

Date: 20090526

Docket: T-700-08

Citation: 2009 FC 544

Ottawa, Ontario, May 26, 2009

PRESENT: THE CHIEF JUSTICE

BETWEEN:

ARMAND SOLOMENESCU

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The applicant seeks judicial review of the refusal by the Canada Revenue Agency (CRA or the Agency) for the cancellation and waiver of his penalties and interest payments for the tax years 2001, 2003 and 2004.

[2] For tax year 2001, the applicant claimed a deduction for legal fees of \$12,157. In September 2002, the deduction was disallowed by the CRA because, in its view, the documentation provided did not establish allowable legal costs. A reassessment was issued to reflect the disallowance. There is no evidence before me that the applicant exercised his statutory right to appeal this decision.

[3] The applicant refused to accept the Agency's position. As a result of the CRA reassessment, the applicant's statement of account reflected an outstanding balance of \$ 5,416.50. The applicant chose not to pay this amount when it was due. As a result, interest payments grew as did the applicant's outstanding balance.

[4] In August 2007, the applicant filed his request for penalties and interest relief on the grounds that the Agency's actions caused undue delays in resolving the issue of the deductibility of his legal fees and that its various notices and reassessments from time to time caused confusion, hampering his ability to understand the status of his account.

[5] Undue delay by the CRA in resolving an objection is one of the grounds warranting the waiver of penalty and interest payments: Information Circular, 07-1, Taxpayer Relief Provisions, May 31, 2007 at paragraph 26(b).

[6] The applicant believes that during a telephone conversation of March 1, 2006, a representative of the Agency advised him "that about half of the amount claimed by me in legal fees, shown as a deduction on my 2001 Tax Return, had been accepted." (paragraph 6 of the applicant's affidavit)

[7] A careful review of the record discloses no correspondence or other documents to support the applicant's belief.

[8] The applicant's letter of March 4, 2006 to the Agency representative with whom he spoke three days earlier makes no mention of any change in the Agency's position concerning its refusal to acknowledge the deduction of legal fees.

[9] During the hearing in this Court, the applicant argued that the Agency's change of position is shown by comparing CRA correspondence and his statement of account which is an ongoing CRA summary of the applicant's outstanding balance reflecting adjustments made from time to time.

[10] For the applicant, the income tax arrears as stated in a CRA letter of January 9, 2006 is approximately 50% less than the balance owing in September 2002 according to his statement of account. This difference, in the applicant's view, reflects the allowance of one-half of his deduction for legal fees.

[11] I do not agree with the applicant's submission. In fact, the amount indicated in the Agency's statement of income tax arrears of January 9, 2006 (\$2,984.73) is within pennies precisely the prorated difference over the 180 days between the amounts noted on the statement of account for September 9, 2005 (\$2,915.71) and March 7, 2006 (\$3,317.54).

[12] The comparison between the Agency's letter of January 9, 2006 and the statement of account does not support the applicant's position.

[13] In summary, the record discloses no undue delay by the Agency to disallow the applicant's deduction for legal fees. The applicant chose to pursue the issue administratively in communications with CRA representatives. The delay caused by this process cannot be attributed to the CRA as undue. Nor has the applicant shown that the CRA ever modified its disallowance of the deduction in issue.

[14] The process did result in reassessments and adjustments for arrears in payments. These various notices may have confused the applicant. Any such confusion can be attributed to his refusal to accept the CRA position and pay his arrears. The Agency's refusal to provide relief to the applicant on account of his confusion is not an unreasonable outcome: *Dunsmuir v. New Brunswick*, 2008 SCC 9, at ¶¶ 45-47.

[15] In my view, the applicant's difficulties with the Agency are aptly described in the first review refusal of the request for penalty and interest relief, dated October 23, 2007:

Your inability to provide proof of the deduction for a particular taxation year should not have prevented you from filing subsequent year tax returns when due. As well, your repeated late filing, and allowing a balance to remain outstanding for such a long period of time could not be considered as beyond your reasonable care and control. While there has been numerous reassessments on your returns, there is nothing to indicate CRA delays in initially processing or reassessing your returns in a timely manner.

[16] On March 25, 2008, the second review decision-maker also concluded that neither extenuating or extraordinary circumstances nor suggested CRA delays warranted granting the relief sought by the applicant.

[17] With all the sympathy one might have for the applicant's difficulties in understanding the various communications he was receiving from the Agency, I cannot conclude that the second review refusal for penalty and interest relief was unreasonable.

[18] For these reasons, this application for judicial review must be dismissed.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. This application for judicial review is dismissed.
2. The undersigned remains seized of the proceeding concerning the issue of costs, in the event this issue cannot be resolved amicably.

“Allan Lutfy”
Chief Justice

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-700-08

STYLE OF CAUSE: ARMAND SOLOMENESCU v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: March 17, 2009

REASONS FOR JUDGMENT: LUTFY C.J.

DATED: May 26, 2009

APPEARANCES:

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SOLICITORS OF RECORD:

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