

Federal Court



Cour fédérale

**Date: 20141001**

**Docket: T-730-14**

**Citation: 2014 FC 934**

**Vancouver, British Columbia, October 1, 2014**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**YUET YI FUNG**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**(Reasons delivered orally in Vancouver on October 1, 2014)**

[1] Yuet Yi Fung seeks judicial review of a second-level decision of the Canada Revenue Agency. In that decision, a Minister's Delegate refused to grant relief to Ms. Fung from penalties and interest assessed as a result of her failure to file a T-1135 Foreign Income Verification Statement with respect to her 2011 taxation year by the June 15, 2012 deadline.

[2] By way of background, having failed to file the T-1135 return by the deadline, Ms. Fung was assessed a late-filing penalty of \$2,500, and arrears interest of \$106.82. She paid the monies owing on April 23, 2013, but, in the meantime, she sought relief under the “tax fairness” provisions contained in subsection 220(3.1) of the *Income Tax Act*.

[3] In her first-level submissions, Ms. Fung asserted that she was pregnant in 2011, and that her daughter was born earlier than expected. In her request for tax relief, Ms. Fung stated that because she had had to take care of a premature baby and her four-year-old child, it was very difficult for her to have what she described as “focused time” to organize her income tax receipts, with the result that she was unable to file for the 2011 taxation year until October of 2012. Ms. Fung also stated that she was unaware that she had to file a T-1135 form by the June 15 deadline, even if she did not owe any tax for the 2011 taxation year.

[4] Ms. Fung’s request for relief was rejected at the first level, with the decision-maker noting that Ms. Fung’s baby was born in August of 2011. The CRA officer was of the view that if Ms. Fung was unable to manage her tax obligations, it was her responsibility to engage the services of a tax professional to ensure that her tax returns were filed in a timely manner. Because the taxation officer was not satisfied that Ms. Fung had established the existence of circumstances beyond her control, her first-level request for relief was denied.

[5] Ms. Fung then took her request to the second level. The Minister’s Delegate making the decision at the second level noted that the taxpayer relief provisions of the *Income Tax Act* provide the CRA with “the discretion to cancel all or a portion of interests or penalties owing,

where such penalties or interest were incurred as a result of circumstances beyond the taxpayer's control". In this case, the Minister's Delegate noted that Ms. Fung's baby was born 10 months before the June 15, 2012 filing deadline.

[6] While accepting that "difficulties are sometimes involved", the Minister's Delegate concluded that Ms. Fung was ultimately responsible for filing her tax returns by the filing deadline. Because the Minister's Delegate was not satisfied that Ms. Fung had established the existence of circumstances beyond her control, her request for relief was once again refused. It is this decision that is the subject of Ms. Fung's application for judicial review.

[7] On an application such as this, it is not my role to re-evaluate Ms. Fung's request for relief and decide whether I would come to a different decision than did the Minister's Delegate. I can only intervene in the decision if Ms. Fung can persuade me that the second-level decision was unreasonable in that it lacked justification, transparency or intelligibility, or that the outcome was beyond the range of possible, acceptable outcomes that are defensible in light of the facts and the law: see *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 47, [2008] 1 S.C.R. 190.

[8] Unfortunately, Ms. Fung has not been able to persuade me that the Minister's Delegate's decision was unreasonable. The Minister's Delegate considered all of the arguments that had been put forward by Ms. Fung in support of her request for relief, and explained why these arguments were not accepted. There was nothing unreasonable about the Minister's Delegate's analysis.

[9] Ms. Fung says that she was unaware that she had to file her T-1135 return by the statutory deadline if there was no money owing. Ignorance of the law is not, however, an excuse, and was not a matter beyond Ms. Fung's control. It would not have provided a basis for the granting of discretionary relief under subsection 220(3.1) of the *Income Tax Act: Sandler v. Canada (Attorney General)*, 2010 FC 459, at para. 12.

[10] Insofar as the birth of Ms. Fung's child was concerned, as was noted in the second-level decision, this occurred some 10 months before Ms. Fung's filing deadline for her T-1135 return. The onus was on Ms. Fung to satisfy the Minister's Delegate of the existence of circumstances that would justify the granting of relief. Ms. Fung did not provide any medical evidence to the Minister's Delegate to support the claim that she made for the first time in her Memorandum of Fact and Law that her child required "intensive care for an extended period of time", and there is no evidence in the record that was before the Minister's Delegate that would support this claim.

[11] It was up to Ms. Fung to provide evidence to support her request for relief to the Minister's Delegate. It was not up to the Minister's Delegate to tell Ms. Fung what kind of evidence she had to provide to support her request. Ms. Fung did not provide any information as to the type of care that was required by her child, nor did she explain why she was unable to obtain the services of a tax professional in a timely manner, even though it appears that she had used the services of a tax professional in the past to prepare her tax filings, and she ultimately retained a tax professional to prepare her 2011 T-1135.

[12] Indeed, Ms. Fung has not provided any evidence as to *any* efforts that she may have made during the relevant period to comply with her tax obligations in 2011-2012. In the circumstances, it was entirely reasonable for the Minister's Delegate to conclude that Ms. Fung had not demonstrated the existence of circumstances that would justify the granting of relief from the penalties and interest that had been assessed against her.

[13] Consequently, the application is dismissed. On the consent of the parties, the style of cause will be amended to replace the "Canada Revenue Agency" as the respondent with the "Attorney General of Canada".

[14] I have considered the issue of costs. It appears to me that the respondent should be entitled to an order of costs, but in the exercise of my discretion I am going to limit those costs to \$500.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application is dismissed;
2. The style of cause will be amended to name “Attorney General of Canada” as the respondent in place of the “Canada Revenue Agency”; and
3. The respondent is awarded costs in the amount of \$500.

“Anne L. Mactavish”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-730-14

**STYLE OF CAUSE:** YUET YI FUNG  
v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** OCTOBER 1, 2014

**JUDGMENT AND REASONS:** MACTAVISH J.

**DATED:** OCTOBER 1, 2014

**APPEARANCES:**

Yuet Yi Fung

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Matthew Turnell

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Yuet Yi Fung  
Richmond, British Columbia

FOR THE APPLICANT  
(ON HER OWN BEHALF)

William F. Pentney  
Deputy Attorney General of Canada  
Vancouver, British Columbia

FOR THE RESPONDENT