Federal Court  Cour fédérale

Date: 20191213

Docket: T-1782-17

Citation: 2019 FC 1599

Ottawa, Ontario, December 13, 2019

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MARTIN JAMES MERRILL STOVER

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

I. Nature of the Matter

[1] The Applicant, Mr. Stover, requested that the Minister grant him taxpayer relief from paying interest accrued on outstanding tax debts from the 2005 and 2006 taxation years under subsection 220(3.1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [Act]. The Minister's Delegate denied the application in a second level review decision dated October 19, 2017. The Applicant applies for judicial review of that decision.

[2] For the reasons that follow, the application for judicial review is allowed.

II. Background

[3] The Applicant has practiced as a certified financial planner in Ontario since 1986. For a number of years, the Applicant operated a partnership with another financial planner who also acted as the landlord of the premises where they conducted their business. The Applicant states that he dissolved the partnership in 2007 due to a conflict with his partner. Around that time, the Applicant and his wife separated and ultimately ended their marriage.

[4] In April 2008, an auditor of the Canada Revenue Agency [CRA] contacted the Applicant. The auditor asked the Applicant to provide supporting documents to prove commission expenses claimed in the 2005 and 2006 taxation years. The Applicant states that he informed the auditor that he could not provide documents to support the claims for deductions because his business partner destroyed the partnership records out of spite upon the partnership's dissolution. Since his partner was their landlord, he prevented the Applicant from accessing the premises to obtain the records. The Applicant's former spouse also withheld correspondence and mail addressed to him and she destroyed documents relevant to those taxation years.

[5] In November 2008, the auditor mailed a letter informing the Applicant that he did not provide any evidence to establish the expenses claimed and that the CRA would disallow the commission expenses and reassess the Applicant for the 2005 and 2006 taxation years. As such, the Applicant's total taxable income in 2005 and 2006 was increased by approximately $154,500.

[6] The Applicant states that he became aware of the reassessments in February 2009 after the auditor called him demanding payment of approximately $60,000. On February 2, 2010 the Applicant served a Notice of Objection [Objection] on the Minister with respect to the reassessments.

[7] On February 24, 2012, the Minister registered a tax lien against the Applicant's home for approximately $118,600.

[8] In April 2012, the Applicant applied to the Tax Court of Canada [TCC] for an extension of time to serve an Objection. On February 26, 2013, the TCC granted the application and deemed the Objection, previously served on February 2, 2010, to be a valid notice of objection.

[9] In January 2014, the Minister asked the Applicant to provide information to support the commission expenses that he claimed. Ultimately, on March 27, 2014, the Minister disallowed the Objection and confirmed the reassessments because the Applicant did not provide information or supporting documentation to prove the commission expenses he had claimed.

[10] In July 2014, the Applicant appealed the reassessments to the TCC, which granted an extension of time in December 2014. Ultimately, the Applicant discontinued the appeal in December 2015.

[11] On December 22, 2016, the Minister received the Applicant's request for relief from interest owing on the outstanding tax debt due to financial hardship and illness.

[12] In January 2017, the Minister relieved the Applicant from paying interest accrued from October 1, 2013 to October 31, 2013 due to delays caused by the CRA during the objection process following the TCC order. However, the Minister refused to grant further relief due to the Applicant's alleged hardship and illness.

III. The Second Level Appeal Decision

[13] In May 2017, the Minister received the Applicant's second level appeal request for relief from approximately $57,000 in interest accrued with respect to his debts in the taxation years of 2005 and 2006. In his submissions to the Minster, the Applicant raised extraordinary circumstances, actions of the CRA, and financial hardship to support his request for relief.

[14] First, the Applicant submitted that he could not provide the documents that the CRA requested in 2008 because his wife and his business partner destroyed them in 2007. The Applicant stated that his attempts to recover documents relating to the expenses were futile.

[15] Second, the Applicant submitted that he suffered mental illness due to the difficulties in his professional and marital life, including estrangement from his only son after his wife abducted him. He stated that he became addicted to alcohol and prescription medication and succumbed to clinical depression.

[16] Third, the Applicant referred to actions of the CRA to support his claim for relief. He noted that the CRA registered a lien against his home after he objected to the reassessments. The Applicant also notes the delay incurred by the CRA between the TCC decision of February 2013

and the decision dismissing his opposition in March 2014. The Applicant then noted that his appeal of the CRA's decision to refuse the Objection was discontinued in error by the lawyer representing him at that time.

