on MyAccount, the source of which was CRA. She contended that nothing in CRA's 2015 or 2020 correspondence advised her that amounts shown on her CRA MyAccount website could be considered inaccurate. She maintained that she only acted based on the incorrect information provided about her contribution room limit and that she had no intention of over-contributing to her TFSA.

[37] At the hearing, the applicant explained that when she made the two contributions in January and February 2019, she did not know that the "Contribution Room" amounts indicated as "Unused Year Begin" and "Unused Year End", as displayed on MyAccount, could be updated to account for additional information received by CRA, for instance when she filed her income tax return. From looking at that information in early 2019, she understood that she had room to contribute over $26,000 to her TFSA and did so. Then, when she checked MyAccount again in spring 2019, it showed $7,849, which she (mistakenly) understood was even more additional room to contribute to her TFSA. So in May 2019, she contributed that amount as well.

[38] The applicant's submissions advised that she did not invest the over-contribution into high-growth assets and only placed those deposits into a savings account with a low interest rate. She never intended to gain an unfair advantage through this deposit and gained far less from the unintentional deposit than the taxes CRA is now attempting to levy on her.

[39] The applicant also submitted that the tax liability was unfair and placed undue hardship on her. The amount of interest earned on the excess contribution was less than $400 (less applicable tax), whereas the tax assessed on the TFSA over-contribution exceeded $1,700. She submitted that the total tax liability for 2019 and 2020 tax years was $3,313.33, based on an over-contribution of $18,150.50 for 16 months. According to the applicant's calculations, she "gained" approximately $200 from her over-contribution ordeal. The tax liability was therefore almost 10 times her "gain", which she submitted was unfair given the innocent circumstances of her error.

[40] The respondent submitted that the decision was reasonable. According to the respondent, the present application boiled down to a single issue: did the applicant's misunderstanding constitute a "reasonable error" under subsection 207.06(1)? The respondent submitted that the answer was No.

[41] The respondent submitted that before the Minister could exercise a discretion under section 207.06, the two requirements of that provision must both be satisfied: the individual must show that the tax liability arose as a consequence of a "reasonable error", and the individual must have withdrawn the excess contribution "without delay". The respondent also submitted that the Minister has no discretion or power to decide when to impose a tax on an over-contribution. The tax liability is a prescribed requirement of the *ITA* under section 207.02. The respondent submitted that the Minister only has the discretion to cancel all or part of the tax liability that is required to be imposed and only if the two preconditions of section 207.06 are met.

[42] The respondent also submitted:

- what constitutes a "reasonable error" is determined on an objective assessment of all the relevant evidence (citing *Connolly v Canada (National Revenue)*, 2019 FCA 161, [2019] 4 FCR 256, at para 69);
- the applicant's mistake arose as a result of her misunderstanding of the rules applicable to TFSAs and her misunderstanding of the information shown on her MyAccount on the CRA website;
- the applicant's circumstances did not give rise to a "reasonable error" because they were not beyond her control, and she had made regular contributions to her

TFSA since 2009. In addition, the applicant received CRA's "education letter" dated May 27, 2016. At that time, CRA waived tax arising from the applicant's over-contribution in the 2015 tax year. However, despite having been warned in 2016, the applicant made the same error when she over-contributed in the 2019 tax year;

- ignorance of the rules and failing to make inquiries is not a reasonable error (citing *Connolly*, at para 77). Taxpayers are responsible to keep track of their TSFA contributions and to ensure that they are in compliance with TFSA contribution rules (citing *Dimovski*, at paras 16-17 and 19-20);
- receiving bad advice or misreading a CRA notice are not grounds for relief as a "reasonable error" (citing *Posmyk*, at para 16); and
- innocence and lack of intent are not determinative of the reasonableness of an error (citing *Dimovski*, at para 16; *Weldegebriel*, at para 10 and 15; *Kapil v Canada (Revenue Agency)*, 2011 FC 1373, at paras 24-25).

[43] The respondent submitted that the decision in CRA's letter dated April 8, 2021, was reasonable under *Vavilov* principles. According to the respondent, CRA's letter accurately set out statutory requirements in section 207.06 and the applicant's position about how the over-contribution error occurred, which demonstrated that CRA took her explanation into account.

[44] In addition, the respondent argued that CRA's letter reasonably concluded that misinterpreting the contribution limit was not a "reasonable error". The respondent submitted that the decision letter addressed the requirements of *ITA* subsection 207.06(1), was responsive

to all of the applicant's submissions and explained why her error was not reasonable under that provision. Because the applicant did not meet the requirement that excess contributions must have arisen as a result of a "reasonable error", the applicant was not entitled to relief under *ITA* subsection 207.06(1).

[45] With respect to the quantum of tax payable on the over-contribution, the respondent observed that the *ITA* prescribed the amount of tax to be paid on excess contributions, in *ITA* section 207.02.

[46] Although I have sympathy for the applicant's situation, I am compelled to the conclusion that the decision was reasonable under the *Vavilov* principles that must be applied by this Court.

[47] CRA's decision not to waive the tax liability was constrained by the requirements of *ITA* section 207.06. The Minister's discretion to waive or cancel tax only arises if the circumstances meet both requirements in *ITA* subsection 207.06(1): (a) the applicant must establish that the liability arose as a consequence of a "reasonable error", and (b) the applicant must have withdrawn the excess contribution "without delay": *Posmyk*, at paras 17-18; *Weldegebriel*, at para 16; *Dimovski,* at paras 11-12; *Kapil*, at paras 27-28.

[48] As counsel for the respondent indicated, the crux of this application is whether CRA's decision complied with the factual and legal constraints that applied to it. In my view, on the evidence and submissions made to CRA, it was reasonably open to CRA to conclude that the applicant did not make a "reasonable error" for the purposes of *ITA* paragraph 207.06(1)(a).

[49] As is well known, the Canadian tax system is a self-reporting system. It relies on taxpayers to comply with the *ITA* and to honestly disclose their tax circumstances to CRA: *R v McKinlay Transport Ltd.*, [1990] 1 SCR 627, at pp. 636-37 and 648; *Guindon v Canada*, 2015 SCC 41, [2015] 3 SCR 3, at para 54; *Connolly*, at para 69; *Dimovski*, at para 17.

[50] The individual taxpayer's responsibility is to understand or be informed of the law and to take reasonable steps to comply with the *ITA*: *Connolly*, at para 69; *Weldegebriel*, at para 10; *Jiang*, at paras 12-13; *Kapil*, at para 24. Given the complexity of the tax system, taxpayers are also expected to seek advice: *Connolly*, at para 69; *Dimovski*, at para 17.

[51] For TFSA purposes, the taxpayer is responsible to be aware of their contribution limits and to ensure that their contributions comply with applicable rules: *Rempel v Canada (Attorney General)*, 2021 FC 337, at para 26; *Jiang*, at paras 11-13.

[52] Justice Diner stated in *Weldegebriel*, at para 10:

> …as a self-reporting system, the onus was on [the taxpayer] to understand the law (*Kapil v Canada Revenue Agency*, 2011 FC 1373 at para 24); ignorance of the rules, particularly in a system which relies on the taxpayer, is not an excuse. As Justice O'Keefe held in *Lepiarczyk v Canada Revenue Agency*, 2008 FC 1022 at para 19, "while innocence may be a factor to consider, it is not determinative in the present case."

[53] In this context, I find the decision in CRA's letter dated April 8, 2021, was reasonable. As the respondent noted, each taxpayer's circumstances must be considered objectively (*Connolly*, at para 69) and it appears that CRA did so. CRA's letter recognized and set out the

facts raised in the applicant's letters. The letter showed that CRA considered the applicant's circumstances and her position on why her tax liability should be waived.

[54] CRA's letter recognized that the applicant did not intend to make excess contributions. As a matter of law, innocent or honest errors are not determinative—they do not necessarily lead to a finding of a "reasonable error" under paragraph 207.06(1)(a): *Weldegebriel*, at paras 10 and 15; *Posmyk*, at para 16; *Gekas*, at para 27. Accordingly, CRA made no legal error in failing to waive the tax solely on that basis.

[55] CRA's letter recognized the applicant's errors in viewing the MyAccount website and stated that CRA did not consider misinterpreting TFSA contribution limits to be a reasonable error. The applicant acknowledged making errors about her contribution limits and in understanding the information on her MyAccount on CRA's website. However, the applicant as taxpayer was responsible for knowing her contribution limits and ensuring she did not over-contribute. And as Justice Phelan said in *Posmyk*, at para 16, "[f]actors such as receiving bad advice or misreading CRA notices and honest errors are not grounds for relief".

[56] In her letters to CRA dated August 7 and November 1, 2020, the applicant effectively acknowledged that the mistakes were hers and that she had misunderstood the information on MyAccount about her contribution limits for 2019. On this application, she also explained her perspective that the misunderstanding was based on (as she characterized it) "inaccurate" information on CRA's MyAccount website. The applicant's position was that the MyAccount

information did not reflect her actual contribution room for 2019 and so she was misled. She also argued that the source of this information was CRA.

[57] However, that is not quite the case in a self-reporting tax system: the applicant was the underlying source of the information on her MyAccount page because the displayed contribution limits (at the start and the end of tax years) must have been based on what she had provided to CRA. In addition, as she acknowledged, the information on her MyAccount was later updated to reflect new information. Indeed, she noted in her letter dated August 7, 2020, that a CRA agent told her that she should refer to the amount after her tax return was assessed.

[58] The evidence before this Court did not include what the applicant saw on her MyAccount in early 2019 because it had already changed by the time either party could preserve it for the record. From all the circumstances, it is reasonable to believe that the information on MyAccount in early 2019 could have been correct at the time based on the information the applicant had provided to CRA at that moment, and it was updated in the spring to reflect new information from her tax return. In any event, it was the applicant's responsibility in law to ensure her contributions complied with the *ITA*.

[59] In addition, this is not a circumstance in which the applicant's over-contributions were outside her control, as occurred in *Gekas*, at paras 5 and 30-31. In that case, a miscommunication between the taxpayer and his financial institution caused an employee to make an erroneous deposit into his TFSA instead of another account. The mistake was not in the taxpayer's control

because someone else made the mistake. In the present case, the applicant made the mistakes herself and in law was responsible for them.

[60] I conclude therefore that it was open to CRA in the circumstances to conclude that the applicant did not make a “reasonable error” under *ITA* paragraph 207.06(1)(a).

[61] Overall, I conclude that it was reasonable in this case for CRA to decide not to cancel or waive the applicant’s tax liability under *ITA* section 207.06. CRA’s decision respected the applicable provisions in the *ITA* and the case law that constrained its decision. It reasonably accounted for the applicant’s circumstances and her position. Because the applicant did not satisfy one of the requirements in subsection 207.06(1) by establishing to the Minister’s satisfaction that she made a reasonable error, CRA had no discretion to cancel or waive the applicant’s tax liability under that provision.

III. Conclusion

[62] The application is therefore dismissed. The respondent did not seek costs and none will be ordered.

JUDGMENT in T-758-21

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. No costs are payable in respect of this application.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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