

Federal Court



Cour fédérale

Date: 20210310

Docket: T-134-20

Citation: 2021 FC 215

Ottawa, Ontario, March 10, 2021

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

AMANDEEP BADESHA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Amandeep Badesha seeks judicial review of a decision by the Minister of National Revenue [Minister] dated January 2, 2020 to refuse his request to cancel tax assessed on excess contributions to his tax-free savings account [TFSA] in respect of his 2016, 2017 and 2018 taxation years.

[2] Mr. Badesha opened a TFSA with the Toronto Dominion Bank [TD Bank] in 2013. He contributed \$5,464.86 in 2013, \$2,013.88 in 2014, and \$5,887.75 in 2015. As of January 1, 2016, Mr. Badesha's TFSA contribution limit was \$33,233.62.

[3] In the course of 2016, Mr. Badesha contributed a total of \$82,214.81 to his TFSA. He withdrew just \$2,889.59. This resulted in excess contributions of \$43,981.19.

[4] On July 12, 2017, the Minister assessed Mr. Badesha under s 207.02 of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] for the 2016 taxation year, and issued a Notice of Assessment under Part XI.01 of the ITA. The Notice of Assessment informed Mr. Badesha that he must withdraw the excess contributions from his TFSA immediately to avoid additional tax.

[5] As of December 31, 2017, Mr. Badesha had withdrawn only \$4,692.89 from his TFSA. The fair market value of the property in his TFSA was \$37,150.16.

[6] On July 17, 2018, the Minister assessed Mr. Badesha under s 207.02 of the ITA for the 2017 taxation year, and issued a Notice of Assessment under Part XI.01 of the ITA. The Notice of Assessment again informed Mr. Badesha that he must withdraw the excess contributions from his TFSA immediately to avoid additional tax.

[7] As of December 31, 2018, Mr. Badesha had withdrawn only \$1,453.78 from his TFSA. The fair market value of the property in his TFSA was just \$8,993.29. In oral submissions before

this Court, Mr. Badesha said that he lost more than \$70,000.00 “playing the stock market”, which he now regrets.

[8] On July 16, 2019, the Minister assessed Mr. Badesha under s 207.02 of the ITA for the 2018 taxation year, and issued a Notice of Assessment under Part XI.01 of the ITA. The Notice of Assessment informed Mr. Badesha, for the third time, that he must withdraw the excess contributions from his TFSA immediately to avoid additional tax.

[9] Mr. Badesha asked the Canada Revenue Agency [CRA] for relief from unpaid taxes on July 19, 2019. He said he had been misinformed by an employee of the TD Bank about the nature of a TFSA. According to Mr. Badesha, he was told that a TFSA was just like an ordinary bank account, and he was not advised of any contribution limits.

[10] Mr. Badesha admitted receiving the Notices of Assessments issued by the CRA in respect of his 2017, 2018 and 2019 taxation years. However, he said that from 2015 to 2019, he often received fraudulent telephone calls from individuals purporting to be calling from the CRA who demanded money. He therefore assumed that the Notices of Assessment must be fraudulent as well.

[11] On September 5, 2019, Mr. Badesha filed a Notice of Objection to the 2018 TFSA Assessment. He closed his TFSA account on September 17, 2019.

[12] On September 23, 2019, the Minister's delegate refused Mr. Badesha's request for cancellation of the tax on his excess TFSA contributions for the 2016 to 2018 taxation years. The Minister's delegate found that Mr. Badesha was not eligible for relief, because he had failed to distribute the excess contributions from his TFSA without delay, despite having been repeatedly informed of the tax consequences.

[13] An appeals officer with the CRA concluded that Mr. Badesha's Notice of Objection related only to whether the assessment under Part XI.01 of the ITA should be cancelled pursuant to s 207.06 of the ITA, and not whether the 2018 TFSA Assessment was valid and correct. The appeals officer confirmed the 2018 TFSA Assessment on November 4, 2019.

[14] The file was forwarded for a second level review of Mr. Badesha's request for waiver of tax in respect of his 2016 to 2018 taxation years. On January 2, 2020, the Minister's delegate refused to cancel the taxes owed by Mr. Badesha as a result of the excess contributions to his TFSA. The Minister's delegate noted that Mr. Badesha was notified by the CRA about the excess contributions he made in 2016 and 2017, but he took no steps to distribute the excess contributions until 2019.

[15] The sole issue raised by this application for judicial review is whether the Minister's refusal to cancel the taxes owed by Mr. Badesha as a result of the excess contributions to his TFSA was reasonable.

[16] The Minister’s decision is subject to review against the standard of reasonableness. This is a deferential standard. The Court will intervene only if “there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 100; *Carpenter v Canada (Attorney General)*, 2020 FC 753 at para 20).

[17] The Minister’s discretion to waive or cancel tax assessed under Part XI.01 is limited by s 207.06(1) of the ITA, which provides as follows:

Waiver of tax payable

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

- (a) the individual establishes to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error; and
- (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
 - (i) the amount in respect of which the individual would otherwise be liable to pay the tax, and
 - (ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).

Renonciation

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) le particulier convainc le ministre que l’obligation de payer l’impôt fait suite à une erreur raisonnable;
- 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) la somme sur laquelle le particulier serait par ailleurs redevable de l’impôt,
 - (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).

[18] The criteria are conjunctive, meaning both prongs must be established before a taxpayer will be considered for relief (*Kapil v Canada (Revenue Agency)*, 2011 FC 1373 at para 28). The CRA interprets “reasonable error” to mean that the taxpayer’s excess contributions to a TFSA occurred because of extraordinary circumstances beyond the taxpayer’s control. The CRA interprets “without delay” to mean that the taxpayer took immediate corrective action to distribute the excess contributions or close the TFSA within 30 days of being notified by the CRA.

[19] Obtaining bad advice from financial institutions does not constitute reasonable error; nor does misreading notices issued by the CRA (*Jiang v Canada (Attorney General)*, 2019 FC 629 at para 12; *Perinpanayagam v TFSA Processing Unit*, 2020 FC 1111 at para 40). As Justice Peter Annis observed in *Pouchet v Canada (Attorney General)*, 2018 FC 473 at paragraph 37, “[i]gnorance of the law is not a reasonable error or mistake”.

[20] The Canadian tax system is based on self-assessment. It is up to each individual to ensure they conduct their financial affairs in accordance with the ITA (*Levenson v Canada (Attorney General)*, 2016 FC 10 at para 20). Mr. Badesha had an obligation to comply with the ITA. His misunderstanding of the law was not a reasonable error. Nor was his misunderstanding of the Notices of Assessment issued by the CRA.

[21] Mr. Badesha holds a Bachelor’s degree in health sciences, and he is employed as a respiratory therapist. He has traded securities on the stock market, albeit without much success. He is not a person who lacks sophistication.

[22] The Minister's refusal to cancel the taxes owed by Mr. Badesha as a result of the excess contributions to his TFSA was reasonable. Despite being repeatedly notified of his excess contributions in 2017, 2018 and 2019, Mr. Badesha consistently failed to distribute either the amount of the excess contributions or the fair market value of his TFSA until he finally closed his TFSA on September 17, 2019. Even when Mr. Badesha was unquestionably aware of his tax liability under Part XI.01 of the ITA in June 2019, he did not close his TFSA until the following September.

[23] The Minister's decision was justified, transparent and intelligible, and falls within the range of possible, acceptable outcomes. The application for judicial review is therefore dismissed.

[24] The Minister has not requested costs, and accordingly no costs are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-134-20

STYLE OF CAUSE: AMANDEEP BADESHA v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
VANCOUVER, BRITISH COLUMBIA AND
OTTAWA, ONTARIO

DATE OF HEARING: MARCH 4, 2021

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MARCH 10, 2021

APPEARANCES:

Amandeep Badesha
(on his own behalf)

FOR THE APPLICANT

Eric Brown

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT