

Federal Court



Cour fédérale

Date: 20230109

Docket: T-247-21

Citation: 2023 FC 34

Ottawa, Ontario, January 9, 2023

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

SUSANNA MARIE CLARKE

Applicant

and

**CANADA REVENUE AGENCY
ATTORNEY GENERAL OF CANADA**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Susanna Marie Clarke (“Ms. Clarke”), requested that the Minister of National Revenue (“Minister”) cancel or waive arrears interest with respect to her income tax debt for the 2010, 2011, 2012, 2013, 2014, and 2015 taxation years. Ms. Clarke’s request was only partially granted. She challenges this decision on judicial review.

[2] I find that Ms. Clarke has not shown any serious shortcomings in the Minister's decision to only partially grant her request for relief. As I explain below, the Minister's decision is reasonable. Much of Ms. Clarke's arguments on judicial review relate to a challenge to the accuracy of the reassessment, which I cannot address on judicial review.

[3] For the reasons below, the application for judicial review is dismissed.

II. Background

[4] The Minister has discretion to waive or cancel all or any portion of any penalty or interest otherwise payable under the *Income Tax Act*, RSC 1985, c 1 (5th Supp), s 220(3.1) [ITA]. The Canada Revenue Agency [CRA] publishes guidelines that lay out factors to consider in determining if all or any portion of penalties or interest may be cancelled, including whether there are extraordinary circumstances beyond the taxpayer's control, the penalty and interest arose primarily out of actions of the CRA, and the taxpayer's conduct and history (Canada Revenue Agency, Information Circular IC-07-1R1, "Taxpayer Relief Provisions" (18 August 2017)).

[5] On November 5, 2019, Ms. Clarke submitted a request to the CRA to cancel or waive the penalties and interest with respect to her income tax arrears for the 2010-2015 taxation years ("First Level Review"). The Applicant's request was based on alleged CRA error, alleged CRA delay, financial hardship and inability to pay, and her medical conditions.

[6] As of December 18, 2019, Ms. Clarke was assessed arrears interest of \$5,002.70 for the 2010 taxation year and \$4,571.17 for the 2011 taxation year, for a total sum of \$9,573.87 for both years. Neither penalties nor interest were assessed for the 2012-2015 taxation years. Though Ms. Clarke requested relief for the 2010-2015 taxation years, the CRA only considered the 2010 and 2011 taxation years where interest had been applied.

[7] The CRA credited Ms. Clarke's tax refunds for subsequent years to the amount owing for 2010 and 2011. Ms. Clarke made no voluntary payments toward her amounts owing. While Ms. Clarke had paid the amount owing for 2010 in full, \$5,601.31 remained outstanding for 2011 at the time of the First Level Review.

[8] On January 16, 2020, the CRA officer considering the First Level Review partially granted the Applicant's request, recommending that the CRA grant relief of the arrears interest assessed on the 2010 and 2011 tax years from October 6, 2013 to November 8, 2013 due to identified audit delays. The officer found that no further relief was warranted. In a decision dated January 20, 2020, the CRA team leader considering the First Level Review adopted this recommendation.

[9] On March 13, 2020, Ms. Clarke submitted a second level request for relief of late-filing fees, penalties, and interest for the 2012-2016 taxation years ("Second Level Review"). At the time of the Second Level Review, Ms. Clarke owed \$6,361.33. On January 22, 2021, the CRA officer considering the Second Level Review recommended that the request be approved, granting arrears interest relief from January 17, 2019 to March 17, 2020 due to the Applicant's

permanent disability, and from October 1, 2020 to the date of the final decision letter due to processing delays caused by the COVID-19 pandemic. The officer also found that the Applicant knowingly allowed a balance to exist, failed to take reasonable care in conducting her affairs, and failed to act quickly to remedy the delay or omission and therefore refused further relief.

[10] In a decision dated January 26, 2021, the CRA team leader of the appeals branch of the Taxpayer Relief Centre of Expertise who considered the Second Level Review (“CRA Appeals Team Leader”) accepted the recommendation to partially approve the request. It is this decision which Ms. Clarke challenges on judicial review.

[11] The CRA Appeals Team Leader noted that arrears interest would be cancelled from January 17, 2019 to March 16, 2020 due to Ms. Clarke’s medical circumstances, and from October 1, 2020 to January 26, 2021 due to CRA processing delays. The CRA Appeals Team Leader noted that arrears interest was not accruing from March 18, 2020 to September 30, 2020 as a result of COVID-19 interest relief measures.