[17] Fourth, the Applicant stated that the CRA lien registered in February 2012 while his objection was pending caused him financial hardship because it limited his ability to re-mortgage his home or otherwise receive financing from financial institutions.

[18] On October 4, 2017, an Officer of the Taxpayer Relief Centre completed a report recommending that the Minister deny the Applicant's second level appeal.

[19] On October 19, 2017, the Minister's Delegate denied the Applicant's appeal in accordance with the Officer's recommendation.

[20] After summarizing the Applicant's submissions, the Report noted that, as of October 4, 2017, the Applicant owed an outstanding principal balance of approximately $46,500, which continued to accrue interest. The Report also stated that the Applicant owed approximately $57,600 in interest after accounting for the relief provided at the first level (October 2013 arrears).

[21] The Report first addressed the Applicant's compliance as a taxpayer from 2001 to 2016: he once filed a return late and remitted payment late for 14 taxation periods. The Report remarked that the Applicant has been issued multiple notices to pay outstanding tax debts, and

the Applicant once omitted $2500 in capital gain income from a tax return. However, the Report also stated that the Applicant made multiple voluntary payments with respect to the 2005 taxation year and garnishee payments were applied, while the Applicant made one voluntary payment with respect to the 2006 taxation year.

[22] In addressing the Applicant's submissions, the Report stated as follows:

A. the Officer was unable to determine if the Applicant's marital difficulties prevented him from filing his 2005 and 2006 tax returns on time given that these returns were due before he was officially separated;

B. the Applicant did not exercise reasonable care to ensure that he followed proper reporting procedures and did not demonstrate that circumstances beyond his control prevented him from meeting legislative requirements;

C. the CRA's actions did not cause any undue delays or errors or prevent the Applicant from addressing the balance owing;

D. the Applicant did not file an objection until March 26, 2013. The Applicant's objection was assigned to an appeals officer on November 18, 2013;

E. the Officer referred to a clinical psychologist's report from September 2008, which states that the psychologist saw the Applicant from May 2005 to June 2006. The Officer could not confirm that he was prevented from filing the 2005 and 2006 returns accurately and on time due to his medical condition.

[23] The Report then stated that the CRA views financial hardship as the prolonged inability to provide necessities such as food, clothing, shelter, and reasonable non-essentials. An individual's ability to pay is determined by factors such as household income, basic living expenses, and the capacity to borrow. The Report held that the interest is not causing excessive financial hardship and that the Applicant did not establish an inability to pay for the following reasons:

A. the Applicant's financial information demonstrates that he has a positive net worth and a monthly surplus of income;

B. the Applicant has fulfilled his commitments to other creditors but not his commitment to pay his tax debt;

C. the Applicant is spending over $400/month on clothing/personal care, recreation, entertainment, and dining out, which exceeds the amount of interest charged each month on the outstanding tax debt.

IV. Issues and standard of review

[24] The Minister's exercise of discretion under subsection 220(3.1) of the Act will be reviewed by this Court on a reasonableness standard (*Northview Apartments Ltd. v Canada (Attorney General)*, 2009 FC 74 at paras 9-10; *Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 20 [*Stemijon*]).

[25] This application for judicial review raises a single issue: did the Minister reasonably exercise its discretion under subsection 220(3.1) of the Act?

V. Submissions and analysis

[26] The Applicant submits that the Minister failed to consider the following circumstances:

A. the Applicant's business partner destroyed his financial and business records and prevented him from accessing the business premises, which he argues was an extraordinary circumstance outside of his control (paragraph 25 of the Information Circular 1C07-1R1 [the Guidelines]);

B. the Applicant's family breakdown, destruction of records by his spouse, and abduction of his son;

C. the Applicant's mental illness and addiction to medication and alcohol which affected his emotional and mental state;

D. the CRA assigned his file to collectors and registered a lien against his home despite the Applicant's Notice of Objection, and incurred unreasonable delays in the carriage of his file;

E. during the objection proceedings, the CRA used improper accounting procedures and erred by refusing to accept comparative receipts;

F. in its decision, the Minister focused on the filing of tax returns and financial ability. However, the 2005 and 2006 tax returns were filed on time and amounts due (apart from the disallowed expenses) were paid on time.

