

Federal Court



Cour fédérale

Date: 20240105

Docket: T-1675-19

Citation: 2024 FC 22

Ottawa, Ontario, January 5, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

BRENT MARSALL

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Brent Marsall, seeks judicial review of the Minister of National Revenue (“Minister”)’s decision to refuse to exercise its discretion under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] to cancel or waive interest accrued on unpaid income tax. Mr. Marsall reallocated funds in October 2011 from his T1 account to pay the GST balances of two corporations, of which he is a director, based on GST reassessments that the

CRA substantially reversed in October 2015. Mr. Marsall sought relief under subsection 220(3.1) of the *ITA*, arguing that the Minister should waive a portion of the interest on the unpaid income tax because that income tax would have been paid but for this reallocation of funds from his T1 account to cover GST liability for two of his corporations.

[2] On September 12, 2019, the Minister refused Mr. Marsall's request for relief. Mr. Marsall challenges this refusal on judicial review. He argues that the Minister unduly restricted their discretion to consider his request for relief and misapprehended the facts surrounding the request. I am not persuaded that there are sufficiently serious shortcomings in the Minister's evaluation on either ground raised by Mr. Marsall.

[3] Based on the reasons below, the application for judicial review is dismissed.

II. Background Facts and Procedural History

[4] Mr. Marsall is a shareholder and director of two corporations: Dynasty Global Inc and 1232466 Alberta Ltd. In March 2010, the Minister began an audit of Mr. Marsall, including these two corporations.

A. *Income Tax and GST Reassessments*

[5] In July 2010, Mr. Marsall estimated that he owed approximately \$533,889.79 in taxes on income he failed to report in 2008 and he paid the Receiver General that amount through his T1 account. The Minister had not yet reassessed Mr. Marsall to impose additional income tax on

unreported income for 2008, so the Minister credited this amount as an instalment of Mr. Marsall's 2010 income tax.

[6] About a year later, in June 2011, the Minister reassessed Dynasty Global Inc and 1232466 Alberta Ltd for net unreported Goods and Services Tax [GST] in the amount of \$115,106.75 and \$263,119.44, respectively. In August 2011, Mr. Marsall authorized the Minister to reallocate funds from the July 2010 payment in his T1 account to cover the two corporations' unpaid GST liability, which led to a corresponding increase in the outstanding balance on his T1 account.

[7] On September 13, 2011, the Minister reassessed Mr. Marsall's 2007, 2008, and 2009 taxation years and imposed tax on \$1,900,941 of unreported income. Two days later, on September 15, 2011, a CRA collections officer contacted Mr. Marsall and confirmed his consent for the August 2011 funds reallocation request. The CRA officer also advised that, as a consequence of reallocating funds from Mr. Marsall's T1 account, interest would accrue on any unpaid income tax liability. The Minister made the reallocation on October 18, 2011.

[8] In November 2011, Mr. Marsall filed a Notice of Objection challenging the Minister's reassessment of his 2007, 2008, and 2009 taxation years. Mr. Marsall also objected to the Minister's reassessment of GST for his two corporations.

[9] In February 2015, the Minister reassessed Dynasty Global Inc, substantially reversing the June 2011 reassessment. The Minister refunded Dynasty Global Inc \$106,637.82 for overpaid GST and \$5,556.59 in interest on the overpaid GST.

[10] In March 2015, the Minister reassessed 1232466 Alberta Ltd, substantially reversing the June 2011 reassessment. The Minister refunded 1232466 Alberta Ltd \$242,221.66 for overpaid GST and \$12,212.08 in interest on the overpaid GST.

[11] In May 2015, the Minister reassessed Mr. Marsall's 2007, 2008, and 2009 income and reduced the unreported income assessed in each of the three years. Mr. Marsall appealed this reassessment to the Tax Court of Canada, which resulted in a further reduction of his unreported income in each of the three years in 2018. Once the Minister processed the Tax Court's 2018 judgment, Mr. Marsall still owed tax on \$1,603,311 of unreported income for 2007, 2008, and 2009.

B. *First Request for Taxpayer Relief*

[12] On November 7, 2018, Mr. Marsall submitted a Request for Taxpayer Relief. He sought relief from interest on the income tax owing for his 2007, 2008, and 2009 taxation years pursuant to subsection 220(3.1) of the ITA. Mr. Marsall argued that he should not owe interest on the 2008 income tax because it would have been paid but for the reallocation of that amount to Dynasty Global Inc and 1232466 Alberta Ltd's GST liability and Mr. Marsall's 2010 income tax liability. Mr. Marsall also argued that the interest resulted from the CRA's own delay in processing his objection and appeal.

[13] On February 6, 2019, the CRA partially granted Mr. Marsall's request due to delay, providing relief from interest accrued from December 9, 2011 to July 31, 2013 and from March 2, 2015 to May 7, 2015. Those were periods where the CRA acknowledged receipt of Mr. Marsall's objections but where no officer was actively working on the file. However, the CRA refused Mr. Marsall's request for relief as it related to the reallocation of his payment to GST and 2010 income tax liabilities.

C. *Second Request for Taxpayer Relief*

[14] Mr. Marsall made a second request for relief on May 28, 2019. He asked the Minister to retroactively reverse the October 2011 allocation of funds from Mr. Marsall's T1 account to Dynasty Global Inc and 1232466 Alberta Ltd's GST balances for the purpose of calculating arrears interest. In other words, Mr. Marsall asked the Minister to relieve him of interest that would not have accrued but for the October 2011 allocation to cover Dynasty Global Inc and 1232466 Alberta Ltd's GST balances. Mr. Marsall stated that the October 2011 allocation led to a corresponding increase in the outstanding balance of his T1 account and in the interest accrued until October 2015, when the CRA substantially reversed its reassessment of Dynasty Global Inc and 1232466 Alberta Ltd's GST liability. Mr. Marsall argues that it is unfair to ask him to pay the interest that accrued between October 2011 and October 2015 because it resulted from the CRA's erroneous GST reassessment. Mr. Marsall calculated the interest accrued from October 2011 and October 2015 as approximately \$62,000 and sought relief in that amount.

D. *Decision under Review*

[15] On September 12, 2019, the Minister refused Mr. Marsall's request for taxpayer relief. The Minister found that Mr. Marsall's request to retroactively reverse the October 2011 allocation of funds to Dynasty Global Inc and 1232466 Alberta Ltd was not a "taxpayer relief issue" as contemplated by subsection 220(3.1) of the *ITA*.

[16] The Minister further decided that Mr. Marsall should not receive additional interest relief for the 2007, 2008, and 2009 taxation years because the "same payment cannot be used in different account balances to the taxpayer's benefit." Given that Mr. Marsall authorized the October 2011 allocation of funds to the GST accounts, he cannot now request an adjustment of the interest accrued on his T1 account as though that allocation had not taken place. The CRA found that there were no circumstances beyond Mr. Marsall's control that prevented him from paying the balance owing; nor was there evidence that he acted quickly to remedy the debts.

III. Issue and Standard of Review

[17] The only issue on judicial review is the CRA's evaluation of Mr. Marsall's request for interest relief under subsection 220(3.1) of the *ITA*. The parties agree, as do I, that I should review this issue on the reasonableness standard.

[18] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] described the reasonableness standard as a deferential but nonetheless "robust form of review," where the analysis begins with the decision-maker's

reasons (*Vavilov* at para 13). A decision-maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103).

[19] The Court described a reasonable decision as "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[20] The Minister has discretion to waive or cancel all or any portion of any penalty or interest otherwise payable under the *ITA*. The CRA publishes guidelines that lay out factors to consider in determining if all or any portion of penalties or interest may be cancelled, including whether there are extraordinary circumstances beyond the taxpayer's control, if the penalty and interest arose primarily out of the CRA's actions, and the taxpayer's conduct and history (Canada Revenue Agency, Information Circular IC-07-1R1, "Taxpayer Relief Provisions" (18 August 2017)).

[21] Mr. Marsall argues that the Minister failed to properly consider the broad scope of their power to grant relief under section 220(3.1) of the *ITA*. Mr. Marsall points to the Minister's statement that the request to reverse transfers is "not a taxpayer relief issue" as confirmation that the CRA was unduly narrow in its assessment of the relief request.

[22] I do not agree. The Minister did not stop its analysis at the statement referenced by Mr. Marsall. After noting that allowing a retroactive reallocation, which was how Mr. Marsall framed his request, was not a taxpayer relief issue, the Minister went on to consider Mr. Marsall's request for relief from interest owing because of the reallocation. The Minister considered the request to waive interest in the amount that would not have accrued but for the reallocation. This was what Mr. Marsall requested.

[23] Mr. Marsall also argues that the Minister misconstrued facts where it found that he "chose not to pay" his T1 account; rather, he argues that the CRA's reassessment of the GST amounts forced him to transfer funds to the GST accounts. I do not agree that the Minister misconstrued these facts. Mr. Marsall did not argue or provide evidence to show that the corporations were unable to pay their own GST debt or that he was unable to pay his income tax, and therefore was forced to only pay one.

[24] The goal of taxpayer relief provisions is to provide relief from the strict application of requirements in tax legislation. Mr. Marsall's overarching argument is that the Minister's assessment is only a recitation of how the law operates and fails to consider how he is seeking relief from the application of the law. The problem with this argument is that Mr. Marsall's request is only focused on the alleged unfairness of the operation of the law and fails to explain why, in his particular circumstances, he required relief from its application.

[25] The reasons for the decision suggest that the decision-maker was aware of and engaged with the arguments that Mr. Marsall raised, but explained its reasoning for ultimately disagreeing with them.

V. Disposition

[26] Overall, the Minister's reasoning follows a rational chain of analysis that is transparent, intelligible and justified. Accordingly, the judicial review is dismissed.

[27] The Respondent sought costs. I do not see a reason to alter the usual practice of ordering the unsuccessful party to pay the costs of the application. I award costs of this judicial review to the Respondent.

JUDGMENT in T-1675-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. Costs are awarded to the Respondent.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1675-19

STYLE OF CAUSE: BRENT MARSALL v MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: JULY 5, 2023

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JANUARY 5, 2024

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