

Federal Court



Cour fédérale

**Date: 20130118**

**Docket: T-522-12**

**Citation: 2013 FC 47**

**Ottawa, Ontario, January 18, 2013**

**PRESENT: The Honourable Mr. Justice Rennie**

**BETWEEN:**

**SIVANATHAN SIVADHARSHAN**

**Applicant**

**and**

**THE MINISTER OF NATIONAL REVENUE**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] The applicant seeks judicial review of a decision of a delegate of the Minister of Finance (the Minister) denying his request to amend his 2004 and 2005 T1 income tax returns.

[2] Subsection 152(3.1) of the *Income Tax Act*, RSC 1985, c 1 (the *Income Tax Act*) provides that an income tax return may be reassessed within three years of Notice of Assessment. There is an exception to the three year limitation period in subsection 152(4.2) of the *Income Tax Act*. This

provision grants the Minister the discretion to reduce or refund tax payable after three years have passed. The Canada Revenue Agency's (CRA) policy is to only issue a reassessment after the three year limitation period if the Minister is satisfied that there would have been a reassessment if the request had been filed in time.

[3] I find that the Minister reasonably exercised his discretion to deny the applicant's request to reassess outside the prescribed period. Therefore, this application is dismissed.

***Facts***

[4] The applicant filed his 2004 and 2005 tax returns on June 15, 2006, reporting \$41,725 and \$77,217 in net business income respectively for those years. The Notices of Assessment were issued on August 4, 2006.

[5] The applicant was contacted by the CRA Collections Department regarding outstanding taxes in October of 2006. The CRA agent's notes of that conversation indicate that the applicant stated that he was not worried about legal action because the CRA did not know the origin of his income.

[6] On July 14, 2010, some four years later, the applicant filed an adjustment form to amend his 2004 and 2005 tax returns. The applicant explained that he mistakenly reported his income as \$81,500 instead of \$8,150 for 2005 and \$44,500 instead of \$4,450 for 2004.

[7] As he was outside of the three year limitation period his request was forwarded to the taxpayer relief division. In order to process his request the CRA requested further information, including his business records and bank statements.

[8] The taxpayer replied by explaining that he had been self employed as a street-vender selling flowers and that the transactions had been in cash. He also explained that he did not have bank accounts because he had been a victim of identity theft. He provided supporting police reports.

[9] The applicant explained that he did not keep some of his business records. He also said that some receipts had been lost when he moved from Ottawa to Toronto. The applicant provided further details regarding the identity theft. He explained that the fraudster had rented a mail box in his name and so he had not received the CRA's correspondence.

[10] The applicant did not provide any financial records for 2004 or 2005. He said that the Ottawa police department had custody of his bank and credit card statements and he authorized the CRA to obtain those records from his bank.

[11] In the first level decision dated February 23, 2011, the applicant's request for a reassessment was denied because the Minister was unable to determine the correct taxes payable for those years.

[12] The applicant requested an administrative review of the first level decision. In the reconsideration decision dated February 10, 2012, his request for reassessments was denied. The

applicant did not provide evidence to substantiate his income in 2004 and 2005. Therefore, the Minister did not have adequate information to determine the correct taxes payable.

*Issue*

[13] The issue for this judicial review is whether the Minister's decision is reasonable: *Lanno v Canada (Canadian Revenue Agency)*, 2005 FCA 153.

*Analysis*

[14] Under Canada's self-assessing tax system the taxpayer is responsible for ensuring that his tax returns are filed correctly.

[15] The applicant claims that his 2004 and 2005 income tax returns incorrectly stated his income. He explains that he could not have earned such a high income because he was a full-time student and worked as a street-vendor

[16] This may be the case, but the difficulty for the applicant is that he was unable to produce any documentation to establish that his business was that of a flower-seller and the amount of income actually generated. The Minister is not obligated to accept a taxpayer's assertion regarding his income without any supporting evidence.

[17] Subsection 230(1) of the *Income Tax Act* requires every person carrying on business to keep records so that the correct tax payable can be determined. The applicant either did not keep or has lost these records.

[18] The applicant has asked that the Minister obtain records from his financial institution but this, in my view, does not advance his case. The taxpayer bears the burden of obtaining this evidence and providing it to the Minister. If these records were available the applicant should have obtained them.

[19] As the applicant did not provide the Minister with any evidence to demonstrate his financial situation in 2004 and 2005, I consider it reasonable for the Minister to have denied his request.

[20] Secondly, it was reasonable for the Minister to be sceptical about the assertion that the income reported was the result of an error. In 2004 the applicant described his income arising from his work as a “technical consultant” and in 2005 as a “flower-seller”. There was no evidence, nor any description, to support either, nor was any reasonable explanation tendered for the rapid transition in employment.

[21] The Minister will, as a matter of policy (Information Circular IC-07-1), exercise his discretion to extend the normal period for assessing where the Minister is satisfied that the reassessment would have been made had the request been made on time, and that the reassessment is correct in law.

[22] The decision of the Minister is assessed against a standard of reasonableness which tests the criteria of justification, intelligibility and transparency and whether it falls within a range of

acceptable outcomes defensible in respect of the facts and law: *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339, para 46.

[23] Discretion vested in the Minister to grant relief against the operation of certain provisions of the *Income Tax Act* is exercised in a legal and factual context. In this case, that context includes an absence of evidence upon which the Minister could reasonably exercise his discretion in favour of the applicant.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that:**

1. The title of proceedings herein is amended to name only The Minister of National Revenue as respondent.
2. The application for judicial review is dismissed.
3. Costs to the respondent.

"Donald J. Rennie"

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-522-12

**STYLE OF CAUSE:** SIVANATHAN SIVADHARSHAN v MINISTER OF NATIONAL REVENUE

**PLACE OF HEARING:** Toronto, ON

**DATE OF HEARING:** December 5, 2012

**REASONS FOR JUDGMENT AND JUDGMENT:** RENNIE J.

**DATED:** January 18, 2013

**APPEARANCES:**

Sivanathan Sivadharshan

FOR THE APPLICANT  
(ON HIS OWN BEHALF)

Amit Ummat

FOR THE RESPONDENT

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FOR THE RESPONDENT