[27] The Respondent first argues that subsection 220(3.1) of the Act is intended to provide discretion to waive interests and penalties when a taxpayer has failed to comply with the Act due to extraordinary circumstances through no fault of their own, but is not intended to arbitrarily reduce or settle tax debts of individual taxpayers (referring to the Guidelines).

[28] The Respondent submits that the Minister reasonably exercised its discretion not to waive the outstanding interest in light of the evidence before it. The Respondent argues that the Minister properly considered the non-amicable break-up of the Applicant's partnership, his marital break-up, and submissions about his medical condition. The Minister reasonably considered these factors and concluded that it was unable to confirm if they prevented the Applicant from filing his returns accurately and on-time.

[29] The Respondent further submits that the Minister's analysis of financial hardship and ability to pay was reasonable. The Minister reasonably considered if payment of the accumulated interest would cause the Applicant "a prolonged inability to provide necessities such as food, clothing, shelter and reasonable non-essentials", in addition to the Applicant's income, basic living expenses, and capacity to borrow by relying on the financial information before it.

[30] Finally, the Respondent submits that the CRA did not commit any errors that would have prevented the Applicant from addressing the balance of his tax debt and the Minister's conclusion that no such errors or undue delays occurred is reasonable. In the Respondent's view, the Applicant alleges an error in the assessment and the evaluation of his file which cannot be raised as grounds for relief under subsection 220(3.1) of the Act as the Federal Court does not

have the jurisdiction to vacate or review tax assessments (Citing *Jus d'Or Inc v Canada (Customs and Revenue Agency)*, 2007 FC 754 at para 8).

[31] According to the Respondent, the Guidelines refer only to the following CRA errors: 1) processing delays or errors to the public; 2) errors in material available to the public; 3) incorrect information or delays in providing information to the taxpayer; and 4) undue delays in resolving an objection or an appeal, or in completing an audit. In the Respondent's view, the Minister reasonably concluded that the Applicant did not raise such errors.

VI. Analysis

A. *General Principles*

[32] Subsection 220(3.1) of the Act affords the Minister broad discretion to waive or cancel interest otherwise payable under the Act:

(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 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	**(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 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

is necessary to take into account the cancellation of the penalty or interest.	et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

[33] I recognize that the Guidelines may serve as a useful guide to inform the Minister's exercise of discretion under subsection 220(3.1) of the Act, as they list certain circumstances that may warrant the waiver of interest (notably at paras 23, 25 of the Guidelines). However, subsection 220(3.1) of the Act is much broader than the Guidelines—which, ultimately, are not exhaustive and cannot restrict the Minister's exercise of discretion (*Stemijon* at paras 24-25).

[34] The Applicant does not argue that the Minister fettered its discretion by relying on the Guidelines. From its reasons, the Minister did not appear to restrict its broad discretionary power to the contents of the Guidelines. Rather, the Minister considered the arguments raised by the Applicant to determine if relief is warranted and appeared to understand the nature and scope of its discretion (*3563537 Canada inc. v Canada Revenue Agency*, 2012 FC 1290 at paras 62-65).

B. *Financial hardship and medical condition*

[35] I find that the Minister did not commit a reviewable error in its assessment of the financial hardship that the Applicant raised to support his request for relief. The Minister reviewed the evidence before it and concluded that the Applicant has a positive net worth, has a positive incoming cash flow, was able to maintain commitments to other creditors, and allocated a greater proportion of his income to discretionary purchases than the amount of income charged each month. It was open to the Minister to make these particular findings (*Hauser v Canada (Revenue)*, 2007 FC 113 at para 20). Moreover, while financial hardship does not equate to

"financial impossibility", it is not apparent that the Minister held the Applicant to that high standard. As such, the Minister's conclusions were justified, transparent, and intelligible. They do not warrant this Court's intervention (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190 at para 47).

