Federal Court Cour fédérale

Date: 20240722

Docket: T-2340-23

Citation: 2024 FC 1141

Ottawa, Ontario, July 22, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JENNINGS-CLYDE, INC. D/B/A/ VIVATAS, INC.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant corporation seeks judicial review of a decision by an officer of the Canada Revenue Agency [CRA] denying the Applicant's request for the exercise of ministerial discretion under subsection 220(3) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [*ITA*].

[2] The Applicant requested that the Minister of National Revenue [Minister] exercise her discretion under subsection 220(3) to extend the three-year deadline for filing its 2012-2014 income tax returns as set out in subsection 164(1) of the *ITA*. The CRA officer concluded that subsection 220(3), which provides the Minister with broad discretion to extend the time to file a tax return, could not be relied upon to extend the deadline in subsection 164(1) in light of subsection 164(1.5). Subsection 164(1.5) sets out specific exceptions to the filing deadline under subsection 164(1) and does not apply to corporations.

[3] I am dismissing this application. The Applicant has not persuaded me that the CRA officer's interpretation of the relevant legislative provisions is unreasonable. In finding that subsection 220(3) of the *ITA* was not applicable, the officer reasonably distinguished this case from recent Federal Court of Appeal jurisprudence relied on by the Applicant. In addition, the officer's analysis of the relevant statutory provisions is consistent with a well-established principle of statutory interpretation, the implied exception rule. In accordance with that rule, a specific provision is to prevail over a general one in the event of a conflict.

[4] Furthermore, there was no breach of procedural fairness in the decision-making process. In essence, the Applicant's argument is one of legitimate expectations. The Applicant asserts that based on a July 2022 letter from the CRA, it expected that the Minister was considering whether to exercise discretion under subsection 220(3) to extend the filing deadline in subsection 164(1) of the *ITA*. Instead, the CRA officer subsequently concluded that subsection 220(3) had no application and that the Minister had no discretion to extend the filing deadline. In these

circumstances, however, the doctrine of legitimate expectations is not applicable as it does not give rise to substantive rights, only procedural ones.

II. **Background**

[5] The Applicant is a United States-based corporation in the software consulting business. Between 2012 and 2015, the Applicant performed contract work in Canada. Pursuant to subsection 153(1) of the *ITA* and subsection 105(1) of the *Income Tax Regulations*, CRC, c 945, taxes were withheld at source from the payments made to the Applicant for its services in Canada.

[6] As a non-resident corporation that carried on a business in Canada, the Applicant was entitled to claim a refund of the taxes withheld at source for services rendered in Canada. To qualify for a refund for the taxes withheld, the Applicant was required to file a tax return within three years after the end of the relevant taxation year, in accordance with subsection 164(1) of the *ITA*.

[7] The Applicant filed its income tax returns for the 2012-2015 taxation years and sought a refund of payments withheld for each of those years in August 2018. The CRA issued Notices of Assessment for the 2012, 2013, and 2014 taxation years denying refunds for those taxation years because the Applicant failed to file its tax returns within the three-year period in accordance with subsection 164(1) of the *ITA*. The Applicant filed Notices of Objection in respect of each of these assessments in December 2018.

[8] In February 2019, the Applicant requested that the Minister exercise her discretion under subsection 220(3) of the *ITA* to extend the time for filing its 2012, 2013, and 2014 tax returns. In support, the Applicant explained that the tax returns were filed late due to the extenuating personal circumstances of its accountant.

[9] The Applicant's request was put on hold in February 2021 pending the completion of an internal review concerning the CRA's administration of subsection 220(3) of the *ITA*.

[10] In July 2022, the CRA advised the Applicant that in reviewing its request to extend the time for filing its 2012-2014 tax returns, the following criteria would be considered: (i) the existence of extraordinary circumstances that prevented the taxpayer from filing the income tax returns on time; and (ii) a demonstration that the taxpayer was not negligent and careless in failing to file the tax return on time and otherwise conducting its affairs under the *ITA*. In response, the Applicant provided information to support that extraordinary circumstances led to the late filing of its tax returns.

[11] By decision dated June 19, 2023, the CRA officer determined that subsection 220(3) "may not be relied upon by the Minister to exercise discretion to extend the deadline in subsection 164(1) of the Act." The officer explained that subsection 164(1.5) of the *ITA* only provides the Minister with the discretion to extend the three-year period in limited circumstances and does not apply to a corporation.

[12] By Order dated October 17, 2023, the Court granted leave to the Applicant to be represented in this judicial review application by Patrick Lacour, a director of the Applicant corporation, pursuant to Rule 120 of the *Rules*.

