Cour fédérale Federal Court

Date: 20180620

Docket: T-194-15

Citation: 2018 FC 595

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 7, 2018

PRESENT: THE HONOURABLE Mr. Justice Gascon

BETWEEN:

DOMINIQUE MARTINEAU

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] For more than 12 years now, the Applicant, Dominique Martineau, has been challenging decisions made regarding him by the Respondent, the Canada Revenue Agency [CRA], as concerns assessments of taxes to be paid by him for the 2003 taxation year. The application for judicial review before the Court in the present case is the most recent episode in this long saga.

[2] In a decision rendered on August 26, 2014 [Decision], a CRA representative denied a request for relief filed by Mr. Martineau under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c. 1 (5th Supp.) [ITA], seeking the cancellation of a penalty for false statements and interest imposed on Mr. Martineau for 2003. In her Decision, the representative found that Mr. Martineau could not use the Taxpayer Relief Guidelines to indirectly challenge a tax assessment, that Mr. Martineau did not provide any new evidence for the 2003 taxation year subject to the assessment, and that Mr. Martineau had not proved financial hardship rendering him unable to fulfil his tax obligations.

[3] Mr. Martineau is now applying to the Court for a judicial review of this Decision. He states that the CRA's Decision is unreasonable, and requests that the Court cancel the penalty and interest imposed on him further to the Notice of Reassessment issued in 2005 pertaining to undeclared income for the 2003 taxation year. The CRA's response is that the Decision is reasonable in all respects and that it is well-supported by the evidence available to the tax authorities.

[4] The only issue raised by Mr. Martineau's application is to determine whether the Decision is reasonable. For the reasons that follow, I find that Mr. Martineau's application for judicial review must be dismissed. Having reviewed the Decision, the evidence before the CRA and the applicable law, I am not convinced that the Decision made by the CRA representative is not within the range of acceptable outcomes in these circumstances, or that there are reasons to warrant intervention by the Court. I understand that Mr. Martineau would have liked for the CRA to have decided otherwise or for the representative to have accepted his interpretation of

the circumstances surrounding the transactions that led to the tax assessment he is still challenging today. However, in the context of this application for judicial review, the Court is not hearing an appeal of the Notice of Assessment already issued by the CRA and upheld by the Tax Court of Canada [TCC], and I find no error in the Decision of the CRA representative that might allow me to intervene. In its decision, the CRA took into account all the evidence, and its findings are defensible in respect of the facts and law.

II. Context

A. *Facts*

[5] The facts that gave rise to Mr. Martineau's challenges date back to October 2005. On that date, the CRA issued a Notice of Reassessment for the 2003 taxation year and imposed on Mr. Martineau a federal tax of $1,200.23, a penalty of $600.11 for gross negligence (that is, false statements or an omission on a return), and interest on arrears of $189.64. The CRA had discovered that the [translation] "Due to shareholder" account on the financial statements of Mr. Martineau's company, Eau Distilpur Inc., was not justified and that a shareholder benefit totalling $16,734 had not been reported by Mr. Martineau in his income.

[6] Disagreeing with the CRA, Mr. Martineau objected to the reassessment. However, in March 2007, the CRA maintained the assessment in full. In February 2011, Mr. Martineau filed an initial request for relief under subsection 220(3.1) of the ITA, but the request was denied by the CRA in June 2012 on the ground that Mr. Martineau had failed to demonstrate financial hardship or an inability to pay. At the time, Mr. Martineau had failed, in particular, to provide the

financial documents requested by the CRA and to produce his tax return for the 2010 taxation year.

[7] In July 2012, Mr. Martineau again requested that the CRA review his request for relief, arguing that he did not owe the $1,200.23 in taxes for the 2003 taxation year because the CRA auditor had failed to take into account a document stating that a man named Gilles St-Pierre had invested $15,000 in the company and that he was unable to pay the sum owed. In support of his second request for relief, Mr. Martineau provided the CRA with the following documents: a bank statement from April 1999; proof of loan insurance dating back to 1999; a loan contract for $30,000 dated 1999; a record of banking transactions from March 1999; proof of change of status of a joint cash account in 2001; a summary of his provincial and federal returns for 2010; an income statement from the Société d'assurance-automobile du Québec [SAAQ]; and a 2011 Notice of Assessment. In August 2014, the CRA rendered the Decision dismissing Mr. Martineau's second request for relief. That Decision is the subject of this judicial review.

[8] While his application for judicial review was before this Court, Mr. Martineau also appealed the Decision to the TCC to challenge the assessment for the 2003 taxation year. In a judgment rendered in March 2016, Justice Favreau of the TCC dismissed the appeal on the ground that Mr. Martineau had not instituted his appeal within the timeframe prescribed in subsection 169(1) of the ITA and had not requested an extension of that timeframe.

[9] In respect of the action brought by Mr. Martineau before this Court, the CRA filed a motion to strike Mr. Martineau's application for judicial review, alleging that the application had

no chance of succeeding. In an order issued in June 2015, Justice Bell ruled that the Court did not have the jurisdiction to [translation] "vacate the assessment" as Mr. Martineau had requested in his notice of judicial review because a tax assessment may only be challenged in the TCC under section 12 of the *Tax Court of Canada Act*, RSC 1985, c. T-2. Justice Bell therefore partially allowed the CRA's motion to strike, but nonetheless permitted Mr. Martineau to continue his appeal on the matter of the request for relief regarding the penalty and interest imposed on him by the CRA.

[10] The interest has continued to accrue over time, such that Mr. Martineau's tax debt for the 2003 taxation year is close to $3,500 today.

B. *Decision*

[11] In the decision denying Mr. Martineau's request for relief, the CRA representative provided the following reasons for refusing to accommodate Mr. Martineau as he requested: 1) a request for relief cannot be used to challenge a reassessment; 2) the new documents submitted by Mr. Martineau all pertain to the 1999 financial year, which was not included in the audit that Mr. Martineau is objecting, and no new evidence was submitted for the 2003 taxation year; and 3) the evidence does not show that Mr. Martineau has financial hardship preventing him from satisfying his tax obligations, with Mr. Martineau's income and expenses instead showing a monthly budget surplus.

[12] The CRA representative based her decision on the detailed report made by a CRA reviewing officer [Officer], who had spoken with Mr. Martineau over the phone and analyzed all

the documents submitted in order to assess his file and obtain a clear picture of the status of his assets and liabilities. In that respect, the Officer noted that: 1) Mr. Martineau had failed to report income for the 2003 taxation year and that a penalty for false statements had been imposed; 2) none of the documents submitted by Mr. Martineau for this second review pertained to 2003 or showed an error on the part of the CRA auditor; and 3) Mr. Martineau did not have financial hardship, but rather a monthly surplus according to the [translation] *Results and statement of the applicant's net worth* form and Mr. Martineau's admissions regarding his monthly income from the SAAQ and his expenses.

C. *Standard of review*

[13] The action brought by Mr. Martineau is an application for judicial review against the Decision, which is a discretionary decision rendered by the CRA under subsection 220(3.1) of the ITA. When the Court is called upon to review the legality of such a decision, the applicable standard of review is that of reasonableness (*Canada Revenue Agency v. Telfer*, 2009 FCA 23 [*Telfer*] at paras. 24–28; *Herrington v. Canada (National Revenue)*, 2016 FC 953 at para. 15). In a context where the standard of review is that of reasonableness, the Court must show deference and be careful not to substitute its own opinion for that of the CRA, provided that the decision in question is justified, transparent and intelligible, and that it falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v. New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at para. 47; *Canada Revenue Agency v. Slau Limited*, 2009 FCA 270 at para. 27). The reasons for a decision will be considered to be reasonable "if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland*

and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62 [*Newfoundland Nurses*] at para. 16). Moreover, findings of fact command a high degree of judicial deference, given the role of the trier of facts at an administrative tribunal such as the CRA (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59).

III. Analysis

[14] Mr. Martineau argues that the CRA Decision is manifestly unreasonable given the errors committed by the representative in assessing evidence, the CRA's refusal to close his file, the placement of a heavy burden of proof on him, failure to consider evidence that he considers to be uncontradicted, and the irrational nature of the Decision on account of the evidence submitted in 2005. In short, Mr. Martineau claims that, even though the tax authorities had all the necessary evidence before them, the CRA did not understand his submissions, the TCC judge and the CRA representative both made errors in assessing his file, and the CRA therefore abused its authority. Furthermore, Mr. Martineau is of the opinion that [translation] "in view of the principles applicable in this case," the Court is [translation] "doubly justified in vacating" the reassessment for the 2003 taxation year.

[15] Mr. Martineau also argues that he had spoken to various people at the CRA, sent multiple letters and made many calls to the CRA, with no response. Mr. Martineau maintains that, with respect to the documents and evidence, he submitted everything to the CRA so that it could determine that he did not actually owe any taxes for the 2003 taxation year, but that the CRA did not give his file proper consideration.

[16] Despite the deep conviction that Mr. Martineau expressed and demonstrated in his proceedings and at the hearing as to the merit of his case, I do not share his point of view about the unreasonableness of the Decision rendered by the CRA.

[17] First, as counsel for the CRA clearly explained, only the TCC may vacate a tax assessment, and this Court does not have the jurisdiction to assess the validity of an assessment or a self-assessment. The TCC is the only court with the authority to deal with such issues (*Canada v. Addison & Leyen Ltd*, 2007 SCC 33 at para. 11; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at paras. 24, 27; *Cybernius Medical Ltd. v. Canada (Attorney General),* 2017 FC 226 at para. 24). I also cannot consider Mr. Martineau's arguments seeking to vacate the Notice of Reassessment for the 2003 taxation year. Moreover, Justice Bell's order of June 2015 had struck out the words [translation] "the assessment" from Mr. Martineau's notice of application. Thus, the only remaining issue is the reasonableness of the CRA Decision refusing to cancel the penalty for false statements and the interest accrued following the reassessment.

[18] However, as I mentioned during the hearing, the standard of review of reasonableness is based on deference that reviewing courts must show towards the decisions of administrative decision-makers, which, like the CRA, are vested with powers delegated to them by the legislator. This principle of deference recognizes that these administrative decision-makers have greater expertise than courts of law with regard to issues under their jurisdiction, that courts of law must not substitute their opinion for that of the administrative decision-makers, and that the latter are better equipped to choose from all the reasonable possible outcomes. In the CRA's

case, the legislator conferred on this specialized administrative tribunal the responsibility to enforce legislative provisions on tax assessments and requests for relief. Its expertise stems from the specialization of its functions and its familiarity with tax-related matters. Insofar as the CRA decision falls within a range of "possible, acceptable outcomes" which are defensible in respect of the facts and law, and displays the markers of justifiability, transparency and intelligibility, the Court must refrain from intervening (*Dunsmuir* at para. 47; *Newfoundland Nurses* at para. 16).

[19] The issue upon which I must decide is therefore not whether the alternative interpretation of the facts presented by Mr. Martineau could constitute a possible, acceptable outcome under the circumstances; rather, I must determine whether the interpretation made by the CRA representative in the Decision of August 2014 itself fell within a range of possible and acceptable outcomes. I am of the opinion that this is the case.

[20] I recognize that Mr. Martineau ably combed through the evidence surrounding the 2003 Notice of Assessment and the grounds stated by the CRA, pointing out excerpts from documents that might have played in his favour and highlighting the evidence that, according to him, the CRA interpreted incorrectly. However, Mr. Martineau merely asked the Court to reassess the evidence presented to the CRA and to substitute itself for the administrative decision-maker. Unfortunately for Mr. Martineau, the action brought before this Court is not an appeal of the CRA decision, but a judicial review. When it conducts a review of the findings of fact of a decision-maker according to the standard of reasonableness, the Court is not tasked with duplicating the work carried out by the decision-maker and re-assessing the relative importance attributed by the decision-maker to the various factors and evidence it had. The Court is limited

to determining whether the decision falls within a range of possible and acceptable outcomes in respect of the facts and law. The case law also clearly establishes that the exercise of discretion to grant requests for relief under subsection 220(3.1) of the ITA must entail significant deference on the part of courts of law, given the CRA's extensive expertise in the field (*Telfer* at paras. 24–26).

[21] It is relevant to reiterate the state of the law and the parameters governing the application of subsection 220(3.1) of the ITA concerning requests for taxpayer relief. Under this provision, the CRA has the discretion to waive all or any portion of a penalty or interest payable by the taxpayer or a partnership. According to the information circular issued by the CRA, *Taxpayer Relief Provisions*, IC07-1R1, dated August 18, 2017 [*Circular*] (see also *Northview Apartments Ltd. v. Canada (Attorney General)*, 2009 FC 74 sy paras. 5–8), the CRA may exercise its relief authority if one of the following situations demonstrates a taxpayer's inability to satisfy a tax obligation or requirement: 1) extraordinary circumstances; 2) actions of the CRA; and 3) inability to pay or financial hardship. In the request for relief, Mr. Martineau argued the last two factors, that is, an error committed by the CRA auditor and financial hardship rendering him unable to pay his tax debt.