[36] I arrive at the same conclusion with respect to the Applicant's submissions about his mental health. It was reasonable for the Minister to find that the evidence before it did not support the Applicant's claim that his mental condition prevented him from fulfilling his obligations under the Act. I recognize that mental illness, including clinical depression, can be a circumstance justifying a waiver of interest, and the Minister's failure to consider such a factor may amount to a reviewable error (*McLeod (Estate) v Canada (National Revenue)*, 2007 FC 1111 at paras 24-34; *Laflamme v Canada (National Revenue)*, 2008 FC 1403 at paras 16, 35-40; *Cayer v Canada Revenue Agency*, 2009 FC 1195 at paras 10, 18, 56; *Holmes v Canada (Attorney General)*, 2010 FC 809 at paras 3, 7, 23-32; *Yachimec v Canada (National Revenue)*, 2010 FC 1333 at paras 36, 47).

[37] However, it is the Applicant's onus to demonstrate that an alleged medical condition prevented him from complying with his tax obligations. This means the evidence must establish a causal link between the Applicant's medical condition and his failure to fulfil his tax obligations (*Williamson v Canada (Attorney General)*, 2011 FC 383 at paras 28-30; *Lemerise v Canada (Attorney General)*, 2010 FC 116 at para 23; *Pylatuik v Canada (Attorney General)*, 2016 FC 1394 at para 40; *Dort Estate v Canada (Minister of National Revenue)*, 2005 FC 1201 at para 23 [*Dort Estate*]).

[38] As the Minister noted, the Applicant's evidence in that respect was limited to a letter drafted by a clinical psychologist dating from September 2008. In this letter, the psychologist stated that the Applicant was her patient between May 31, 2005 and June 2006 and commenced sessions again in May 2008. The letter does not state that the Applicant suffered from mental or physical illness or that he struggled with addiction at any time. Rather, the letter notes that the Applicant was bothered by not seeing his son and responded by "over-indulging in alcohol, on a few occasions, at home alone". The letter concludes by stating that the Applicant "has remained stable. He continues to be productive at work and positive regarding his future, both personally and professionally."

[39] Unlike the cases in which this Court found a Minister's decision refusing to waive interest to be unreasonable where the taxpayer alleged mental illness, the Applicant did not provide medical evidence that he has been diagnosed with mental illness since the balance has remained outstanding, or at any other time. As such, the record supports the Minister's conclusion that illness did not prevent the Applicant from complying with his obligation to pay the outstanding tax debt.

C. *Destruction of financial records*

[40] The Applicant submitted that there were circumstances beyond his control that prevented him from providing the auditor with evidence to substantiate his business deductions. The Applicant submitted that these documents were destroyed by his business partner and spouse in 2007, before the CRA's audit and request for documents in April 2008. In his application for taxpayer relief, the Applicant stated that he informed the CRA auditor of these circumstances.

[41] I acknowledge that the Minister did not refer to this factor in its analysis apart from summarizing the Applicant's arguments at the outset of its decision. The Minister noted that both the 2005 and 2006 returns were filed on time, a CRA letter from April 2008 requested documents from the Applicant to support his claims for expenses, and that the Minister reassessed the Applicant in 2008 to disallow the expenses after it did not receive the documents. The Minister goes on to state that the Applicant "did not exercise reasonable care expected from a taxpayer to ensure proper reporting procedures are followed. The submission has failed to demonstrate that there were circumstances beyond his control preventing compliance and meeting legislative requirements".

[42] However, I agree with the Respondent that the Applicant's submission in this regard ultimately amounts to challenging the correctness of the tax assessments related to the 2005 and 2006 taxation years. This Court cannot review or vacate a tax assessment because an alternative right of appeal to the TCC is provided by operation of section 18.5 of the *Federal Courts* Act RSC 1985, c F-7 [*Federal Courts Act*]; a taxpayer is therefore not to use the taxpayer relief provisions to make a collateral attack on tax assessments (*Al-Quq v Canada (Attorney General)*, 2018 FC 574 at paras 19-20, 30-32; *Zaki v Canada (National Revenue)*, 2018 FC 928 at para 20; *Parmar v Canada (Attorney General)*, 2018 FC 912 at paras 50-53). As such, the Minister's decision not to entertain this submission about the destruction of financial records was reasonable. Before setting forth why this is the case, the Federal Court of Appeal's comments in *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 about what may properly be considered by this Court on judicial review of a decision under 220(3.1) of the Act is germane to the case at hand. From paragraph 90:

> In some circumstances, discretionary relief elsewhere in the [Act] may provide an adequate, effective recourse. For example, under