III. **Issues and Standard of Review**

[13] The Applicant challenges the CRA officer's decision on two grounds. First, it argues that the officer erred in interpreting subsection 220(3) of the *ITA* and finding that it was not applicable to the Applicant's case: Applicant's Memorandum of Fact and Law at paras 25-36. Second, the Applicant alleges a breach of procedural fairness based on the CRA "altering course" in deciding that the Minister did not have discretion to extend the filing deadline under subsection 164(1): Applicant's Memorandum of Fact and Law at paras 37-39.

[14] The standard of review applicable to the first ground is that of reasonableness. A reasonable decision is one that is justified in light of the relevant legal and factual constraints that bear on the decision: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]. The relevant legal considerations that may constrain a decision-maker are not closed and may include the governing statutory scheme, the principles of statutory interpretation, and the relevant statutory and common law: *Vavilov* at paras 105-124; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 66-72 [*Mason*].

[15] A reviewing court must not undertake its own interpretation of an administrative decision-maker's home statute. Rather, as long as the decision-maker's interpretation of the legislative provisions is reasonable and their reasons are justified, intelligible, and transparent, a reviewing

court must not interfere: *Vavilov* at paras 75, 83, 85-86; *Mason* at paras 41-42; *Safe Food Matters Inc v Canada (Attorney General)*, 2022 FCA 19 at para 39 [*Safe Food Matters*].

[16] While an administrative decision-maker is not required to engage in a formalistic statutory interpretation exercise, the general principles of statutory interpretation apply: *Vavilov* at paras 119-120; *Mason* at para 69; *Safe Food Matters* at para 40.

[17] With respect to the second ground of review, allegations of breaches of procedural fairness are reviewable on a standard akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific*]. The reviewing court must assess whether the procedure followed by the decision-maker was fair and just in the circumstances: *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Canadian Pacific* at para 54.

IV. **Analysis**

A. *The CRA officer's decision is reasonable*

[18] Parliament enacted various provisions in the *ITA* to provide relief to taxpayers and "blunt the harsh effects of strict filing requirements": *Bonnybrook Park Industrial Development Co Ltd v Canada (National Revenue)*, 2018 FCA 136 at para 47 [*Bonnybrook*]. Some of these taxpayer relief provisions are specific, whereas others are more general. At issue in this case is the interplay between two such provisions: subsections 164(1.5) and 220(3). These statutory provisions are reproduced in an appendix to these reasons.

[19] Subsection 220(3) is an example of a relief provision with broad application. It grants the Minister "the authority to provide relief from filing requirements throughout the Act": *Bonnybrook* at para 48. In contrast, subsection 164(1.5) is specific in its application. It limits the circumstances in which the Minister may extend the filing deadline in subsection 164(1) and specifically excludes corporations from this relief: *Bonnybrook* at para 52; *Landmark Auto Sales Ltd v The Queen*, 2008 TCC 121 at para 14.

[20] In this case, the Applicant requested that the Minister exercise her discretion under subsection 220(3) to extend the three-year deadline for filing its 2012-2014 income tax returns for the purposes of refunds under subsection 164(1). In support, the Applicant relied on the Federal Court of Appeal's 2018 decision in *Bonnybrook*.

[21] In my view, the CRA officer's decision concluding that the Minister had no discretion to extend the filing deadline under subsection 164(1) of the *ITA* is reasonable. As set out below, in finding that subsection 220(3) did not apply, the officer reasonably distinguished the Applicant's case from *Bonnybrook*. Furthermore, the officer's analysis is consistent with the well-established principle of statutory interpretation, namely the implied exception rule.

(1) The CRA officer reasonably distinguished *Bonnybrook* in finding that subsection 220(3) was not applicable

[22] A decision may be unreasonable where the decision-maker fails to explain or justify a departure from a binding precedent in which the same legislative provision has been interpreted: *Vavilov* at para 112; *Mason* at para 72. As the Federal Court of Appeal explained, the inquiry is

highly contextual. The extent to which a precedent will constrain a decision-maker depends on the nature of the precedent and the reasons given by the decision-maker for declining to follow it: *Canada (Attorney General) v National Police Federation*, 2022 FCA 80 at para 49.

[23] Here, the CRA officer did not make their decision without regard to relevant jurisprudence: *Vavilov* at para 112. Rather, after considering the *Bonnybrook* decision, the officer concluded that it was distinguishable from the Applicant's case and that subsection 220(3) did not provide the Minister the requisite discretion to extend the filing deadline in subsection 164(1) of the *ITA*. In doing so, the officer reasonably justified why the two cases were distinguishable.

[24] In *Bonnybrook*, the taxpayer corporation was denied a dividend refund under subsection 129(1) of the *ITA* because it failed to file its tax returns within the three-year period set out in that provision. The taxpayer sought an extension of time under subsection 220(3), but the CRA determined that subsection 220(3) was not applicable to subsection 129(1).

[25] In allowing the taxpayer's appeal, the Federal Court of Appeal concluded that subsection 220(3) provides the Minister with broad discretion to extend the time for filing a return: *Bonnybrook* at para 42. The Court reasoned that subsection 220(3) must be given effect unless it is clear that Parliament intended otherwise and found that Parliament did not do so in subsection 129(1):

> [56] In my view, counsel suggests a leap too far in suggesting that subsection 220(3) of the Act does not apply to dividend refunds in light of the 1994 amendments. In circumstances where a provision provides relief to taxpayers, such as subsection 220(3), the provision should be given effect unless it is quite clear that Parliament intended otherwise. Parliament has not done so in subsection 129(1),

> even taking into account subsections 152(4.2) and 164(1.5) of the Act. If Parliament had intended that the general relief provisions in subsections 220(3) not apply to subsection 129(1), it would have been an easy matter for Parliament to have provided for this explicitly.
>
> [Emphasis added]

[26] The CRA officer determined that, unlike the case with subsection 129(1) of the *ITA* in *Bonnybrook*, subsection 220(3) did not provide the Minister discretion to extend the three-year deadline in subsection 164(1). While the officer acknowledged that subsections 129(1) and 164(1) are "similar in construction", the determinative factor in the officer's analysis was that subsection 164(1.5) "provides a limited set of exceptions to the three year period in subsection 164(1)".

[27] On this basis, the CRA officer reasonably concluded that Parliament made clear that the Minister only had the discretion to extend the three-year deadline in subsection 164(1) in the limited circumstances set out in subsection 164(1.5):

> By enacting subsection 164(1.5), Parliament made it clear that the only exceptions to the three year period in subsection 164(1) are those set out in subsection 164(1.5).
>
> […]
>
> Paragraph 164(1.5)(a) only provides an exception to the three year period if the taxpayer is an individual (other than a trust) or a graduated rate estate. It does not apply to a corporation. Parliament clearly intended to limit the specific exceptions to extend the three year period in subsection 164(1) with the result being that it only applies to certain classes of taxpayers.
>
> [Emphasis added]

[28] I do not agree with the Applicant that "[e]very element that held true for the application of subsection 220(3) to subsection 129(1) in the *Bonnybrook* decision holds just as true for the

application of subsection 220(3) to subsection 164(1)": Applicant's Memorandum of Fact and Law at para 36. This argument ignores the significant feature that sets this case apart from *Bonnybrook,* namely that subsection 129(1) does not have a provision equivalent to subsection 164(1.5) limiting the Minister's discretion. As set out above, Parliament's enactment of subsection 164(1.5) was the determinative factor in the CRA officer's decision in this case.

[29] Indeed, the Federal Court of Appeal in *Bonnybrook* acknowledged that while subsection 220(3) has general application, Parliament may limit its effect: *Bonnybrook* at para 56. This is precisely what the CRA officer held in this case — that, in enacting subsection 164(1.5), Parliament explicitly limited the circumstances in which the Minister may extend the three-year deadline in subsection 164(1).

[30] Based on the foregoing, I find that the CRA officer reasonably distinguished the Applicant's case from *Bonnybrook* in deciding that subsection 220(3) does not apply to the filing deadline in subsection 164(1) of the *ITA.*

(2) The CRA officer's approach is consistent with the implied exception rule

[31] The Applicant argues that the CRA officer erred in interpreting subsection 164(1.5) and finding that it "limit[s] the broad powers of discretion granted in subsection 220(3)": Applicant's Memorandum of Fact and Law at para 30. I disagree. While the CRA officer did not rely on the implied exception rule in their decision, the officer's approach to the interplay between subsections 164(1.5) and 220(3) of the *ITA* is wholly consistent with this well-established principle of statutory interpretation.

[32] The implied exception rule (*generalia specialibus non derogant*) provides that a specific legislative provision prevails over a provision of general application in the event of a conflict: *James Richardson & Sons, Ltd v Minister of National Revenue et al*, 1984 CanLII 1 (SCC), [1984] 1 SCR 614 at 621; *Canada (National Revenue) v ConocoPhillips Canada Resources Corp*, 2017 FCA 243 at paras 48-49 [*ConocoPhillips*]; *Wong v Canada (Citizenship and Immigration)*, 2016 FCA 229 at para 14.