[22] With respect to actions of the CRA that may open the door to the cancellation of interest and penalties, the *Circular* mentions: 1) processing delays or errors in processing; 2) errors in material available to the public; 3) incorrect information or delays in providing information to the taxpayer; or 4) undue delays in resolving an objection or an appeal, or in completing an audit (*Circular* at para. 26). It is clear that none of these specific cases applied to Mr. Martineau's file.

The CRA error about which Mr. Martineau was complaining was instead an error in the assessment and evaluation of his file; however, the evidence shows that Mr. Martineau had not submitted any documents for the 2003 taxation year with his request for relief, as all the documents filed with and analyzed by the CRA were for 1999.

[23] I therefore cannot find that the CRA Decision of August 2014 was unreasonable with regard to Mr. Martineau's request for relief based on an alleged CRA error. On the contrary, the Decision made by the CRA representative was based on sound, uncontradicted evidence for the 2003 taxation year that had no errors, and it is not the Court's responsibility to interfere in such findings of fact rendered by the CRA within the scope of its expertise.

[24] Furthermore, the *Circular* also explains that the CRA may consider waiving all or part of a taxpayer's penalties and interest when, for example, payment of the accumulated interest causes a prolonged inability for the taxpayer to provide basic necessities such as food, medical care, transportation, or accommodation (*Circular* at para. 27). "Cancelling a penalty based on an inability to pay or financial hardship" is not generally considered, unless extraordinary circumstances, such as a natural disaster, prevent compliance (*Circular* at para. 28). To determine a taxpayer's ability to satisfy his or her tax obligations, the CRA will then review in detail the taxpayer's financial situation, taking into account the taxpayer's income and expenses, assets and liabilities, ability to borrow funds and sell assets, and actions and efforts to pay amounts owing (*Circular* at para. 28.1).

[25] That is precisely what the CRA did before concluding, in August 2014, that Mr. Martineau did not have financial hardship preventing him from paying the penalty and interests that the tax authorities had imposed on him. Mr. Martineau had argued that he was unable to pay the tax debt. Yet, the comprehensive analysis of his financial situation that the Officer conducted based on the documents and information that Mr. Martineau himself had provided showed that he had a budget surplus at the time of several hundred dollars every month. Under the circumstances, while it certainly may be a long and demanding process for Mr. Martineau to pay his tax debt in full, it was not unreasonable for the Officer and the CRA representative to find that Mr. Martineau would not be burdened by this obligation to the point of not being able to provide for his basic necessities. The CRA's finding is unlikely to be the outcome for which Mr. Martineau had been hoping, especially considering his frustration with an assessment that he considers completely unjustified, but his disagreement with the assessment of the evidence by the CRA and with the results of the exercise of this discretion do not amount to an unreasonable decision warranting this Court's intervention. Again, the Decision of August 2014 regarding Mr. Martineau's financial situation is supported by the evidence that the CRA representative had before her, and is a reasonable decision.

[26] Moreover, I cannot agree with Mr. Martineau's claims that his case dragged on for years due to a lack of diligence by CRA officers in processing his case or their failure to follow up on his communications. Instead, the evidence in the record shows that the CRA attempted to contact Mr. Martineau a number of times, but it appeared that the latter did not have a fixed address. It is regrettable that the CRA officers and Mr. Martineau sometimes left each other voice messages without managing to speak, but I am satisfied that based on the evidence in the record, the CRA

was diligent in trying to reach Mr. Martineau over the years, even though this proved difficult due to multiple changes in address or telephone number at which Mr. Martineau could be reached.

IV. Conclusion

[27] For the reasons discussed above, Mr. Martineau's application for judicial review is dismissed, as the CRA's denial of the request for relief is eminently part of the possible and acceptable outcomes that the CRA could determine under the circumstances, in light of the evidence before it and the applicable law. There are no grounds warranting the Court's intervention in the Decision of August 2014.

[28] As counsel for the CRA stated during the hearing, the CRA is not applying for costs in this matter, and the Court therefore does not award any.

JUDGMENT in file T-194-15

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed without costs.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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