> subsection 220(3.1) of the [Act], a taxpayer may obtain fairness relief against assessments of penalties and interest that are, in the circumstances, unfair. In some circumstances, this can address substandard conduct leading up to the assessment (undue delay in making the assessment could trigger fairness relief). It is true that the Minister who made the assessment also decides whether fairness relief should be granted under section 220. But the criteria underlying the two decisions are different. The Minister's section 220 decision is subject to judicial review in the Federal Court on administrative law principles. If the Minister approaches the issue of fairness relief with a closed mind or makes a decision that is substantively unacceptable or procedurally unacceptable in administrative law, her decision is liable to be quashed (the Minister must have an open mind and cannot fetter her discretion).
>
> [References omitted]

[43] I recognize, as the Applicant points out, that the Guidelines, at paras 25, 35-36, contemplate the possibility that third-party errors or extraordinary circumstances could justify the waiver of interests. While non-binding, these paragraphs of the Guidelines do appear to reflect some circumstances in which the Minister may grant relief from paying interest on accrued tax debts: "extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying with an obligation under the act" (Guidelines at para 25, see also: *LaFramboise v Canada (Canada Revenue Agency)*, 2008 FC 196 at paras 3, 9-10, where the Minister unreasonably failed to consider that the taxpayer's failure to file return on time and pay an outstanding tax debt was due to the total destruction of her home and financial records in a house fire; see also *3563537 Canada inc. v Canada Revenue Agency*, 2012 FC 1290 at paras 72-78, where the Minister unreasonably failed to consider that fraud by a financial planner prevented the taxpayer from filing his return on time).

[44] In other words, on judicial review of a taxpayer relief decision, this Court can properly consider the Minister's failure to address evidence or submissions that a taxpayer could not file a return on time, pay the outstanding debt at all, or comply with other obligations under the Act, due to circumstances outside of their control. However, the problem in this case is that the unfortunate destruction of the Applicant's financial records did not incur a delay in filing his returns, prevent him from paying the tax debt, or from fulfilling his obligations once he was reassessed in 2008.

[45] Rather, the Applicant's submission arises from the *source* of the reassessments (he was reassessed *because* he could not provide supporting materials, due to incidents that he submits were beyond his control). The Applicant objected to these reassessments, he appealed them to the TCC, and ultimately discontinued his appeal (apparently due to an error committed by his lawyer). While these circumstances are unfortunate, the TCC had the jurisdiction to rectify these reassessments so that they could reflect the Applicant's true tax debt by relying on other credible evidence of the expenses claimed as deductions (*Amiripour v The Queen*, 2015 TCC 187 at paras 14-18). Failing a decision by the TCC rectifying those assessments, or a favourable decision after filing a notice of objection, the reassessments at issue are presumed to be valid (*Frank Arthur Investments Inc. v Canada (National Revenue)*, 2014 FC 336 at para 42). The Applicant's argument here appears to assume that the existing reassessment is incorrect, which is a matter at the heart of the TCC's jurisdiction (*Kerry (Canada) Inc. v Canada (Attorney General)*, 2019 FC 377 at para 34).

[46] On a taxpayer relief application, the Minister acts as a Federal tribunal and is not to consider whether or not the assessments reflect the applicant's true tax debts (their correctness) and this Court cannot review the Minister's decision on that basis (*Federal Courts Act* section 18.5). For these reasons, I find that the Minister did not commit a reviewable error by refusing to consider the Applicant's submissions about the source of his outstanding tax debt.

D. *Undue delay of the CRA during the assessment process*

[47] The Applicant raised one submission that itself merits setting the Minister's decision aside, namely: delays caused by the CRA in treating the Applicant's file during the objection process.

[48] In his submissions to the Minister requesting relief from the payment of interest, the Applicant referred to delays imputable to the CRA, namely in failing to treat his Objection. While the TCC order of February 26, 2013, also in the record before the Minister, was not supported by reasons, it is apparent that the Applicant served an Objection on the Minister on February 2, 2010. The TCC order provides as follows:

> 1. the application to extend the time to file a Notice of Objection for the Applicant's 2005 and 2006 taxation years is granted; and
>
> 2. the time within which the said Notice of Objection in respect of the 2005 and 2006 taxation years may be served is extended to the date of this Order and the Applicant's Notice of Objection served on the Minister of National Revenue on February 2, 2010, is deemed to be a valid Notice of Objection.
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> [My emphasis]

[49] Normally, in accordance with subparagraph 165(1)(a)(ii) of the Act, a taxpayer must object to an assessment within 90 days of the date the notice of assessment was sent. In this case, the notice of assessment was sent on November 24, 2008. The Applicant therefore had until late February 2009 to object on time. However, the Applicant served his Objection nearly one year later than the delay provided in the Act. That said, section 166.1 of the Act provides taxpayers with the right to request that the Minister extend time to serve an objection. According to paragraph 166.1(7)(a) of the Act, the Minister can only consider requests made within one year of the deadline for objecting provided under subsection 165(1) of the Act (i.e. 15 months after the notice of assessment was sent). In this case, the Applicant filed his Objection a few weeks before the deadline for requesting an extension of time.

[50] While the record did not contain information stating that the Applicant explicitly requested an extension of time or that he provided the Minister with reasons for requesting an extension of time, Notices of Objection filed after the 90 day delay for objecting, but within the extension of time delay, have been interpreted as implicit applications to extend time (*Melanson v The Queen*, 2011 TCC 569 at para 14; *1682320 Ontario Limited v The Queen*, 2013 TCC 126 at paras 11-17; *Haight v The Queen*, 2000 DTC 2571 at paras 26-30; *Fagbemi v The Queen*, 2005 DTC 955 at paras 6-8).

[51] According to subsection 166.1(5) of the Act, when an application to extend time has been filed within the delay, “the Minister shall, with all due dispatch, consider the application and grant or refuse it, and shall thereupon notify the taxpayer in writing of the Minister’s decision.”

[52] In this case, the Minister did not treat the Applicant's Objection with all due dispatch. Rather, the Minister remained passive for two years and ultimately undertook enforcement actions against the Applicant by registering a lien against his home on February 24, 2012. Thereafter, the Applicant sought recourse to the TCC in April 2012.

[53] While the Minister was under no obligation to extend time after the Applicant filed a late Objection, it was still required to make a decision with all due dispatch. The Minister's failure to do so evidently incurred delays, as the Applicant believed that the objection process was underway as of February 2, 2010. Had the Minister acted with due dispatch as required, the Applicant's objection and appeal process which, ultimately began in February 2013, would have evidently concluded much sooner. This would have had an impact on the interest accrued. In the Guidelines, the Minister itself recognizes that interest may be waived or cancelled if it "resulted mainly because of actions of the CRA" including "errors in processing" and "undue delays in resolving an objection or an appeal, or in completing an audit" (at para 26).

[54] Where the Minister fails to consider departmental delays in exercising its discretion, including a failure to treat a notice of objection with all due dispatch, this Court's intervention is warranted, as such matters are highly relevant to the question of taxpayer relief *(Hillier v Canada (Attorney General)*, 2001 FCA 197 at paras 24-26; *Dort Estate* at paras 14-21; *Cole v Canada (Attorney General)*, 2005 FC 1445 at paras 33-35). This is the case here. The Minister's analysis of delays imputable to the CRA is limited to those incurred between the TCC order of February 26, 2013 and the assignment of the Applicant's file to an appeal officer in November 2013, and consequently, at the initial level, cancelled interest for one month during that period (October

2013) to account for the delay. However, the Minister made no comment with respect to the delays incurred between the date the Applicant filed the Objection in 2010 and the TCC order in 2013 aside from stating: "[a] review of the account has not revealed any undue delays or errors caused by the actions of the CRA."

[55] While the Applicant still had an unpaid balance when this delay was incurred by the CRA, up until the Minister rendered the decision under review, this does not mean that the Applicant would not be entitled to cancellation of interest incurred due to those delays (*Lalonde v Canada Revenue Agency*, 2010 FC 531 at para 52).

VII. Conclusion

[56] I find that the Minister's decision is unreasonable and the application for judicial review is therefore granted. The decision of the Minister's Delegate is set aside and shall be remitted to another Delegate for redetermination of the Applicant's entitlement to relief from interest accrued due only to delays caused by the CRA.

JUDGMENT in T-1782-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is granted;
2. The matter is referred to a different Delegate for re-determination of the Applicant's entitlement to relief from interest only with respect to the delays caused by CRA;
3. The applicant is entitled to costs.

"Paul Favel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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