

Federal Court



Cour fédérale

Date: 20121019

Docket: T-1005-10

Citation: 2012 FC 1223

Toronto, Ontario, October 19, 2012

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

NANCY HUNTER

Applicant

and

CANADA REVENUE AGENCY

Respondent

REASONS FOR ORDER AND ORDER

[1] The present Application is a judicial review of a decision of the Canada Revenue Agency (CRA), dated May 30, 2010, in which the Applicant's request for interest relief pursuant to the taxpayer relief provision of subsection 220(3.1) of the *Income Tax Act*, RSC 1985 c I (5th Supp) (the Act) was denied. The Applicant submitted her application in November of 2009 seeking relief of arrears interest in the amount of \$18,528.32. The interest had arisen on the Applicant's account due to tax liability imposed on the Applicant in the course of a tax audit for the 2001 and 2002 tax years.

[2] The interest relief provision found in subsection 220(3.1) of the Act allows the Minister of National Revenue to grant interest and penalty relief to taxpayers in certain circumstances. The exercise of this discretionary power of the Minister is guided by ministerial guidelines found in Information Circular IC O7-1 (the Guidelines). The Guidelines state that a taxpayer can seek interest and penalty relief on one or more of the following grounds: (1) extraordinary circumstance beyond the control of the person seeking relief, such as natural disasters or serious illness; (2) actions of the CRA such as delays and errors; and (3) taxpayer's inability to pay or financial hardship. In *Bozzer v Minister of National Revenue*, 2011 FCA 186 (FCA), the Federal Court of Appeal confirmed that the Guidelines accurately reflect the purpose of subsection 220(3.1).

[3] The application submitted by the Applicant stated that relief was sought on all three of the above grounds. However, the argument in the accompanying narrative, while citing delays of the CRA, is essentially based on the Applicant's view that her tax liability was not warranted. The narrative outlines the circumstances that led to the Applicant's tax liability and expresses the Applicant's view that the CRA mishandled her audit. It also cites the length of time it took for the CRA to complete the audit and the subsequent appeals. The "extraordinary circumstances" cited by the Applicant on Form RC4288 of the application relate to the CRA's conduct during the audit and expresses the view that legitimate expenses were denied in the course of the taxpayer's audit. Thus, I find that the Applicant supported her application with grounds well outside the scope of the Guidelines.

[4] The March 30, 2010 Decision of the Minister's delegate (Decision) to deny the Applicant's request is responsive to the Applicant's request because it addresses CRA delay and error. On the question of CRA delay, the Decision provides as follows:

I have reviewed your file, including the reassessment made for 2001 and 2002 and the consideration of your Notices of Objection by Appeals Division. Relief from interest was granted for 175 days at the time of reassessment and I conclude that is adequate to account for any delays on the part of the agency in finalizing your audit. The Appeals Division addressed your objections in a timely manner and no relief is warranted on account of delay on their part.

With respect to CRA error, the decision provides as follows:

There are no errors in the reassessment by Mr. Ladouceur and our Appeals Division had reduced the reassessment in regard to any disallowed expenses or other items you were able to support when filing your Notices of objection.

(Decision, Applicant's Application Record, p. 6)

[5] With respect to the present challenge to the Decision, the Minister's discretion under the fairness provisions of the *Act* is reviewable on a standard of reasonableness (*Lanno v Canada Customs and Revenue Agency*, 2005 DTC 5245 (FCA) at paras 3 to 7; *Canada Revenue Agency v Telfer*, 2009 FCA 23 at para 2).

[6] The Applicant's challenge is stated in the first paragraph of her written submissions:

This is an application for judicial review in respect of the decision of the Canada Revenue Agency (CRA) to reject legitimate business expenses claims for the 2001 tax year of the Applicant, Nancy Hunter. Further, the CRA has been unjust in their penalty and interest charges against the Applicant due to undue delays and numerous errors made by the auditor during the audit and the review process.

(Applicant's Application Record, p. 178)

At paragraph 23 of the submissions, the Applicant states the primary issues for determination: the errors in the audit prepared by the CRA; the erroneous decision to disallow legitimate expenses; and the unfairness of the interest amount levied by the CRA (Applicant's Application Record, pp. 185 - 186). I find that these substantive arguments are irrelevant to a determination on the present Application given the narrow scope of s.220(3.1) of the Act as described above.

[7] In argument during the course of the hearing of the present Application, the Applicant raised a fairness argument with respect to the Minister's process for considering her application for interest and penalty relief. Prior to submitting her application, the Applicant learned that interest relief requests are normally subject to a two-tier process within the CRA. That is, in the normal course, a taxpayer whose request is refused by a first-level decision-maker is entitled to seek a second-level review and has the opportunity to submit additional materials. However, on March 26, 2010, two months before her decision was rendered, the Applicant was informed by letter that her particular request would be treated as a second-level application. The reason stated was that the CRA had already granted interest relief in 2006, and her request for additional relief was, therefore, a second-level request. The Applicant did not raise an objection with respect to this procedure when she was so notified; indeed, she did not respond to the letter. The Applicant stated that she did not object because she did not understand that this was her last opportunity to obtain interest relief from the CRA.

[8] During the course of the present hearing, the Applicant argued that she was entitled to another opportunity to make her case before the CRA. When pressed to identify the unfairness of not receiving another chance, the Applicant articulated that a second-level assessment would

provide another opportunity to demonstrate to the CRA that mistakes were made in the course of her tax audit. I find that this argument was made on a continuing mistaken impression that the interest and penalty relief regime is a means to remedying the perceived errors of the CRA in assessing her tax liability. As a result, I give the argument no weight.

[9] However, during the course of the hearing the Applicant did point to CRA documents, disclosed in the course of this judicial review, which she argued do indicate that the CRA had incorrect information with respect to the Applicant's compliance with her tax obligations. This is a factor cited in the Guidelines as a relevant consideration when considering whether her relief is warranted. The Applicant argued that a second-level assessment would provide the opportunity to correct this information. However, I find that because the Minister's Decision does not rely on the identified information, its existence is not a relevant consideration on the present Application.

[10] In conclusion, given the above analysis, I find that there is no basis upon which to find that the Minister's decision is unreasonable.

ORDER

THIS COURT ORDERS that

The present Application is dismissed.

I make no order as to costs.

“Douglas R. Campbell”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1005-10

STYLE OF CAUSE: MARY HUNTER V CANADA REVENUE AGENCY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 16, 2012

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: OCTOBER 19, 2012

APPEARANCES:

Jim Swales (appearing as Agent for Applicant) FOR THE APPLICANT

Rita Araujo FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A (represented by Agent) FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada FOR THE RESPONDENT