



Date: 20230228

Docket: T-1794-21

Citation: 2023 FC 278

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 28, 2023

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

MATTIO BERTONE

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Bertone, seeks judicial review of a decision dated October 27, 2021, by the senior officer of the Taxpayer Relief Division [Minister's Representative] of the Canada Revenue Agency [CRA], in which the Minister's Representative allowed Mr. Bertone's application for relief in part, pursuant to her discretionary power under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act].

[2] I am of the opinion that the application for judicial review should be dismissed.

Mr. Bertone's argument is essentially based on the idea that the decision is inconsistent, since one part of his application for relief was approved and the others were not, while the exceptional circumstances cited in support of his application, namely, his illiteracy and his accountant's poor work, apply in the same manner to each of them. This argument is undermined by the explanations from the Minister of National Revenue [Minister] according to which the Minister's Representative considered that Mr. Bertone's situation was a satisfactory justification when his errors involved complex tax concepts, but not when they involved simple concepts that he should have been aware of. Overall, Mr. Bertone's arguments do not persuade me that he did not know that his tax situation was problematic or that he was diligent in resolving this situation.

Consequently, I cannot conclude that it was unreasonable for the Minister's Representative to use her discretion as she did.

II. Background

[3] Mr. Bertone has been a contractor for more than 30 years. In particular, he had to pay in instalments for the 2003, 2005 and 2006 taxation years. He made partial payments in 2003, and no payments were received for 2005 or 2006. Until 2006, Mr. Bertone retained the services of an accountant, Ubaldo Pietrantonio, for his business operations. As of 2007, Mr. Bertone entrusted his business to his accountant's daughter, Diana Pietrantonio.

[4] For the purposes of this application, it is important to mention that the specific dates when Mr. Pietrantonio transferred Mr. Bertone's file to his daughter were the subject of new submissions by counsel for Mr. Bertone at the hearing. However, as I have clearly indicated,

because this new version of the facts was not presented in an affidavit and because, in any case, this information was not before the Minister's Representative when she made her decision, it will not be considered in this decision.

[5] Mr. Bertone repeatedly filed late returns with the CRA—specifically, for the taxation years of 2002, 2003, 2006 to 2009, and 2012. On July 24, 2008, as part of collection action taken by the CRA, a collections officer personally met with Mr. Bertone, with his daughter present, to notify him that his tax return for the 2007 taxation year had not been filed. Mr. Bertone was then notified that he was in default through letters sent to his residence in July 2008, January 2009 and March 2009—the return for 2007 was finally filed 367 days late on June 17, 2009. In addition, Mr. Bertone had to pay instalments for the years 2003 and 2005 to 2008. The only payment received for this purpose was made in 2003, an amount of \$3,449, when the required payment was \$5,050, while the two payments made in 2007 and 2008 were dishonoured for insufficient funds.

[6] On several occasions, discussions were held with collections services so that payment agreements could be reached, but they were unsuccessful. A few payments were received, but the balance remains unpaid to this date.

[7] On December 19, 2011, notices of reassessment were issued for the taxation years 2007 to 2009, and similarly, on December 22, 2014, notices of reassessment were issued for the taxation years 2008 and 2009 following an objection filed by Mr. Bertone. The amounts owing for these three years were established at \$64,846.45, \$8,314.14 and \$4,161.80, respectively. On

February 20, 2015, the account statement produced by the CRA (T7D) established Mr. Bertone's tax debt at \$77,962.21.

[8] On July 3, 2015, Mr. Bertone filed an initial application for relief with the CRA for the taxation years 2007 to 2009, which on November 23, 2015, gave rise to partial relief of the interest due to the time spent processing his application. Almost four years later, on September 5, 2019, through his new representatives, Mr. Bertone filed a second application for relief, which was granted in part on December 10, 2020, once again due to the time spent processing his application.

[9] On January 14, 2021, Mr. Bertone filed a notice of application with the Court registry in T-105-21, which he discontinued on April 6, 2021. The Minister then conducted a third review of Mr. Bertone's application for relief, which is the subject of this dispute. On May 19, 2021, Mr. Bertone presented his submissions as part of the third review, which stated the following: (a) his level of literacy was under the threshold of autonomy; (b) he trusted Ms. Pietrantonio as he had trusted her father for nearly 40 years, but she knowingly submitted income tax returns in an erroneous manner and allegedly copied his signature on at least two occasions; (c) it would be unfair for him to suffer for the mistakes of his accountant; and (d) the penalties imposed were not necessary, since he had always paid his fair share of income tax to the Crown and had always complied with his payment agreements.

III. Impugned decision

[10] The decision by the Minister's Representative reviewed a past decision from December 10, 2020, that dismissed Mr. Bertone's second application for relief. The application for relief in question involved (1) the penalty for late filing and repeated late filing; (2) the interest on instalments; and (3) the interest on arrears that had been assessed against Mr. Bertone.

[11] The Minister's Representative cancelled the interest on arrears applied to the 2007, 2008 and 2009 taxation years since the due date, but only until December 2014, the date the CRA Appeals Division settled Mr. Bertone's objection. She found that it was reasonable to believe that Mr. Bertone was unable to spot the errors and inaccuracies on his income tax returns, even though he knew these incomes, due to his illiteracy during the period concerned. She determined that Mr. Bertone had trusted his new representative, but she had not acted with the required diligence. However, given that the amounts owing had been clearly communicated to Mr. Bertone in the notice of reassessment from December 2014, there was no reason for the CRA not to start charging interest as of that date.

[12] Furthermore, the Minister's Representative noted that Mr. Bertone's advanced age (in his eighties) and functional illiteracy had been considered, but that his age was not the cause of his breach of his tax obligations more than 12 years previously and his illiteracy had been considered in the period mentioned above.

[13] However, the Minister's Representative upheld the penalties for late filing, since she was of the opinion that, despite Mr. Bertone's poor literacy, he was aware of the filing deadline dates, which had not changed over the years, independent of the person who took care of preparing his

income tax returns. The Minister's Representative also upheld the interest on the instalments, since Mr. Bertone had been notified each year of his obligation to make payments and no instalment payments had been received for the years 2007 to 2009.

[14] As stated above, the Minister's Representative also upheld the interest on arrears accruing as of December 22, 2014, for the years 2007 to 2009 because, although she acknowledged the difficulties experienced by Mr. Bertone due to his illiteracy, the amounts established after his objection was resolved represented the balance due and payable. The Minister's Representative accepted that Mr. Bertone had been notified of the balance of his tax debt on a regular basis since the notice of reassessment dated December 22, 2014, and that the balance remained unpaid, which allowed interest to accumulate.

[15] Moreover, she noted that counsel for Mr. Bertone had mentioned that the CRA could not hold him responsible for the errors of his representative, whom he had trusted. In this regard, he highlighted that the CRA had not held Mr. Bertone responsible for the false statements made by Ms. Pietrantonio in his income tax returns for the years 2007 to 2009, which confirmed that the CRA had not considered these situations to ones of embezzlement or misrepresentation. He added that the incorrectly assigned payments mentioned in the second application had been transferred and applied, as Mr. Bertone had requested, and that there was no error on the CRA's part in his file.

IV. Issue and standard of review

[16] This application for judicial review raises only one issue: Was the decision by the Minister's Representative reasonable? The appropriate standard for reviewing a decision by the Minister's Representative is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 16–17 [*Vavilov*]). The role of the Court is to examine the administrative decision maker's reasoning and the outcome to determine whether the decision is “based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at paragraph 85).

V. Analysis

[17] Situations where taxpayers are relieved of tax obligations resulting from errors made by their accountants are very rare, as Justice Pentney noted in *Neyedly v Canada (Attorney General)*, 2020 FC 678:

[69] ... The Applicant blames his advisors for this delay, but the law is clear that errors attributed to third parties are not considered extraordinary circumstances justifying relief (*Kotel v Canada (Attorney General)*, 2013 FC 1015 at paragraph 65; *Tremblay v Canada (Attorney General)*, 2013 FC 1049, at paragraphs 12 and 13). This is consistent with the IC07 Guideline, which provides at paragraphs 35–36, that taxpayers are “generally considered responsible for errors made or delays caused by third parties acting for the taxpayers for income tax matters.” The IC07 Guideline does accept there may be exceptional situations, but on the evidence in the record, there was no basis for such a finding.

[Emphasis added.]

[18] The components of Mr. Bertone's application for relief that were denied by the Minister's Representative are as follows: (1) the penalties for late filing and repeated late filing; (2) the interest on instalments; and (3) the interest on arrears after December 22, 2014.

[19] With respect to the first two components, they were not featured in any serious submissions before me, and I see nothing unreasonable in the decision by the Minister's Representative. Even if I accept as proven the level of dependence that Mr. Bertone claims to have had on his accountant and the extent of the trust that he placed in her and acknowledge the complexity of his tax situation for the years 2007 to 2009 and his illiteracy, there is nothing complex about the obligation to submit his income tax returns and to pay instalments in a timely manner. In this case, instalments were due for the years 2003 and 2005 to 2008. Nevertheless, the only payment made was in 2003, while the two payments made in 2007 and 2008 had insufficient funds; overall, I am not persuaded that CRA's decision was unreasonable with respect to these issues.

[20] Mr. Bertone's main argument before me dealt with the conclusion by the Minister's Representative regarding the interest on arrears that has accrued on the unpaid balance of his assessments for 2007 to 2009. The balance of interest on arrears at the time his application for relief was received by CRA on March 30, 2021, was \$49,022.54, from which \$23,094.21 was deducted after the third review of his application for relief.

[21] Mr. Bertone argues that he still relies on the accounting firm that has taken care of his tax obligations for nearly half a century. He notes that the Minister's Representative acknowledged the exceptional circumstances in his case, namely, his illiteracy had prevented him from recognizing the errors and inaccuracies in his income tax returns from 2007 to 2009 and that he had trusted his new representative but she had not acted with the required diligence. Mr. Bertone argues that, despite this recognition of his exceptional situation, the Minister's Representative

refused to give it full effect. In his view, the decision by the Minister's Representative is inconsistent, since it concedes only a portion of the interest on arrears based on this recognition, while the effects of his exceptional situation were being felt well beyond December 22, 2014.

[22] I accept that Mr. Bertone's accountant may have made mistakes when she completed his income tax returns. In addition, Mr. Bertone successfully objected to the post-audit assessments dated December 19, 2011; moreover, notices of reassessment were issued on December 22, 2014, for 2008 and 2009. The Minister's Representative accepted Mr. Bertone's argument that because he relied on his accountant to manage his tax obligations, he was unable to know how much he owed to CRA due to this accountant's mistakes. However, this argument could not reasonably apply beyond December 22, 2014, since, failing a challenge to the CRA's decision, the amount owed by Mr. Bertone crystalized on that date.

[23] In my view, Mr. Bertone made a strategic decision: once the notices of reassessment were received, he decided not to pay his assessments and, in July 2015, instead made an initial application for relief of penalties and interest. He was successful in part, and a portion of the interest was cancelled. But at that time, rather than repay the amount owing, Mr. Bertone hired new accountants and, in 2017, began what was described before me as a gigantic undertaking, [TRANSLATION] "a colossal job", to reconstitute the history of payments made to two tax authorities by his accountants. Mr. Bertone argued that the decision by the Minister's Representative to cancel the interest on arrears only as of December 22, 2014, fails to consider that the balance of the tax debt to the two tax authorities does not match the actual debt, given

the amounts that were paid to them in previous years, and that it had discovered that a payment made by Mr. Bertone had been attributed to another taxpayer.

[24] At the hearing, the colossal and unending work undertaken by Mr. Bertone's representatives to reconstitute the work of his former accountants was the subject of lively argument by his counsel. If he is to be believed, this work is to the tax system what the Turcot Interchange is to the Montréal road network. Therefore, it is surprising to note that this work was barely mentioned, not in Mr. Bertone's affidavit itself—only in that of his daughter, who assisted him throughout the process of challenging the notices of assessment. In fact, Mr. Bertone's affidavit does not include any information about this, while that of his daughter includes the following general allegations:

[TRANSLATION]

19. Since 2017, and until recently, with the support of our current counsel, I had to perform a colossal job that required unending research to reconstitute the history of payments made to the two tax authorities (exhibits L-2, L-3 and L-4);
20. This work would not have been as strenuous if the payments to the tax authorities had not at one time been under the control of Ms. Pietrantonio;
21. As part of what was an immense job, we noted that Ms. Pietrantonio failed in her responsibilities to comply with the deadlines for filing income tax returns and to prepare cheques matching the amounts owed to the tax authorities.

...

[25] Exhibits L-2 to L-4 to which the affidavit refers essentially consist of photocopies of cheques sent by Mr. Bertone to the tax authorities and a few letters between them and Mr. Bertone's representatives. However, neither the written submissions nor the oral arguments

in this case enable the Court to judge the relevance of this information. For example, I note at first glance that the oldest cheques date from 2012, while the evidence on record indicates that Ms. Pietrantonio was no longer taking care of Mr. Bertone's taxes at that time, as he was represented by other accountants as of November 28, 2011. In summary, I am of the view that, despite the laudable efforts of counsel for Mr. Bertone at the hearing, the nexus between the colossal job performed, the details of the errors of which Ms. Pietrantonio is accused and Mr. Bertone's alleged right to relief when he had not paid his assessments was never clearly established.

[26] Having allowed the deadline to elapse for challenging the notices of reassessment issued on December 22, 2014, Mr. Bertone had two choices: he could pay the amount owing, thus avoiding the need to pay interest for as long as it took him to conduct the research to reconstitute the payment history, or he could not pay it and thus risk staying in CRA's crosshairs. He made the second choice, so the interest continued to accumulate.

[27] I must say that, given his past as a self-taught businessman with his own company and several rental properties, I have difficulty accepting the depiction of Mr. Bertone given at the hearing, according to which he is an illiterate man who is heavily dependent on his accountant. In that regard, counsel for Mr. Bertone conceded that there was probably insufficient evidence before me to support such an allegation.

[28] Furthermore, the evidence that Mr. Bertone had unshakeable confidence in his accountant does not, on its own, lead to the conclusion that he blindly allowed Ms. Pietrantonio to do what

she wanted, particularly considering the guidance that he received from his daughter from the start of his exchanges with the CRA. There is also no issue of fraudulent or negligent behaviour by Ms. Pietrantonio, and in that regard, Mr. Bertone's allegations regarding the cheques that Ms. Pietrantonio supposedly forged were not supported by the evidence as it was presented before me. Lastly, the mere fact that Mr. Bertone's tax returns were filed late or that a different signature appeared on some of them does not allow, in itself and without any other convincing evidence as to the history or context, for a speculative conclusion that Ms. Pietrantonio fraudulently and without Mr. Bertone's knowledge affixed his signature to his income tax statements or that she intentionally filed Mr. Bertone's income tax returns for 2007 more than a year late.

[29] In any case, the fact remains that Mr. Bertone chose not to make any payments to repay the balance owing from the moment the amount of his assessments became certain on December 22, 2014. There was nothing preventing him from doing this, and it was therefore reasonable for the Minister's Representative to find that Mr. Bertone's failure to pay his assessments was not due to circumstances beyond his control, such that relief of interest accumulating from that point on was not justified.

[30] Overall, I find that the evidence produced by Mr. Bertone is insufficient to support his arguments as to the unreasonableness of the decision by the Minister's Representative. Thus, I am not satisfied that either of the findings by the Minister's Representative was unreasonable. As a result, the application for judicial review is dismissed. This judicial review will be dismissed with costs.

JUDGMENT in T-1794-21

THIS COURT ORDERS as follows:

1. The application for judicial review is dismissed.
2. Costs are awarded to the Minister.

“Peter G. Pamel”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

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