[12] The CRA Appeals Team Leader found that further relief was not warranted, finding that Ms. Clarke had sufficient household income to pay the CRA balance owing without causing undue hardship. They also noted that it was beyond the scope of the taxpayer relief provisions to adjust the reassessment.

III. Issue and Standard of Review

[13] The issue on judicial review is the CRA Appeals Team Leader's determination to only partially grant relief from the interests in the 2010-2011 taxation years and to not grant further relief as Ms. Clarke requested.

[14] The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] confirmed that reasonableness is the presumptive standard of review when reviewing administrative decisions on their merits. This case raises no issue that would justify a departure from that presumption.

[15] The Supreme Court of Canada described the reasonableness standard as a deferential but nonetheless "robust form of review," where the analysis begins with the decision-maker's reasons (*Vavilov* at para 13). A decision-maker's formal reasons are assessed "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov* at para 103).

[16] The Court described a reasonable decision as "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). Administrative decision-makers must ensure that their exercise of public power is "justified, intelligible and transparent, not in the abstract, but to the individuals subject to it" (*Vavilov* at para 95).

IV. Analysis

[17] Ms. Clarke made a request for relief on the basis of four grounds: CRA error, CRA delay, financial hardship, and her medical condition. On judicial review, Ms. Clarke challenges the Minister's relief determination due to CRA error and CRA delay. Ms. Clarke made no arguments challenging the Minister's determinations on financial hardship or her medical condition.

A. *CRA Error*

[18] Ms. Clarke's main submission on judicial review essentially asks this Court to review the CRA's reassessment amount. Ms. Clarke argues that the CRA "failed in their re-assessment to credit the pre-assessed interest and penalties not owed to the Crown on [her] file in error."

[19] Following her and her husband's appeal of their 2010 and 2011 assessments to the Tax Court of Canada, the parties reached a settlement agreement. The Tax Court of Canada issued its Judgment in September 2017 based on the Consent to Judgment. The Judgments are identical for Ms. Clarke's case and her husband's, James Clarke's, case (Dockets 2016-3786(IT)I and 2016-3787(IT)I). The Tax Court of Canada allowed the appeal of the 2011 taxation year and referred the reassessment back to the CRA for reconsideration and reassessment. It is this reassessment with which Ms. Clarke takes issue. She argues that the CRA removed interests and penalties from her husband's account but not from hers. In her view, this is an error based on her legitimate expectation that the files would be treated the same way.

[20] This Court does not have jurisdiction to address the accuracy of the reassessment. I do not view Ms. Clarke's complaint as simply identifying a processing error; rather, her complaint would require me to delve into the reassessment and determine whether the CRA did it accurately. This is not my role. As explained by Justice Walker:

The Tax Court has exclusive jurisdiction to determine the correctness of CRA assessments and reassessments by virtue of subsection 152(8) and section 169 of the ITA, section 12 of the *Tax Court of Canada Act*, RSC 1985, c T-2, and sections 18.1 and 18.5 of the [*Federal Courts Act*] (*Martel v Canada (Attorney General)*, 2019 FC 840 at para 34, citing *Canada v Roitman*, 2006 FCA 266 at para 19. See also *Zaki v Canada (Minister of National Revenue)*, 2018 FC 928 at para 20).

[21] Accordingly, in the context of a judicial review of a request for interest and penalty relief, I see no basis to intervene with the alleged errors in the CRA reassessments.

B. *CRA Delay*

[22] Ms. Clarke also argues that there were numerous delays on the CRA's part that justify the granting of relief. In her submissions, Ms. Clarke does not identify with specificity the time periods related to the CRA's actions that caused the delay.

[23] The Minister acknowledged delays caused by the CRA and granted relief based on these delays. Ms. Clarke identified no serious shortcomings in this analysis. Based on the materials before me, I do not see a basis to disturb the Minister's determination regarding the CRA's delay and the partial grant of relief.

V. Disposition

[24] The application for judicial review is dismissed. Both parties sought costs. Taking into account all of the circumstances of this matter, I am exercising my discretion to make no order as to costs.

JUDGMENT IN T-247-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. No costs are awarded.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-247-21

STYLE OF CAUSE: SUSANNA MARIE CLARKE v CANADA REVENUE AGENCY, ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JULY 25, 2022

JUDGMENT AND REASONS: SADREHASHEMI J.

DATED: JANUARY 9, 2023

APPEARANCES:

James Clarke

FOR THE APPLICANT,
AS A REPRESENTATIVE

Karen Truscott

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT