Federal Court  Cour fédérale

Date: 20190510

Docket: T-387-16

Citation: 2019 FC 642

[CERTIFIED ENGLISH TRANSLATION, REVISED BY THE AUTHOR]

Ottawa, Ontario, May 10, 2019

PRESENT: Mr. Justice Grammond

BETWEEN:

6075240 CANADA INC.

Applicant

and

THE MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] The applicant is a taxpayer who failed to produce an income tax return for 2010 and 2012. The Minister therefore made an estimated assessment for those taxation years under subsection 152(7) of the *Income Tax Act*, RSC 1985, c 1 (5th supp) [the Act].

[2] More than three years after those assessments were made, the applicant tried to file its tax returns for the years at issue. The Minister refused to process those returns, on the basis that he

could not issue a reassessment outside the “normal reassessment period” defined in subsection 152(3.1), which is three years in this case.

[3] The applicant is seeking judicial review of the Minister’s refusal to process its tax returns for 2010 and 2012.

[4] The Minister’s decisions under the Act are reviewed according to the standard of reasonableness: *Canada (Minister of National Revenue) v ConocoPhillips Canada Resources Corp*, 2017 FCA 243 at paragraph 34.

[5] The applicant is relying on the opening portion of subsection 152(4) of the Act, which reads as follows:

(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer’s normal reassessment period in respect of the year only if . . .	(4) Le ministre peut établir une cotisation, une nouvelle cotisation ou une cotisation supplémentaire concernant l’impôt pour une année d’imposition, ainsi que les intérêts ou les pénalités, qui sont payables par un contribuable en vertu de la présente partie ou donner avis par écrit qu’aucun impôt n’est payable pour l’année à toute personne qui a produit une déclaration de revenu pour une année d’imposition. Pareille cotisation ne peut être établie après l’expiration de la période normale de nouvelle cotisation applicable au contribuable pour l’année que dans les cas suivants […]

[6] In essence, the applicant alleges that the normal reassessment period can begin only when the taxpayer has filed a tax return. According to it, making an estimated assessment would not trigger this time limit. Thus, in such a situation, the Minister's obligation to examine a tax return with all due dispatch, set out in subsection 152(1), would remain intact and would not be subject to any time limit.

[7] As evidence, the applicant points to the fact that the plain wording of subsection 152(4) applies solely to "any person by whom a return of income for a taxation year has been filed".

[8] I cannot accept these arguments.

[9] One of the objectives of section 152 of the Act is to ensure the finality of assessments by precisely setting out the circumstances in which a reassessment can be issued. To that end, Parliament has established the normal reassessment period, set its length at three years in most cases and established a detailed list of exceptions. The starting point of the normal reassessment period is "the day of sending of a notice of an original assessment" (paragraph 152(3.1)(a)), not the end of the taxation year or the filing of a tax return.

[10] Having established such a system, Parliament could not have intended for a significant category of assessments not to be subject to any time limit with respect to the making of a reassessment. Yet, the applicant's argument would lead to such a result. In this respect, the Act does not create different categories of assessments. The expression "estimated assessment" that I used for convenience is not defined in the Act. Subsection 152(4) applies to all assessments,

whether they were issued following the filing of a tax return or not. If Parliament had intended for another rule to apply, it could have said so explicitly. As I will demonstrate below, this is, in fact, what the Quebec legislature did.

[11] This interpretation of subsection 152(4) is consistent with the general rule found in subsection 152(1), which provides that the Minister must examine a taxpayer's tax return with all due dispatch and assess the tax payable. The general rule must obviously be interpreted in light of the very complex regime put in place by the other subsections of section 152. For example, it has been found that the Minister's obligation to assess with all due dispatch does not apply to a reassessment: *Armstrong v Canada*, 2006 FCA 119 at paragraph 8. *A fortiori*, the Minister's obligation does not apply when subsection 152(4) prohibits the issuing of a reassessment.

[12] Thus, I cannot agree with the applicant's argument that the normal reassessment period was established exclusively for the benefit of taxpayers. This argument is contrary to the wording of subsection 152(4), which provides that an assessment "may be made after the taxpayer's normal reassessment period in respect of the year only if" certain conditions are met, be it on the initiative of the Minister or the taxpayer. In addition, it is clear that the purpose of the normal reassessment period is to ensure the system's stability by, among other things, prohibiting the taxpayer from seeking a correction to an assessment after a certain number of years, for example, if the taxpayer finds an error in his or her returns for previous years.

[13] As for the applicant's textual argument, the English version of subsection 152(4) confirms that the phrase "*à toute personne qui a produit une déclaration de revenu pour une*

année d'imposition" applies only to "*donner avis par écrit qu'aucun impôt n'est payable pour l'année*". The English version reads as follows: "notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year". It is therefore clear that the phrase on which the applicant's textual argument is based cannot apply so as to disregard the normal reassessment period in the case of an estimated assessment, which was made even though a tax return had not been filed.

[14] I note that Justice Judith M. Woods, then a member of the Tax Court of Canada, came to a similar conclusion in *Letendre v The Queen*, 2011 TCC 577 at paragraph 10. Furthermore, in *2750-4711 Québec inc v Canada (Attorney General)*, 2016 FC 579, even though the purpose of the application was different, my colleague, Justice Luc Martineau, assumed that, where the taxpayer had not filed a tax return and was issued an estimated assessment, "the refusal to process the amended returns [was] justified on the basis that the Minister cannot make a reassessment beyond the three-year period" (at paragraph 10).

[15] The applicant submits that the Act should be interpreted similarly to the corresponding provisions of the Quebec statute, sections 1005 and 1010 of the *Taxation Act*, CQLR, c I-3. Paragraph 2 of section 1010 reads as follows:

(2) The Minister may also redetermine the tax, interest and penalties payable under this Part and make a reassessment or an additional assessment, as the case may be,	2. Le ministre peut aussi déterminer de nouveau l'impôt, les intérêts et les pénalités en vertu de la présente partie et faire une nouvelle cotisation ou établir une cotisation supplémentaire, selon le cas:
(a) within three years after the day of sending of an original assessment or of a notice that	a) dans les trois ans qui suivent le plus tardif soit du jour de l'envoi d'un avis de

no tax is payable for a taxation year or the day on which a fiscal return for the taxation year is filed, whichever is later;	première cotisation ou d'un avis portant qu'aucun impôt n'est à payer pour une année d'imposition, soit du jour où une déclaration fiscale pour l'année d'imposition est produite;

[16] However, subsection 152(3.1) of the Act does not provide that the normal reassessment period can begin at the time when the taxpayer files a tax return, if that time is after a first notice of assessment is sent. The federal statute and the Quebec statute set out different rules. Therefore, the Quebec statute cannot be used to interpret the federal statute. I agree that this lack of consistency between the two statutes may be a source of confusion for Quebec taxpayers and that it might be considered a source of unfairness, but it is not my role to rewrite the Act to avoid such an outcome.

[17] The applicant failed to show that the decision not to process its tax returns for 2010 and 2012 was unreasonable. The application for judicial review will therefore be dismissed. In light of all of the circumstances, I am of the view that it is fair to fix the amount of costs at $250, including disbursements and taxes.

JUDGMENT in T-367-16

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. Costs are awarded against the applicant in the amount of $250, including disbursements and taxes.

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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