Federal Court  Cour fédérale

Date: 20180328

Docket: T-1198-17

Citation: 2018 FC 347

Ottawa, Ontario, March 28, 2018

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

YOSHIMI TAKENAKA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Applicant, Yoshimi Takenaka, seeks judicial review of the decision of the Minister of National Revenue partially denying her request for taxpayer relief pursuant to s. 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [the Act]. Ms. Takenaka's request for relief from a late filing penalty and interest was granted for the 2012 taxation year, but was denied for the

2011 taxation year. The decision was made by a Canada Revenue Agency [CRA] official acting as the Minister's Delegate [the Delegate].

[2] The penalty did not relate to any non-payment of taxes due. It was applied for the failure to provide information to the CRA.

[3] As a preliminary matter, the application was brought against the CRA. The Respondent submits and the Applicant accepts that the Attorney General of Canada is the proper and sole respondent. The style of cause is accordingly amended.

[4] For the reasons that follow, this application will be granted.

II. Background

[5] Ms. Takenaka represented herself on this application. She is a homemaker and moved to Canada with her husband and three children as a permanent resident in August 2009. Ms. Takenaka is a citizen of Japan and not a native English speaker.

[6] She and her husband jointly own a rental property in the United States, their former family home. Because of the value of the home, part of which is attributed to her, they are both required by the Act to file a "T1135 Foreign Income Verification Statement." Her husband was aware of this and dutifully filed the statement with his tax returns for the years in question. He included the rental income from the rental property in his gross annual income.

[7] The pre-2013 version of the T1135 form states "[c]omplete and file this statement with your tax return." Ms. Takenaka therefore believed the filing requirement did not apply to her, because, as a homemaker, she had no taxable income in 2011 and 2012 and was not required to file a tax return. Any attribution to her of a portion of the rental income would not have resulted in taxable income. The Federal treasury did not thereby suffer any loss.

[8] It bears noting the form was revised in 2013. The new version dropped the reference to filing "with your tax return"; perhaps as a result of other cases in which this had caused confusion.

[9] In 2014, Ms. Takenaka decided to file a return for 2013 in order to claim the Canada Child Tax Benefit [CCTB]. She also filed returns for 2011 and 2012 at the same time, since the CCTB can be claimed retroactively. Along with her returns, she filed the T1135 form for each year. CRA then sent her Notices of Assessment for the 2011 and 2012 tax years totaling $5,540.87 in penalties and arrears interest, for her failure to have filed timely T1135 forms. The penalties were assessed under s 162(7)(a) of the Act: $25 per day, up to a maximum of $2500 per tax year, plus interest. In the curious lexicon of tax matters, this then created a "balance" outstanding against the Applicant.

[10] Ms. Takenaka applied for taxpayer relief, and based her request on "Financial hardship/inability to pay" and "Inappropriate application of the rules and penalties associated with failure to file T1135." She explained that because she was not required to file a tax return, she did not think she was required to file the T1135. She stated that there was no intention to

conceal the information; her husband had filed the T1135 form in relation to the Michigan property and the CRA was aware that they owned the property. Because she has no income, she said, it is impossible for her to pay the penalty.

[11] By letter dated February 24, 2015, Ms. Takenaka's request was denied. The letter states that taxpayers are "expected" to file a return by the due date irrespective of whether a balance owing exists. It also states that filing the T1135 is a separate obligation that must be fulfilled even if no taxes are owed. The letter explains how the CRA defines financial hardship and that "those who are capable of borrowing or otherwise arranging their financial affairs in order to liquidate their tax obligations are expected to do so."

[12] In other words, the CRA told her to take out a loan or find some other means to pay the penalty notwithstanding that she had no taxable income in either 2011 or 2012.

[13] The letter went on to state that decisions to provide relief are guided by CRA's Information Circular IC07-1 [the Guidelines], and specifically highlighted that relief may be granted from penalties resulting from, among other reasons:

i. Extraordinary circumstances;
ii. Actions of the CRA;
iii. Inability to pay or financial hardship.

[14] In making an assessment, states the letter, CRA will also consider whether the taxpayer:

i. Has a history of voluntary compliance with tax obligations;

ii. Knowingly allowed a balance to exist;

iii. Took reasonable care in conducting their affairs; and

iv. Acted quickly to deal with any delay or omission.

[15] It is worth noting again that Ms. Takenaka had no history of tax obligations and had not knowingly allowed a balance to exist as she had no taxable income to declare. She filed the required statement with her returns for 2011 and 2012 as the forms stated. She had no tax affairs to conduct prior to the fateful decision in 2014 to claim the CCTB. But based on these Guidelines, and considering the information provided by Ms. Takenaka, the CRA determined relief was not warranted.

[16] Ms. Takenaka then filed a "second-level" request for relief. This request was based on the same grounds as the first request. She discussed the undue hardship paying the penalty would cause. She also took issue with the suggestion that she was required to file a tax return. She stated how "unduly harsh" she felt the penalty was, considering that no taxes were due, no information was withheld, and that she believed she was fully complying with her tax obligations. Indeed, she stated, had she suspected she was doing something wrong, she would have filed the T1135s through the CRA's "Voluntary Disclosure Program."

[17] In support of her position that she made an honest mistake for which she should not be penalized, Ms. Takenaka attached the analogous Tax Court case of *Douglas v The Queen*, 2012 TCC 73 (Informal Procedure) [*Douglas*], wherein Justice Woods (as she then was) cancelled the penalty owed by Mr. Douglas because it had been reasonable for him to a) file his tax return late

given that he had no tax payable that year; and b) conclude from the instructions on the T1135 form that he was only required to file the form with his tax return.

[18] Ms. Takenaka's second request was considered by a different processing officer who prepared a "Second Level Report." Applying the Guidelines, the report states that Ms. Takenaka had not taken reasonable care to ensure that her tax obligations were being met. Information about these obligations is publically available, and as such, the circumstances leading to the late filing were not beyond her control. It notes Ms. Takenaka's tax compliance history with respect to her filing of the T1135 forms. Moreover, the report states, by failing to pay the penalty being contested, Ms. Takenaka knowingly allowed a balance to exist upon which arrears interest had accrued. Contrary to her belief to the contrary, Ms. Takenaka was "required" to file her tax returns by the due date since she wished to qualify for the CCTB. It then notes that "[t]he fact that there was no tax due, no information withheld and the returns were filed voluntarily would not be sufficient grounds to warrant a cancellation under the Taxpayer Relief provisions of the ITA." Nevertheless, considering Ms. Takenaka's history of tax compliance since 2013, the report recommended partial relief.

[19] By letter dated June 29, 2017, the Delegate rendered the Decision in which he notes:

> i. Ms. Takenaka was "required" to file her 2011 and 2012 returns "by the due date" in order to claim the CCTB.
>
> ii. "Everyone is expected to file their return" by the deadline even if there is no tax owing.
>
> iii. Ms. Takenaka was required to file her T1135 by the deadline, even if a tax return was not being filed. Under the "Filing this statement" portion of the T1135 form instructions, it states that the form is to be sent separately if no tax return is being filed.

iv. The T1135 form is a separate and distinct return, and is subject to different penalty rules, as indicated on the T1135 form instructions.

v. The onus is on taxpayers to take reasonable care to ensure they are complying with their filing obligations. The Taxpayer Relief provisions do not allow for cancellation of penalties and interest "when an individual chooses to disregard the filing deadlines."

vi. As a case heard under the Tax Court's informal procedure, *Douglas*, above, is not binding precedent. The CRA assesses each case on its own merit.

[20] Nevertheless, since Ms. Takenaka had fully complied with all her tax obligations and filed timely returns since 2013, the Delegate followed the processing officer's recommendation to grant partial relief. The penalty applied for the 2012 tax year was cancelled, while the penalty for 2011 was maintained.

III. Issues

[21] The Applicant raises three issues for consideration by this Court:

1. Was the CRA review related to the Guidelines appropriate and fair as listed in the Second Review Report? Did the Applicant take sufficiently reasonable measures to comply with tax obligations?

2. Is a taxpayer truly required to file a timely return in order to apply for the CCTB, as asserted by the CRA?

3. Though not legal precedent, given the extraordinary similarities, should not the CRA respect the Tax Court decision in *Douglas*? If they cannot, will the Federal Court kindly recognize the similarity and apply similar logic?

[22] The Respondent submits and I agree that the issue to be decided in this application is whether the Delegate reasonably exercised his discretion pursuant to s. 220(3.1) of the Act in deciding not to cancel the penalties and interest assessed for the 2011 tax year.

IV. Relevant legislation

[23] The relevant provisions of the Act are as follows:

Canada Child Benefit	**Allocation canadienne pour enfants**
Definition	**Définitions**
122.6 In this subdivision,	**122.6** Les définitions qui suivent s'appliquent à la présente sous-section.
return of income filed by an individual for a taxation year means	***déclaration de revenu*** Le document suivant produit par un particulier pour une année d'imposition :
(a) where the individual was resident in Canada throughout the year, the individual's return of income (other than a return of income filed under subsection 70(2) or 104(23), paragraph 128(2)(e) or subsection 150(4)) that is filed or required to be filed under this Part for the year, and	a) si le particulier a résidé au Canada tout au long de l'année, sa déclaration de revenu (sauf celle produite en vertu des paragraphes 70(2) ou 104(23), de l'alinéa 128(2)e) ou du paragraphe 150(4)) produite ou à produire pour l'année en vertu de la présente partie;
(b) in any other case, a prescribed form containing prescribed information, that is filed with the Minister; (*déclaration de revenu*)	b) dans les autres cas, un formulaire prescrit contenant les renseignements prescrits, présenté au ministre. (*return of income*)

Filing returns of income — general rule

150 (1) Subject to subsection (1.1), a return of income that is in prescribed form and that contains prescribed information shall be filed with the Minister, without notice or demand for the return, for each taxation year of a taxpayer,

[…]

Individuals

(d) in the case of any other person, on or before

(i) the following April 30 by that person or, if the person is unable for any reason to file the return, by the person's guardian, committee or other legal representative (in this paragraph referred to as the person's "guardian"),

[…]

Exception

(1.1) Subsection (1) does not apply to a taxation year of a taxpayer if

[…]

(b) the taxpayer is an individual unless

(i) tax is payable under this Part by the

Déclarations — règle générale

150 (1) Sous réserve du paragraphe (1.1), une déclaration de revenu sur le formulaire prescrit et contenant les renseignements prescrits doit être présentée au ministre, sans avis ni mise en demeure, pour chaque année d'imposition d'un contribuable:

[…]

Particuliers

d) dans le cas d'une autre personne :

(i) au plus tard le 30 avril de l'année suivante, par cette personne ou, si celle-ci ne peut, pour quelque raison, produire la déclaration, par son tuteur, curateur ou autre représentant légal

[…]

Exception

(1.1) Le paragraphe (1) ne s'applique pas à l'année d'imposition d'un contribuable dans les cas suivants :

[…]

b) le contribuable est un particulier, sauf si, selon le cas :

(i) un impôt est payable par lui pour l'année en vertu de la présente

individual for the year,

partie,

[…]

[…]

Failure to comply

162(7) Every person (other than a registered charity) or partnership who fails (a) to file an information return as and when required by this Act or the regulations, or (b) to comply with a duty or obligation imposed by this Act or the regulations is liable in respect of each such failure, except where another provision of this Act (other than subsection 162(10) or 162(10.1) or 163(2.22)) sets out a penalty for the failure, to a penalty equal to the greater of $100 and the product obtained when $25 is multiplied by the number of days, not exceeding 100, during which the failure continues.

Inobservation d'un règlement

162(7) Toute personne (sauf un organisme de bienfaisance enregistré) ou société de personnes qui ne remplit pas une déclaration de renseignements selon les modalités et dans le délai prévus par la présente loi ou le Règlement de l'impôt sur le revenu ou qui ne se conforme pas à une obligation imposée par la présente loi ou ce règlement est passible, pour chaque défaut 00 sauf si une autre disposition de la présente loi (sauf les paragraphes (10) et (10.1) et 163(2.22)) prévoit une pénalité pour le défaut — d'une pénalité égale, sans être inférieure à 100 $, au produit de la multiplication de 25 $ par le nombre de jours, jusqu'à concurrence de 100, où le défaut persiste.

Waiver of penalty or interest

220(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the

Renonciation aux pénalités et aux intérêts

220(3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable

taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.	ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

V. Standard of Review

[24] There is no controversy that the standard to be applied to reviewing the Minister's decisions under s. 220(3.1) of the Act is reasonableness: *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299, at para 20; *Canada Revenue Agency v Telfer*, 2009 FCA 23, at paras 24-28; *Fung v Canada (Attorney General)*, 2014 FC 934, at para 7 [*Fung*].

[25] Applying the reasonableness standard, the Court can only intervene if persuaded that the 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: *Dunsmuir v New Brunswick*, 2008 SCC 9, at para 47.

VI. Analysis

[26] Ms. Takenaka takes issue with how the processing officer applied the Guidelines to assess her case, specifically the conclusions with respect to whether she had knowingly allowed a balance to exist and her history of tax compliance. She also submits that the Delegate erred by

concluding she was required to file a tax return to claim the CCTB and as such had not taken reasonable care in complying with her tax obligations.

[27] As discussed below, although the processing officer may have unreasonably applied the Guidelines in some respects, I can find no error in how the Delegate assessed Ms. Takenaka's tax compliance history or how consideration of that factor should have led to full as opposed to partial relief. However, I am satisfied that the Delegate erred in asserting that Ms. Takenaka was "required" to file her tax return by the deadline in order to qualify for the CCTB. Moreover, it appears that the Delegate failed to consider the Applicant's hardship submissions.

A. *Minister's discretion under s. 220(3.1) of the Act*

[28] Section 220(3.1) of the Act gives the Minister broad discretionary authority to waive or cancel all or part of any penalties or interest otherwise payable. The purpose of this provision is to allow the Minister to grant relief to a taxpayer who could not comply with a statutory requirement due to personal misfortune or circumstances beyond their control: *Bozzer v Canada*, 2011 FCA 186, at paras 22-25 [*Bozzer*].

[29] In *Bozzer*, at para 22, the Federal Court of Appeal referred to the history of s 220(3.1). It was adopted in 1991 as part of what was called a "fairness package." It is one of several provisions intended to give the Minister an ability "to administer the income tax system fairly and reasonably" by "helping taxpayers to resolve issues that arise through no fault of their own."

B. *The Delegate reasonably considered the Applicant's tax compliance history*

[30] Ms. Takenaka takes issue with how the processing officer assessed her case in accordance with the Guidelines. She states the officer's reasoning with respect to whether she "knowingly allowed a balance to exist" is circular, analogous to using the fact that someone is on trial for murder as evidence against them at that same trial. It was reasonable, she submits, to have waited to pay the penalty until the present review procedure was concluded, particularly since she was claiming hardship. She also submits the processing officer erred by only focusing on her T1135 form submissions when discussing her tax compliance history.

[31] I agree with Ms. Takenaka that there is something circular and perverse about holding the very balance owing that is being contested against the person who is challenging the imposition of the penalty in that same review process. It was also unreasonable, in my view, for the officer to conclude that Ms. Takenaka had "knowingly" allowed a balance to be owed at all, when the evidence clearly indicates that she sincerely did not believe she was required to file the T1135 form by the deadline in 2011 and 2012. However, it does not appear that the processing officer's negative assessment with respect to Ms. Takenaka "knowingly allowing a balance to exist" was relied upon by the Delegate.

[32] With respect to Ms. Takenaka's tax compliance history, the Respondent argues, and I agree, that it is clear the Delegate not only gave ample consideration to Ms. Takenaka's submissions in this regard, but in fact used them as a basis for positively exercising his discretion to grant partial relief, contrary to what is contended by Ms. Takenaka:

> A review of your file reveals that your 2013, 2014 and 2015 T1135 returns were filed on time and that you have a similar record of compliance with your income tax return filings. In addition, both 2011 and 2012 T1135 returns were filed on July 24, 2014. Therefore, we will consider this as one submission and the total penalty amount will be reduced to $2,500.00.

[33] In that regard, therefore, I can find no reviewable error with respect to how the Delegate treated Ms. Takenaka's tax compliance history or how consideration of that factor should have led to full as opposed to partial relief.

C. *The Delegate unreasonably concluded that the Applicant had not exercised reasonable care in the circumstances and that the error was not due to the CRA's actions*

[34] The Guidelines note that "errors in material available to the public, which [lead] taxpayers to file returns or make payments based on incorrect information" are grounds for granting relief. I agree with Ms. Takenaka that the pre-2013 T1135 form's instructions are unclear, confusing, and border on misleading. It is likely because of this that the CRA saw fit to change its form in 2013. Ms. Takenaka is not the first person to have made this mistake.

[35] In *Douglas*, above, at para 12, Justice Woods stated that it was "reasonable for Mr. Douglas to include the T1135 with the income tax return" since he was "simply follow[ing] the instructions on the form." Under those circumstances, Justice Woods determined that "[i]t would be unfair to penalize Mr. Douglas for failure to comply with a filing deadline" (at para 13).

[36] *Fiset c La Reine*, 2017 CCI 63, is another Tax Court case where T1135 penalties were at issue. In that case, the Minister's delegate had agreed to cancel the penalties over the course of

the proceedings. This fact was highlighted by Justice Fournier, who noted that had the penalty not been cancelled, he would have done so himself, as in *Douglas*. He clarified [TRANSLATION]: "In my opinion, insisting that the appellant should have to suffer the consequences of an error made in good faith would be of no benefit to the government as it would merely serve to erode public confidence in the CRA" (at para 10).

[37] As the Respondent submits, these decisions were rendered under the Tax Court's summary procedure; a jurisdiction that is significantly different than that of this Court on judicial review. The task of this Court on judicial review is not to determine what is fair in the circumstances but whether the Delegate's decision is reasonable in the legal sense of the standard described above. It covers a broad range of outcomes which may subjectively appear to be unfair – as they do to Ms. Takenaka.

[38] This Court can't simply apply the Tax Court's reasoning in *Douglas* or *Fiset* and "vacate" the Delegate's Decision. But I can take some guidance from the views expressed by the Tax Court, which is much more knowledgeable and experienced in interpreting the Act than this Court. Such as, for example, Justice Fournier's suggestion that the Act's purpose is not to punish someone who makes a reasonable mistake in good faith. Or Justice Woods' view that it would be unfair to penalize a taxpayer who followed the instructions on the form.

[39] The Respondent submits there is authority in this Court for the position that even if the form is confusing, that did not absolve the Applicant from her obligations under the Act: *Sandler*

v Canada (Attorney General), 2010 FC 459 at paras 12 and 14 [*Sandler*] and *Fung*, above, at para 9.

[40] However, it is possible to distinguish Ms. Takenaka's circumstances from these cases. In *Sandler*, the applicant had a history of late filings and the CRA had previously waived a T1135 late-filing penalty. Unlike Ms. Takenaka who filed her first tax return in this country in 2014, Mr. Sandler was well aware of his obligations to file a timely T1135. In this Court, he took issue with a penalty being imposed as a matter of principle, since "[t]he form did not report any income that he had not already disclosed and on which he paid tax" and "[i]t was a mere formality" (at para 2). That argument did not impress Justice O'Reilly.

[41] In *Fung*, the applicant's request for relief was largely based on her contention that it had been impossible for her to file a timely return given her personal circumstances. However, having failed to provide evidence in support of this, her request was denied. And while she did state that she was unaware there would be any consequences to filing the T1135 form late, unlike Ms. Takenaka, she did not argue that she had been misled by the T1135 form itself. Her main argument in this regard was that she was unaware that she had to file her T1135 return by the statutory deadline since she had no money owing. This was not good enough, Justice Mactavish held, as complying with the requirements of the statute was entirely within her control (at para 9).

[42] In this case, the Delegate's reasons include an assertion that Ms. Takenaka was "required" to file her tax return by the deadline in order to qualify for the CCTB. The Delegate stated:

> The General Income Tax and Benefit Guide states that a taxpayer who wishes to qualify for the CCTB must file a return every year, even if there is no income to report so you were required to file your tax returns for years 2011 and 2012 by the due date.
>
> [Emphasis added.]

[43] At the hearing, the Respondent's counsel fairly conceded that the Delegate had erred in his interpretation of ss. 150 and 122.6 of the Act in this regard. The Applicant was under no obligation to file a return as she had no taxable income. A compelling reason to file a return only arose in 2014 when she decided to claim the CCTB, which she could claim retroactively. This is notwithstanding the fact that the obligation to file a timely T1135 form stands on its own.

[44] The Delegate then determined that Ms. Takenaka was also required to file the T1135 by the due date. In discussing the T1135 filing requirements, he stated:

> The onus is on the taxpayer to ensure that a reasonable amount of care is taken to comply with the requirements of the Income Tax Act. The Taxpayer Relief provisions do not allow for cancellation of penalties and interest when an individual chooses to disregard the filing deadlines.
>
> [Emphasis added]

[45] It was unreasonable, in my view, for the Delegate to have concluded that the Applicant had "chosen" to disregard the filing deadlines. She believed she had no filing responsibility. Moreover, contrary to what is asserted by the Respondent, my reading of the Decision is that the

Delegate relied on his erroneous belief that Ms. Takenaka was required to file a timely tax return to justify his conclusion that the Applicant had not taken reasonable care to comply with her tax obligations. The implication is that, whether the T1135 form was misleading or not, Ms. Takenaka had no excuse not to file her 2011 and 2012 returns by the deadline. By extension, there was no excuse not to file the T1135 form by the deadline.

[46] This reading of the Decision is consistent with the Delegate's own affidavit filed as part of these proceedings. In that affidavit he stated that his decision was based on the fact that Ms. Takenaka's "2011 T1 return was filed late" and that she "was required to file her 2011 T1 return in a timely manner, even if she had no income to report, in order to qualify for the [CCTB]." As I have suggested above, this is a form of circular and erroneous reasoning. She was not required to file a tax return for 2011 before the deadline in 2012. The requirement to file a return for 2011 only arose when she decided to claim the CCTB in 2014.

[47] The processing officer's reliance on this error is even more evident in her recommendation, which the Delegate then approved.

[48] Based on the above, it is clear the Delegate's mistaken belief that Ms. Takenaka was required to file a timely tax return influenced his determination that she had not acted diligently. It is not possible to know whether the same decision would have been reached but for the error in interpreting Ms. Takenaka's obligations under the Act. As a result, I find the Decision lacks justification and is not intelligible.

D. *The Delegate failed to consider the Applicant's hardship submissions*

[49] The Applicant's "second-level" request for relief was based in part on her claim of hardship. However, the Decision does not address the question of hardship at all.

[50] It is now trite to observe that the validity of a decision is not impugned simply because the reasons provided do not address all of the arguments, statutory provisions, jurisprudence or other details raised by the parties. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion: *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 16.

[51] It would have been open to the Delegate to find that Ms. Takenaka had provided insufficient evidence to support her claim of hardship. However, the Delegate did not address this basis of Ms. Takenaka's claim for relief. It is not even mentioned. This, despite the fact that on her claim of relief form, Ms. Takenaka had checked only two boxes: "Financial hardship/inability to pay" and "Other circumstances," and had devoted the bulk of her letter to explaining why she could not pay the penalty.

[52] The failure to even acknowledge the hardship claim was unreasonable.

VII. Conclusion

[53] For the foregoing reasons, I am of the view that the Decision not to grant relief for the 2011 tax year was unreasonable. This application for judicial review should therefore be allowed and the matter remitted to the Minister for redetermination by a different delegate.

[54] For greater certainty, the Delegate's decision to grant relief for 2012 was reasonable and should not be revisited.

[55] In her oral submissions at the hearing, Ms. Takenaka requested that I make a number of orders of a declaratory nature regarding the CRA and its treatment of individuals. None of them appear to fall within the jurisdiction of this Court on judicial review and I will make no such orders.

[56] No request for costs was made and the Court has no evidence of out-of-pocket expenses that might be claimed by a self-represented litigant. Accordingly, no award of costs will be made.

JUDGMENT IN T-1198-17

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to substitute the Attorney General of Canada as the sole Respondent;

2. The application is granted and the matter of relief from the penalty and interest assessed for the 2011 tax year is remitted to the Minister for redetermination by a different Delegate in accordance with the reasons provided;

3. No costs are awarded.

"Richard G. Mosley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1198-17
STYLE OF CAUSE:	YOSHIMI TAKENAKA V ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	FEBRUARY 28, 2018
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DATED:	MARCH 28, 2018

APPEARANCES:

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Arnav Patel	FOR THE RESPONDENT

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