

Federal Court



Cour fédérale

Date: 20170530

Docket: T-1511-16

Citation: 2017 FC 529

Ottawa, Ontario, May 30, 2017

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

KANAK BISWAL

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Ms. Biswal seeks judicial review of a decision of a delegate of the Minister of National Revenue denying her request to waive penalties and interest assessed against her for the late filing of her T1135 Foreign Income Verification Statements for 2013 and 2014.

[2] As requested by the Respondent, the style of cause will be amended to delete the reference to the Canada Revenue Agency.

[3] The Court had ordered that Ms. Biswal's son could speak for her at the hearing of this matter, and as was observed at the hearing he did a very credible job, and is congratulated.

[4] Given the discussion with counsel and the representative of the Canada Revenue Agency [CRA] in attendance at the hearing, I need not go into many of the facts or the vigorous submissions made by the parties' representatives.

[5] The *Income Tax Act*, RSC 1985, c 1, requires a taxpayer who owns foreign income property costing more than \$100,000 to file a Foreign Income Verification Statement. If a taxpayer fails to file the statement by the due date, a penalty is assessed.

[6] Ms. Biswal is relatively new to Canada, and she failed to file form T1135 by the required deadlines as she was under the impression that when no tax is owed, the deadlines do not apply. She complains that she was unaware that she had to file these forms and would have done so had she been advised by Canada. Since the penalties for the late filing were assessed against her for 2013 and 2014, her son notes that she has filed the required returns in a timely manner.

[7] On January 22, 2015, Ms. Biswal received a Notice of Assessment with respect to the 2013 tax year. She was advised that since she indicated "yes" to the question "Did you own or hold foreign property at any time in 2013 with a total cost of more than CAN\$100,000?" she was required to fill out Form T1135 and submit it to the CRA. On June 24, 2015, Ms. Biswal

received a Notice of Re-Assessment for the 2013 tax year indicating that she owed \$2,613.45 in penalties/interest due to late filing of the T1135.

[8] On July 7, 2015, Ms. Biswal submitted a letter to CRA requesting that it cancel the penalty for failing to submit the T1135 for 2013. She indicated, among other things, that she was retired and living with her son, and therefore could not pay the penalty.

[9] On October 16, 2015, Ms. Biswal submitted the T1135 for 2014, which was due on April 30, 2015. On April 13, 2016, she received a Notice of Re-Assessment for the 2014 tax year indicating that she owed \$2,604.41 in penalties/interest due to late filing of the T1135.

[10] On April 27, 2016, Ms. Biswal submitted a letter request for a second review to cancel the penalty for failing to submit the T1135 for 2013 and 2014. The Applicant stated that she did not believe that the CRA exercised its discretion in a “fair, reasonable and compassionate” manner given her circumstances. The penalty for failure to file the T1135 for both years was approximately \$5,217. In her letter, Ms. Biswal stated that her intent was “to do the right thing and report [her] filings accurately”, and she attempted to fix the situation as soon as she was notified of the issue. Moreover, she stated that she filed the T1135 incorrectly in 2013, because the format was different. She also stated that as a new immigrant with no income, the penalty caused her financial hardship.

[11] On July 21, 2016, a second-level administrative relief report was completed. It found that Ms. Biswal:

[did not] give the CRA any grounds for cancelling the [Late Filing Penalties] as she does not demonstrate that circumstances beyond her control prevented her from filing on time. The arguments she makes are not relevant considerations. I recommend the late filing penalties and interest remain.

[12] This was followed by the final decision by the Director of the Ottawa Technology Centre in the Canada Revenue Agency and delegate to the Minister, who confirmed the denial of relief and stated the following which became relevant during the hearing:

You conclude by saying that paying the late filing penalties will cause you immense financial hardship. As mentioned in the first request, you may contact your Tax Service Office Collection unit to make arrangements regarding the penalty or you can send a completed form RC4288 and identify “Financial hardship/inability to pay” by checking the proper box. This form is available on our CRA website. [Emphasis added]

[13] At the hearing of the application for judicial review, Mr. Biswal, handed-up the decision of the Tax Court of Canada in *Douglas v Canada*, 2012 TCC 73, the facts of which are remarkably similar to those before the Court. However, unlike this application it was an appeal of the assessment of the penalty for failure to file Form T1135 in a timely manner. There, as here, the taxpayer did all he could to comply with the Canadian taxation requirements. The Tax Court found that there was no readily available information to alert him to the requirement to file the form – an argument also advanced here by Ms. Biswal. Justice Woods applied the “judge-made due diligence defence” and vacated the penalty and allowed the appeal.

[14] Ms. Biswal was informed that this Court has no similar jurisdiction and that an appeal would have to be filed to the Tax Court of Canada with respect to the penalties imposed. Counsel for Canada advised the Court that such an appeal would still be timely.

[15] More critical to this application, the Court pointed out to the parties that Form RC4288 referenced in the decision under review is in fact entitled “Request for Taxpayer Relief – Cancel; or Waive Penalties or Interest”. It seemed to me that this is the very process that Ms. Biswal has already gone through without success.

[16] When asked, counsel for Canada confirmed, after consultation with his client, that if a Form RC4288 request were made by Ms. Biswal regarding the penalties and interest at issue here, it would be assessed and considered by CRA, and it would not take the position that the request was *res judicata*, having already been considered. It was also noted that if such an application were made, Ms. Biswal should provide more fulsome information as to her personal financial circumstances than was provided in her earlier letter requests. Indeed, her son raised several “facts” in this regard at the hearing.

[17] In light of the fact that Ms. Biswal has at hand the very relief this Court can offer if she succeeds, i.e. to have her request reconsidered, there is no equitable reason why this Court should grant the requested relief. Accordingly, this application will be dismissed, without costs. Ms. Biswal is encouraged to take the actions indicated by way of a further application to CRA and/or an appeal to the Tax Court of Canada.

JUDGMENT

THIS COURT'S JUDGMENT is that the style of cause is amended by deleting as a Respondent, Canada Revenue Agency, and this application is dismissed, without costs.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1511-16

STYLE OF CAUSE: KANAK BISWAL v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 24, 2017

JUDGMENT AND REASONS: ZINN J.

DATED: MAY 30, 2017

APPEARANCES:

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(Applicant's son/self-represented)

FOR THE APPLICANT

Whitney Dunn

FOR THE RESPONDENT

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