Federal Court Cour fédérale

Date: 20241220

Docket: T-1214-24

Citation: 2024 FC 2091

Ottawa, Ontario, December 20, 2024

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

JOSEPH DEMMA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Joseph Demma, seeks judicial review of a decision of the Canada Revenue Agency (the "CRA") dated May 10, 2024 refusing his request for relief from arrears interest, instalment interest, and failure to file penalties pursuant to section 281.1 of the *Excise Tax Act* (RSC, 1985, c E-15) (the "Act").

[2] The Applicant submits that the decision is unreasonable, as the CRA failed to account for the fact that the disputed taxes were remitted to the CRA by the Applicant's employer.

[3] For the reasons that follow, I find that the decision is reasonable and responsive to the Applicant's submissions. This application for judicial review is dismissed.

II. **Background**

A. *Statutory Framework*

[4] The CRA, as a delegate of the Minister of National Revenue, may waive or cancel interest or penalties owed by a taxpayer under the Act (s 281.1). This is referred to as taxpayer relief.

[5] The Respondent submits that the circumstances where relief may be granted are set out in the *Information Circular* 07-1R1 (the "*Information Circular*"). However, paragraph 44.1 of the *Information Circular* states that the appropriate guidelines for taxpayer relief under the Act are the *GST/HST Memoranda Series, Chapter 16.3, Cancellation or Waiver of Penalties and/or Interest* ("*Chapter 16.3*").

[6] In any event, the *Information Circular* and *Chapter 16.3* contain almost identical passages about the situations where the Minister may grant taxpayer relief. Both documents state that relief may be granted where "extraordinary circumstances beyond [a] person's control"

prevent them "from complying with the requirements of the Act" (*Chapter 16.3* at para 8; see also *Information Circular* at para 8).

[7] Where there are extraordinary circumstances, paragraph 15 of *Chapter 16.3* sets out four factors to be considered by the CRA: whether the taxpayer has "a satisfactory history of voluntary compliance," whether the taxpayer "knowingly allowed an outstanding balance to exist upon which the penalties and interest have accrued," whether the taxpayer "acted quickly to remedy the omission or the delay in compliance," and whether the taxpayer "exercised reasonable care and diligence…and was not negligent or careless in the conduct of its affairs." *Chapter 16.3* also states that "[t]he onus is on the [taxpayer] to keep abreast of any new developments in the administration of the GST/HST so as to ensure continuing compliance" (at para 15).

[8] When a taxpayer requests relief under section 281.1 of the Act, the CRA conducts a First Review of the request to determine whether relief is warranted. If the taxpayer disagrees with the outcome of the First Review, they may request a Second Review by another CRA agent (*Chapter 16.3* at para 26; see also *Information Circular* at para 103).

B. *Facts*

[9] The Applicant is a realtor.

[10] On June 23, 2023, the CRA informed the Applicant that he was required to register for a Goods and Sales Tax ("GST")/Harmonized Sales Tax ("HST") account.

[11] By July 31, 2023, the Applicant had not registered for a GST/HST account. Consequently, the CRA issued the Applicant Notices of Assessment for outstanding tax balances in 2020, 2021, and 2022. Late filing fees, arrears interest, and failure to file penalties were applied, as set out in subsection 280(1) and section 280.1 of the Act.

[12] The Applicant requested taxpayer relief. On December 12, 2023, his request was denied at the First Review. The Applicant sought a Second Review of the refusal.

[13] On May 10, 2024, the Applicant's request was again denied at the Second Review. The CRA acknowledged that the Applicant did "not realiz[e he] needed to register for a GST/HST account number" and that "the monies owed were collected, reported, and paid by [his] employer." However, the CRA nonetheless denied his request, noting that "human error, misinterpretation or lack of understanding" are not "grounds for relief as they are considered within [the Applicant's] control." This is the decision that is presently under review.

III. **Preliminary Matter**

[14] The Respondent submits that the style of cause should be amended to identify the Attorney General of Canada as the proper Respondent, rather than the CRA. I agree. The style of cause is amended effective immediately, in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106.

IV. **Issue and Standard of Review**

[15] The sole issue in this application is whether the CRA's decision is reasonable.

[16] The parties submit that the applicable standard of review is reasonableness (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17, 23-25 ("*Vavilov*")). I agree.

[17] To determine whether a decision is reasonable, the Court must assess whether the decision, including both the rationale and the outcome, is transparent, intelligible and justified (*Vavilov* at para 15). The Court must not reweigh evidence that was before the decision maker, and it should not interfere with factual findings except under exceptional circumstances (*Vavilov* at para 125). Unreasonable decisions contain flaws that are central to the reasoning of the decision maker (*Vavilov* at para 100). Reasonable decisions have an internally coherent and rational chain of analysis and are justified in relation to the relevant facts and law (*Vavilov* at para 85).

V. **Analysis**

[18] The Applicant submits that the CRA's decision is unreasonable. It is the Applicant's position that relief should be granted because, "[f]or every year under review, the CRA had received the HST collected by [his employer]." Citing *Gordon v Canada (Attorney General)*, 2016 FC 643 ("*Gordon*"), the Applicant submits that it is unreasonable for the CRA to impose penalties when taxes are "simply remitted by the wrong party" (at para 3). The Applicant also

states that interest should not be charged since the CRA did not "lend" money to the Applicant, per the definition of "interest" by the Business Development Bank of Canada. Lastly, the Applicant highlights that he promptly registered for a GST/HST account and filed the appropriate returns after learning that he was required to do so.

[19] The Respondent submits that the CRA's decision is reasonable. According to the Respondent, the CRA duly considered the Applicant's submissions that his employer remitted HST on his behalf and reasonably determined that relief was not warranted on this basis.

[20] I agree with the Respondent.

[21] The Applicant is mistaken about why penalties and interest are imposed under the Act. These fees are not charged to make the CRA "whole," as the Applicant contends, but as a response to taxpayer noncompliance with the Act (ss 280(1), 280.1). Payments by third parties are not a relevant consideration in this framework.

[22] The CRA therefore did not err by denying the Applicant relief despite his employer remitting HST on his behalf. Penalties and interest are charged if a taxpayer fails to fulfill their tax obligations. The Applicant does not dispute that he failed to register for a GST/HST account and file tax returns. HST remittances from his employer do not change this fact. Although the Applicant may disagree with the CRA on this issue, I find that the CRA's decision is reasonable, as it accords with the "governing statutory scheme" (*Vavilov* at para 108).

[23] I also find that the CRA duly considered the Applicant's submissions. The Applicant states that he provided additional evidence at the CRA's request confirming that his employer remitted HST on his behalf, and that the CRA "chose to ignore" these materials. However, the CRA explicitly recognized that his employer "collected and paid the HST to the CRA for the periods requested." Although "the HST returns and payments were reported and paid on time, they were not reported or paid by the correct registrant." In my view, the CRA satisfied its obligation to "take the evidentiary record and general factual matrix…into account" (*Vavilov* at para 126). Having considered the Applicant's evidence, the CRA reasonably determined that the requested relief was not warranted pursuant to section 281.1 of the Act.

[24] *Gordon* does not assist the Applicant on this issue. According to the Applicant, the Court in *Gordon* overturned the CRA's decision to refuse relief where GST/HST was "remitted by the wrong party" (at para 3). However, judicial review was granted in *Gordon* because the CRA fettered its discretion (para 5). The decision was ultimately "returned to the Minister for redetermination" (at para 43).

[25] In any event, *Gordon* concerned a "wash transaction," a complex, technical, and highly case-specific issue for which the applicant relied upon professional advice (at paras 12, 13, 37; *Chapter 16.3* at paras 22-25). In this case, the Applicant breached a fundamental obligation that is set out in the Act and publicized in "guides, pamphlets, interpretation bulletins, information circulars, and GST/HST memoranda" by the CRA.

[26] The definition of "interest" by the Business Development Bank of Canada is similarly not of assistance to the Applicant. This definition is not part of the legal framework for taxpayer

relief. Subsection 280(1) of the Act states that interest will be charged "if a person fails to remit or pay an amount…when required." No lending or borrowing is needed to justify the charges against the Applicant.

[27] Furthermore, the CRA was not obliged to consider the Applicant's prompt registration and filing of his overdue returns in its decision. The Respondent rightly notes that the Applicant failed to register for a GST/HST account by July 31, 2023. By this time, over a month had passed since he had been informed of his obligation to do so. Moreover, whether the taxpayer "acted quickly to remedy the omission or the delay in compliance" is considered if "circumstances beyond [the taxpayer]'s control" prevented them from complying with the Act (*Chapter 16.3* at para 15, 8; see also *Information Circular* at paras 8, 25). The Applicant in this case admitted that he breached the Act due to human error. There was therefore no extraordinary circumstance, as the CRA explained that "human error…[is] considered within [the Applicant's] control."

VI. **Conclusion**

[28] For these reasons, I find the Second Review decision to be reasonable. The decision provides a "rational chain of analysis and…is justified in relation to the facts and law" (*Vavilov* at para 85). This application for judicial review is dismissed.

[29] Both parties sought costs in this matter. Given that this application was dismissed and the Applicant is self-represented, I exercise my discretion to not award costs (*Lalonde v Canada*

(Revenue Agency), 2023 FC 41 para 97; *Latourell v Canada (Attorney General)*, 2024 FC 44 at para 41).

JUDGMENT in T-1214-24

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to identify the Attorney General of Canada as the proper Respondent effective immediately.

2. This application for judicial review is dismissed, without costs.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1214-24
STYLE OF CAUSE:	JOSEPH DEMMA v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	MARKHAM, ONTARIO
DATE OF HEARING:	DECEMBER 11, 2024
JUDGMENT AND REASONS:	AHMED J.
DATED:	DECEMBER 20, 2024

APPEARANCES:

Joe Demma (on his own behalf)	FOR THE APPLICANT
Princess Okechukwu	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT