Federal Court  Cour fédérale

Date: 20201202

Docket: T-2021-19

Citation: 2020 FC 1111

Ottawa, Ontario, December 2, 2020

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

YOGESWARAN PERINPANAYAGAM

Applicant

and

TSFA PROCESSING UNIT AND THE ATTORNEY GENERAL OF CANADA

Respondents

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is an application for judicial review of a decision by a second level review officer [Officer] acting for the Minister of National Revenue [Minister] pursuant to subsection 207.06(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.), as amended [*ITA*] refusing the Applicant's request to waive tax payable for his excess contributions to his Tax Free Savings Account [TFSA] [Decision].

[2] The application is dismissed because in my respectful view, the Decision of the Officer is reasonable. My reasons follow.

II. Facts

[3] The Applicant's TFSA was managed by a financial advisor at one of Canada's chartered banks [Bank]. In or around 2016, the Applicant alleges he lost $19,225.51 from his TFSA portfolio after a cease trade order was placed on a company whose shares the Applicant held in his TFSA. The loss represented the reduction in the value of the shares. The company had gone bankrupt and was delisted from the relevant stock exchange. The Applicant states that at the end of 2016, the Bank advised him that to replace the funds lost, he could deposit (in his written submissions he used the word "replace" and at the hearing used the word "reimburse") $20,000 into his TFSA without paying tax. It appears the tax he could avoid (according to his Bank's seemingly erroneous advice) would be tax on what, in law, would be an excess TFSA contribution. I say excess contributions tax because a reduction in the value of shares held inside a TFSA does not create a right to make additional contributions to a TFSA over and above the amounts established annually; one is not allowed to top up a TFSA to the extent there is a drop in the value of shares held in it.

[4] For the 2016 taxation year, the Applicant's TFSA contribution limit was $11,500. On August 12, 2016, he contributed $12,000.

[5] The Applicant made an additional $25,000 contribution to his TFSA on November 10, 2016. This is the contribution he alleges the Bank said he could make. I note here this amount exceeds what he said the Bank said he could make.

[6] On June 1, 2017, the Canada Revenue Agency [CRA] sent the Applicant an educational letter [Educational Letter] advising him he had made excess contributions of $25,500 to his TFSA. The Educational Letter told him about the excess contributions tax and steps available for corrective action. Although not specifically cited in the Educational Letter, section 207.02 of the *ITA* imposes the following penalty associated with excess TFSA contributions:

Tax payable on excess TFSA amount	**Impôt à payer sur l'excédent CÉLI**
207.02 If, at any time in a calendar month, an individual has an excess TFSA amount, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of the highest such amount in that month.	**207.02** Le particulier qui a un excédent CÉLI au cours d'un mois civil est tenu de payer pour le mois, en vertu de la présente partie, un impôt égal à 1 % du montant le plus élevé de cet excédent pour le mois

[7] To correct the excess contributions, the Educational Letter told the Applicant to "withdraw the excess amounts right away", i.e. "immediately". The Applicant did not withdraw the $25,500 excess contributions at that time. Eventually the excess contributions were reduced by the annual increase in the contribution limits allowed in 2018, and smaller withdrawals made by the Applicant in the 2018 taxation year.

[8] The Applicant contends he did not receive the June 1, 2017 Educational Letter, a point in dispute. The Officer found against the Applicant in this respect and decided he had received the Educational Letter.

[9] Chronologically, after the June 1, 2017 Educational Letter, on June 8, 2017, the Applicant withdrew $1,800 from his TFSA. Instead of withdrawing the entire excess contributions, he made additional contributions: from January 18, 2018 until August 1, 2018, he contributed a total of $5,100 to his TFSA.

[10] On July 17, 2018, the CRA issued a Notice of Assessment regarding excess contributions in the amount of $12,700 with respect to the 2017 taxation year. It did so because the Applicant had not substantially reduced the excess amount in the TFSA as required by the June 1, 2017 Educational Letter. Notably, the Applicant received the Notice of Assessment which was sent to the same address as the Educational Letter.

[11] On August 3, 2018 and on November 5, 2018, the Applicant withdrew $5,116.37 and $2,000, respectively, from his TFSA.

[12] On August 22, 2018, the Applicant wrote to the Respondent and requested a waiver of the tax imposed on excess TFSA contributions for the 2017 taxation year because the excess contributions were made in error, he alleged, because of the Bank's advice that he was allowed "to replace (Deposit) 20000.00 (*sic*) that [he] lost earlier from [his] account without tax."

[13] Subsection 207.06(1) of the *ITA* authorizes the Minister to waive tax payable under section 207.02 of the *ITA* on two conditions: first, the excess contributions must have been made as a "consequence of a reasonable error", and second, the taxpayer must remove the excess contributions "without delay":

Waiver of tax payable	**Renonciation**
207.06 (1) If an individual would otherwise be liable to pay a tax under this Part because of section 207.02 or 207.03, the Minister may waive or cancel all or part of the liability if	**207.06 (1)** Le ministre peut renoncer à tout ou partie de l'impôt dont un particulier serait redevable par ailleurs en vertu de la présente partie par l'effet des articles 207.02 ou 207.03, ou l'annuler en tout ou en partie, si, à la fois:
(a) the individual establishes to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error; and	**a)** le particulier convainc le ministre que l'obligation de payer l'impôt fait suite à une erreur raisonnable;
(b) one or more distributions are made without delay under a TFSA of which the individual is the holder, the total amount of which is not less than the total of	**b)** sont effectuées sans délai sur un compte d'épargne libre d'impôt dont le particulier est titulaire une ou plusieurs distributions dont le total est au moins égal au total des sommes suivantes:
(i) the amount in respect of which the individual would otherwise be liable to pay the tax, and	**(i)** la somme sur laquelle le particulier serait par ailleurs redevable de l'impôt,
(ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).	**(ii)** le revenu, y compris le gain en capital, qu'il est raisonnable d'attribuer, directement ou indirectement, à la

somme visée au sous-alinéa (i).

[Emphasis added.] [Je souligne.]

[14] On February 13, 2019, the TFSA Processing Unit denied the Applicant's request for relief for the 2017 taxation year.

[15] On March 4, 2019, the Applicant requested a second level review regarding the 2017 taxation year. It is the resulting Decision that is under review.

III. Decision under review

[16] The Officer conducted the second level review and concluded the Applicant had made excess contributions to his TFSA even after knowing he should not. The Decision was set out in a letter from the Officer dated June 26, 2019.

[17] The Officer found against the Applicant and concluded he had received the June 1, 2017 Educational Letter notwithstanding the Applicant's assertion he had not. In this respect, the Officer found: first, the Educational Letter had been sent to the same address listed on the Applicant's current file; second, the Applicant had stated his preference for physical mail; and third, the Educational Letter had not come back as 'returned to sender.'

[18] While in oral argument at the hearing before me, the Applicant said he had other problems with his mail, he did not put evidence to that effect before the Minister's representatives. Therefore, this argument relies on inadmissible new evidence which I am unable

to consider further: see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22, per Stratas JA, at para 20. This issue could and should have been raised with the Officer.

[19] Having decided the Educational Letter was indeed received by the Applicant, the Officer determined there would be no cancellation of the excess contributions tax. This was because the Applicant continued to maintain excess contributions despite being notified by the June 1, 2017 Educational Letter of the excess contributions, and being told to withdraw the excess which he did not do. Indeed, as noted, he continued to make contributions. I note the Officer said that the Applicant continued to make excess contributions to his TSFA "in 2017". This was mistaken because while contributions were made between January and August 2018, none were made in 2017. In my view nothing turns on this mistake.

[20] Prior to issuing the Decision, and because his TFSA maintained excess contributions, on July 16, 2019, the CRA issued a Notice of Assessment indicating an excess amount of $4,683.63 in the Applicant's TFSA with respect to the 2018 taxation year. The Applicant says he only wants the 2017 assessment reviewed, and will pay anything owing in subsequent taxation years.

IV. Issues

[21] The Applicant was self represented and did not raise a particular issue; however, the issue in this application is whether the Decision is reasonable.

V. Standard of Review

[22] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] Justice Rowe said that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] set out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption can be rebutted in certain situations, none of which apply in this case. Therefore, the Decision is reviewable on a standard of reasonableness.

[23] In *Canada Post*, Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
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> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).
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> [Emphasis added.]

[24] The Supreme Court of Canada in *Vavilov*, at para 86 states "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies." The reviewing court must be satisfied the decision maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[25] In this specific situation I am also guided by my colleague Justice Walker in *Sangha v Canada (Attorney General)*, 2020 FC 712 [*Sangha*], who stated the following regarding a judicial review in a case like this, i.e., in which the taxpayer requested a waiver of tax liability due to excess TFSA contributions:

> [18] The provisions of the *ITA* under which the Minister's delegate made the Decision establish the legal context for my review of the parties' submissions (*Vavilov* at para 108). The excess TFSA tax was assessed by the CRA pursuant to section 207.02 of the *ITA*. Mr. Sangha's request for a discretionary waiver of the TFSA tax imposed was made under subsection 207.06(1).
>
> [19] Subsection 207.06(1) of the *ITA* provides that the Minister's discretion may be exercised if:
>
> > 1. The taxpayer establishes to the satisfaction of the Minister's delegate that the tax liability arose as a consequence of a reasonable error; and
> >
> > 2. The excess TFSA amounts are removed from the TFSA by the taxpayer without delay.
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> …
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> [24] The Minister's delegate is required to apply the conditions for relief set out in subsection 207.06(1) to the factual matrix of the particular case (*Vavilov* at paras 125-126) and to meaningfully address the central concerns identified by the taxpayer, in this case the arguments raised by Mr. Sangha in his Second Waiver Request (*Vavilov* at paras 94, 127).
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> …
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> [26] My role is not to substitute my own decision for that of the Minister's delegate, nor am I to review the Decision against a standard of perfection (*Vavilov* at paras 83, 91)...

VI. Parties' positions and analysis

[26] The Respondent raised a preliminary issue regarding the grounds for review. The Respondent submits that determining whether grounds for review of a particular decision exist is not the same as determining the standard of review to be applied to that decision. The Respondent states that the Applicant has not identified a specific ground of review in the application and simply disagrees with the Decision. The Respondent does not request any relief or any order in relation to this issue and simply raises it. In my view, the correct issue as stated

above is whether the Decision was reasonable. The Applicant is self-represented and I do not see the benefit in engaging further regarding this preliminary issue.

[27] The Applicant protests the inclusion of the full history of the Applicant's TFSA when he submits that the case before the Court "belongs to the 2017 tax year". I will look primarily at documentation concerning the 2017 taxation year. I note of course that documents filed in 2018 may and in this case do, in fact and law actually relate to the 2017 taxation year. I also do not agree the taxpayer's history with the CRA is exempt from review; it may well be relevant to what is a discretionary decision for the Minister or his delegate to make.

[28] The Applicant alleged he never received the Educational Letter. He says the first correspondence he received was the Notice of Assessment for the 2017 taxation year dated July 17, 2018.The Officer disagreed and found it was received by the Applicant.

[29] The Applicant submits that the Respondent has not provided any evidence that it mailed the June 1, 2017 Educational Letter to the Applicant, and has not provided any evidence that the Educational Letter was delivered to the correct address. Essentially he says he does not know if it was mailed or not, and if mailed, whether it was lost in the mail or otherwise. He says he did not receive the Educational Letter and alleges it is therefore unfair to deny relief for not doing what the Educational Letter told him to do.

[30] The Officer considered the Applicant's allegations and rejected them. First, the Officer noted that the letter had been sent to the same address listed on the Applicant's current file.

Second, the Applicant had stated his preference for physical mail. Third, the June 1, 2017 Educational Letter had not come back as 'returned to sender.' The Officer concluded the Applicant had received the June 1, 2017 Educational Letter. I note that in his oral argument, the Applicant indicated he has lived at the same address since 2011.

[31] I accept the Respondent's submissions that CRA is not obliged to prove receipt, only that the relevant notice was sent: see *Weldegebriel v Canada (Attorney General)*, 2019 FC 1565 [*Weldegebriel*] per my colleague Justice Diner:

> [8] Despite Mr. Weldegebriel's concerted arguments before this Court, for which I commend his professionalism, I do not find that the Officer rendered an unreasonable Decision. Rather, it was open to the CRA to find that various notices went out without receiving any indication of a different address, upholding the first-level decision. Both the first and second level reviewers found that Mr. Weldegebriel had not acted quickly in response to the notice of over-contributions for the 2017 taxation year, and given the number of notices sent over the years, I cannot find the conclusion unreasonable. The fact that Mr. Weldegebriel finally corrected the over-contribution in 2018 does not reverse his error, which he admits was done innocently. This Court owes deference to the administrative decision-maker, who has broad discretion under the legislation as to whether or not to provide relief.
>
> [9] Ultimately, assuming that Mr. Weldegebriel did not become aware of the issue until 2018, when it was too late to correct the overpayment for the 2017 tax year, I disagree that the onus somehow fell to the Minister to ensure he received the notices. Indeed, in this case, after each notice of over-contribution arrived with a 30 day correction period, CRA did not issue the assessments (for the years 2010-2012) for various months subsequent. And when CRA received the 2013 letter undelivered, officials contacted Mr. Weldegebriel's bank to obtain an updated address. The CRA certainly did what could be expected of it to contact him (*Bowen v Minister of National Revenue*, [1991] FCJ No 1054, 1991 CarswellNat 520 at para 8).
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> [10] Furthermore, as a self-reporting system, the onus was on Mr. Weldegebriel to understand the law (*Kapil v Canada Revenue Agency*, 2011 FC 1373 at para 24); ignorance of the rules,

> particularly in a system which relies on the taxpayer, is not an excuse. As Justice O'Keefe held in *Lepiarczyk v Canada Revenue Agency*, 2008 FC 1022 at para 19, "while innocence may be a factor to consider, it is not determinative in the present case."
>
> [11] While the Respondent pointed out that there is scant law on over-contribution to TFSAs, I agree with the Minister that this case parallels this Court's recent decision *in Jiang v Canada (Attorney General)*, 2019 FC 629 [*Jiang*], which also concerned the TFSA relief provision contained in subparagraph 207.06(1) of the ITA. In *Jiang*, the CRA wrote several letters to the applicant over the years regarding excess contributions to her TFSA. Although having an additional complication in that she was also non-resident of Canada, thus compounding the TFSA over-contribution issue, the CRA similarly sent notices to her Canadian address on file. Yet she, too, never received the notices.
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> [Emphasis added]

[32] The Respondent notes that even if the Applicant had not received the Educational Letter, he did receive the Notice of Assessment for the 2017 taxation year dated July 17, 2018. Indeed this is the case, and it is also the case that the Notice of Assessment was sent to the same address as the Educational Letter, and despite the Notice of Assessment, the Applicant continued to maintain an excess TFSA amount. Even if the Applicant did not receive the Educational Letter, the Respondent submits, and I agree, it was still his responsibility to remove any excess contributions "without delay" as the statute provides.

[33] The question is whether the Officer's conclusion that the Applicant received the Educational Letter was reasonable. In my respectful view the Officer reasonably concluded the Applicant received the Educational Letter. This is a pure question of fact, and of course the Officer is entitled to draw inferences in this connection as happened here.

[34] Moreover, and as noted above, on judicial review I am instructed to take a respectful view of the Decision (*Vavilov*, at para 12), and when I do, I find support for the Officer. It was open on the facts in this case for the Officer to find the Applicant received the June 1, 2017 Educational Letter. While she could have found otherwise on these facts, her finding of receipt is justified (*Vavilov*, at para 85). This conclusion is transparent and intelligible – it flows from the facts found (*Vavilov*, at para 15). The onus is on the Applicant to show unreasonableness. On review of all the circumstances I am not persuaded to interfere with this finding.

[35] The Applicant further submits the Officer did not consider what was shown in Exhibits A, C and E of the Certificate of the Officer (the initial assessment, the Notice of Assessment for the 2017 taxation year, and a printout of the Applicant's mailing address, respectively) [the Applicant is likely referring to Exhibit F – the Decision, rather than Exhibit E – the Applicant's mailing address], namely that the Applicant suffered a significant financial loss. I find no merit in this argument: the entire basis of the excess contributions stemmed from the taxpayer's effort to top up his TFSA to make up for the loss in share value caused by the bankruptcy of a company whose shares were in his TFSA. In addition, "[i]t is well recognized that a decision-maker is presumed to have weighed and considered all the evidence presented to it unless the contrary is shown" (*Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 [Gascon J], at para 24, see also *Vavilov*, at para 128). I am not persuaded these facts were not considered by the Officer; in my view they were front and centre. As such, there is no need for the Officer to have specifically mentioned the Applicant's loss.

[36] The Applicant also says it was unreasonable for the CRA not to advise him whether the Bank's advice regarding topping up to cover reduction in share value was correct or incorrect. There is no merit in this argument which goes against the jurisprudence. The Applicant must obtain his own tax advice. CRA is under no duty to provide legal or financial advice to the taxpayer in a case like this. I refer again to *Weldegebriel* and cases referred to therein:

> [10] Furthermore, as a self-reporting system, the onus was on Mr. Weldegebriel to understand the law (*Kapil v Canada Revenue Agency*, 2011 FC 1373 at para 24); ignorance of the rules, particularly in a system which relies on the taxpayer, is not an excuse. As Justice O'Keefe held in *Lepiarczyk v Canada Revenue Agency*, 2008 FC 1022 at para 19, "while innocence may be a factor to consider, it is not determinative in the present case."

[37] This issue also arose in *Levenson v Canada (Attorney General)*, 2016 FC 10 [*Levenson*], a case concerning excess contributions to an RRSP, which law in my view is equally application to excess contributions to a TFSA. In *Levenson* I ruled as follows:

> [27] The RRSP regime is a voluntary system. The Applicant could and should have known what his contribution limits were. Had the Applicant kept track of these four contributions he could at any time have ascertained his true situation. Having failed to keep CRA up-to-date with his contributions, the Applicant could not expect CRA to provide accurate contribution room advice.
>
> [28] If the Applicant was indeed free to either report or not report his income and RRSP contributions at any time (a point to which I will return later), the case law is clear that he still had a duty to act with due diligence: see *Dimovski* at para 17. In my view, the Applicant failed to act with due diligence in determining how much contribution room he had left. He had the relevant information. He knew or should have known what his limits were. This is another reason why I am unable to accept his argument that CRA was responsible for the situation he created and found himself in.

[38] Merely receiving poor advice is insufficient to establish a reasonable error. Justice Rennie (as he then was) in *Dimovski v. Canada (Revenue Agency)*, 2011 FC 721, decided a similar case, albeit in an RRSP matter, where the taxpayer relied on advice from her bank and made RRSP overpayments:

> [15] There is no doubt the applicant received poor advice throughout. There is some suggestion that her first over-contribution was prompted by a CRA tax preparer who may have assisted the applicant. The evidence on this point is unclear, and in any event would explain only one of the five years during which over-contributions were made. The applicant received poor advice from the bank, which sought and received her funds; from her accountant who said the matter had been resolved when it had not. I accept that there was no intention on her part to over-contribute. Nor did she profit or benefit from the over-contribution as she had no income which was effectively reduced. It is indeed an unfortunate story.
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> [16] Innocence and lack of intent are not determinative, however, of reasonableness. While these subjective factors form part of the considerations that the Minister may take into account, at issue is the reasonableness of the error, objectively assessed, where the applicant's case falters.
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> [17] The Canadian tax system is based on self assessment, which means that it is up to each individual to ensure that they conduct their financial affairs in accordance with the *Income Tax Act: R. v McKinlay Transport Ltd*. [1990] 1 SCR 627. It was up to the applicant to ensure that she did not make excessive contributions to her RRSP and her lack of understanding of the law is not a reasonable error. The tax system is admittedly complex and when taxpayers are faced with complexity they are expected to seek advice.
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> [18] The *Income Tax Act* provides an escape route for individuals such as the applicant who over-contribute. Inexplicably, the applicant did not take advantage of the one-year grace period available to her within which to withdraw her contributions. The applicant was advised in a letter dated January 25, 2007 which warned her of the excess contributions and of the need to withdraw. Regrettably, the applicant did not heed this advice, and in fact, compounded her problems by making further contributions in 2007 and 2008. Objectively viewed, the applicant's conduct in ignoring the warning letters, letting the period of withdrawal lapse

> and then making further over-contributions is not reasonable and falls short of the due-diligence standard.

[39] In addition, I note the Applicant contributed more to his TFSA than what he alleges the Bank told him he could. In 2016, the Applicant's contribution room was $11,500 and the amount the Bank allegedly said he could contribute was $20,000, totalling $31,500. In fact, the Applicant actually contributed $37,000 in 2016.

[40] The Respondent submits that although subsection 207.06(1) of the *ITA* sets out criteria to be met in order for a waiver of tax (reasonable error and removal of excess without delay), the final determination is in the Minister's discretion. I agree that the Applicant has not established the excess contributions arose as a consequence of reasonable error. Rather it was a consequence of several factors: not knowing the law as to when contributions were allowed, not seeking professional advice, relying on bad advice, and not eliminating the excess contributions without delay once informed of them. Reasonable error and removal of the excess contributions without delay are the two preconditions for relief under subsection 207.06(1) of the *ITA*. I reiterate what Justice Walker stated in *Sangha*:

> [18] The provisions of the *ITA* under which the Minister's delegate made the Decision establish the legal context for my review of the parties' submissions (*Vavilov* at para 108). The excess TFSA tax was assessed by the CRA pursuant to section 207.02 of the *ITA*. Mr. Sangha's request for a discretionary waiver of the TFSA tax imposed was made under subsection 207.06(1).
>
> [19] Subsection 207.06(1) of the *ITA* provides that the Minister's discretion may be exercised if:
>
> > 1. The taxpayer establishes to the satisfaction of the Minister's delegate that the tax liability arose as a consequence of a reasonable error; and

> 2. The excess TFSA amounts are removed from the TFSA by the taxpayer without delay.

[41] I agree it would have assisted the Applicant for the CRA to give him tax advice and answer his questions. However, the CRA was under no duty to do so. Therefore, the CRA did not vitiate its Decision by not providing the Applicant with income tax advice concerning his TFSA.

[42] I am sympathetic to the situation the Applicant is in, if and to the extent he relied on unsound advice from the Bank. If that is the case however, his remedy may lie against the Bank, not the Respondent.

VII. Conclusion

[43] In my respectful view, the Decision looked at in context and holistically, was reasonable and therefore the application for judicial review should be dismissed. I say this because the Court's role is not to substitute its decision for that of the CRA or review the Decision to a standard of perfection (*Sangha*, at para 26). The CRA was required to apply the conditions for relief in subsection 207.06(1) of the *ITA* (reasonable error, and removal without delay of excess contributions) to the facts of the case, and meaningfully address the taxpayers concerns (*Sangha*, at para 24). In my view, the CRA did exactly that. It identified the correct framework and considered the facts of the case. In my respectful view the Decision is justified. Further, it is based on an internally coherent and rational chain of analysis (*Canada Post*, at para 31). The Decision as a whole is reasonable and justified in this situation, and conforms within the legal and factual constraints before the decision maker (*Vavilov*, at paras 90 and 99).

VIII. Costs

[44] The parties agreed that costs in the all inclusive amount of $500 inclusive of taxes and fees, should be paid by the unsuccessful party to the successful party. In my view this amount is reasonable and accordingly I will order that amount to be paid by the Applicant to the Respondent, but in light of the losses already suffered by the Applicant, I will add that such payment is to be made only “if demanded”.

JUDGMENT in T-2021-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. The Applicant shall pay to the Respondent the sum of $500.00 as an all inclusive cost award, if demanded.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2021-19
STYLE OF CAUSE:	YOGESWARAN PERINPANAYAGAM v TSFA PROCESSING UNIT AND THE ATTORNEY GENERAL OF CANADA

HEARING HELD BY VIDEOCONFERENCE ON NOVEMBER 17, 2020 FROM OTTAWA, ONTARIO (COURT) AND TORONTO, ONTARIO (PARTIES)

JUDGMENT AND REASONS:	BROWN J.
DATED:	DECEMBER 2, 2020

APPEARANCES:

Yogeswaran Perinpanayagam	APPLICANT (ON HIS OWN BEHALF)
Michael Ding	FOR THE RESPONDENTS

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