[33] As explained by Ruth Sullivan, in accordance with the rule, "the specific provision implicitly carves out an exception to the general one": *The Construction of Statutes*, 7th ed (Toronto: LexisNexis Canada, 2022) at 354-355. Furthermore, as the Supreme Court held, the rule "presumes that the legislature intended a special law to apply over a general one since to hold otherwise would in effect render the special law obsolete": *Lévis (City) v Fraternité des policiers de Lévis Inc*, 2007 SCC 14 at para 58.

[34] As a result, contrary to the Applicant's argument, in order for subsection 164(1.5) to prevail over subsection 220(3), Parliament was not required to explicitly "invalidate" or override subsection 220(3) in enacting subsection 164(1.5): Applicant's Memorandum of Fact and Law at para 34. In accordance with this general rule of statutory interpretation, the effect is implied. Moreover, it is of no consequence which provision was enacted first: Sullivan at 354.

[35] Furthermore, the Federal Court of Appeal's reliance on the implied exception rule in *ConocoPhillips* supports the application of the rule here. In that case, the Court determined that while subsection 220(2.1) of the *ITA* provides the Minister with broad discretion to waive filing

requirements in the Act, subsection 166.1(7) sets out specific limitation periods to be applied in the objections regime. Finding that subsection 220(2.1) applied "would give the Minister a power that the Minister has been denied in a detailed provision in subsection 166.1(7)": *ConocoPhillips* at para 47. On that basis, the Court of Appeal concluded that "the general waiver provision cannot be applied in this manner to override a more specific provision": *ConocoPhillips* at para 48.

[36] In this case, there is a clear conflict between the two statutory provisions. On the one hand, subsection 164(1.5) limits the circumstances in which the Minister may extend the time for filing a tax return for the purposes of a refund under subsection 164(1). Significantly, an extension of time is not available to a corporate taxpayer like the Applicant. On the other hand, subsection 220(3) has general application and grants the Minister broad discretion to extend the time for filing a tax return under the *ITA*. It is not limited to certain classes of taxpayers, unlike subsection 164(1.5).

[37] Consistent with the implied exception rule, the CRA officer reasonably concluded that in light of subsection 164(1.5), subsection 220(3) has no application in the Applicant's case.

B. *The CRA officer's decision was not procedurally unfair*

[38] In arguing that the CRA officer's decision was procedurally unfair, the Applicant refers to the CRA "altering course" after its July 6, 2022 letter: Applicant's Memorandum of Fact and Law at paras 19-23, 37-39. In essence, the Applicant asserts that the CRA's July 2022 letter created a legitimate expectation that subsection 220(3) of the *ITA* was applicable and that it was just a matter of the Minister deciding whether to exercise her discretion under subsection 220(3) to extend the

filing deadline in subsection 164(1). The Applicant argues that the July 2022 letter was "not honoured" and that the CRA subsequently changed course by deciding that the Minister had no discretion to extend the time.

[39] The doctrine of legitimate expectation is described as "an extension of the rules of natural justice and procedural fairness": *Foster Farms LLC v Canada (International Trade Diversification)*, 2020 FC 656 at para 92, citing *Reference re Canada Assistance Plan (BC)*, 1991 CanLII 74 (SCC), [1991] 2 SCR 525 at 557. A legitimate expectation may arise, for instance, where an administrative decision-maker makes representations about the process that will be followed in making a particular decision: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras 94-95 [*Agraira*].

[40] The law is clear, however, that the doctrine does not create substantive legal rights, only procedural ones: *Agraira* at para 97; *Chelsea (Municipality) v Canada (Attorney General)*, 2024 FCA 89 at para 36. As a result, even where a person has "a legitimate expectation that a particular outcome will be reached, that expectation is not enforceable": *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250 at para 75.

[41] The Applicant's assertion that it was unfair that the CRA "altered course" after its July 2022 letter clearly pertains to a substantive matter — whether subsection 220(3) of the *ITA* was applicable. This is a matter of statutory interpretation rather than a matter of process that engages procedural fairness.

[42] In these circumstances, the doctrine of legitimate expectations does not apply. The CRA officer did not breach the Applicant's right to procedural fairness in ultimately deciding that, as a matter of statutory interpretation, subsection 220(3) did not apply. The doctrine of legitimate expectations cannot be invoked to prevent the proper application of the law.

C. *Conclusion*

[43] For these reasons, the application for judicial review is dismissed. The Applicant has failed to establish that the CRA officer's decision was either unreasonable or procedurally unfair.

[44] The Respondent did not seek costs and none are awarded.

JUDGMENT in T-2340-23

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

"Anne M. Turley"
Judge

Appendix

Income Tax Act, RSC 1985, c 1 (5th Supp)
Loi de l'impôt sur le revenu (L.R.C. (1985), ch. 1 (5e suppl.))

Refunds

164 (1) If the return of a taxpayer's income for a taxation year has been made within 3 years from the end of the year, the Minister

[…]

(b) shall, with all due dispatch, make the refund referred to in subparagraph (a)(iii) after sending the notice of assessment if application for it is made in writing by the taxpayer within the period within which the Minister would be allowed under subsection 152(4) to assess tax payable under this Part by the taxpayer for the year if that subsection were read without reference to paragraph 152(4)(1).

[…]

Exception

164 (1.5) Notwithstanding subsection (1), the Minister may, on or after sending a notice of assessment for a taxation year, refund all or any portion of any overpayment of a taxpayer for the year

(a) if the taxpayer is an individual (other than a trust) or a graduated rate estate for the year and the taxpayer's return of income under this Part for the year was filed on or before the day that is 10 calendar years after the end of the year;

(b) where an assessment or a redetermination was made under subsection was made under subsection 152(4.2) or 220(3.1) or 220(3.4) in respect of the taxpayer; or

Remboursement

164 (1) Si la déclaration de revenu d'un contribuable pour une année d'imposition est produite dans les trois ans suivant la fin de l'année, le ministre :

[…]

b) doit effectuer le remboursement visé au sous-alinéa a)(iii) avec diligence après avoir envoyé l'avis de cotisation, si le contribuable en fait la demande par écrit au cours de la période pendant laquelle le ministre pourrait établir, aux termes du paragraphe 152(4), une cotisation concernant l'impôt payable en vertu de la présente partie par le contribuable pour l'année si ce paragraphe s'appliquait compte non tenu de son alinéa a).

[…]

Exception

164 (1.5) Malgré le paragraphe (1), le ministre peut, à la date d'envoi d'un avis de cotisation pour une année d'imposition ou par la suite, rembourser tout ou partie d'un paiement en trop d'un contribuable pour l'année si, selon le cas :

a) le contribuable est un particulier (sauf une fiducie) ou une succession assujettie à l'imposition à taux progressifs pour l'année et sa déclaration de revenu pour l'année en vertu de la présente partie a été produite au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition;
b) une cotisation a été établie, ou un montant déterminé de nouveau, en application des paragraphes 152(4.2) ou 220(3.1) ou (3.4), à l'égard du contribuable;

(c) to the extent that the overpayment relates to an assessment of another taxpayer under subsection 227(1) or (10.1) (in this paragraph referred to as the "other assessment"), if the taxpayer's return of income under this Part for the taxation year is filed on or before the day that is two years after the date of the other assessment and if the other assessment relates to

(i) in the case of an amount assessed under subsection 227(1), a payment to the taxpayer of a fee, commission or other amount in respect of services rendered in Canada by a non-resident person or partnership, and

(ii) in the case of an amount assessed under subsection 227(10.1), an amount payable under subsection 116(5) or (5.3) in respect of a disposition of property by the taxpayer.

c) dans la mesure où le paiement en trop se rapporte à une cotisation établie à l'égard d'un autre contribuable en vertu des paragraphes 227(10) ou (10.1) (appelée « autre cotisation » au présent alinéa), si la déclaration de revenu que le contribuable est tenu de produire en vertu de la présente partie pour l'année est produite au plus tard le jour qui suit de deux ans la date d'établissement de l'autre cotisation et que celle-ci porte :

(i) dans le cas d'une cotisation établie en vertu du paragraphe 227(10), sur le paiement au contribuable d'honoraires, d'une commission ou d'une autre somme à l'égard de services rendus au Canada par une personne ou une société de personnes non-résidente,

(ii) dans le cas d'une cotisation établie en vertu du paragraphe 227(10.1), sur une somme à payer en vertu des paragraphes 116(5) ou (5.3) relativement à la disposition d'un bien par le contribuable.

Extensions for returns

220 (3) The Minister may at any time extend the time for making a return under this Act.

Prorogations de délais pour les déclarations

220 (3) Le ministre peut en tout temps proroger le délai fixé pour faire une déclaration en vertu de la présente loi.

FEDERAL COURT

SOLICITORS OF RECORD

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