

Federal Court



Cour fédérale

Date: 20190301

**Docket: T-1147-17
T-437-18
T-253-18
T-968-18**

Citation: 2019 FC 252

Ottawa, Ontario, March 1, 2019

PRESENT: The Honourable Mr. Justice Zinn

Docket: T-1147-17

BETWEEN:

YOGENDRA PATHAK

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Docket: T-437-18

AND BETWEEN:

YOGESH PATHAK

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Docket: T-253-18

AND BETWEEN:

ASTRO HORA INC.

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

Docket: T-968-18

AND BETWEEN:

ASTRO HORA INC.

Applicant

and

MINISTER OF NATIONAL REVENUE

Respondent

JUDGMENT AND REASONS

[1] Mr. Pathak and Astro Hora Inc. [the Applicants] seek judicial review of four separate decisions made by Canadian Revenue Agency [CRA] Team Leaders who decided not to waive penalties and interest owed. The penalties and interest owed were based on a 2011 audit that determined gross negligence concerning statements made by the Applicants about their GST/HST and Income Tax. It is submitted that these decisions not to grant relief were

unreasonable because the Team Leaders did not correctly consider their financial hardship, Mr. Pathak's health, and CRA delay in the audit process.

[2] By Order dated June 11, 2018, the four applications relating to these decisions were consolidated and Mr. Pathak was granted leave to represent Astro Hora Inc. [the Corporation], by the Court.

[3] For the reasons that follow these applications must be dismissed as the decisions under review were reasonable based on the materials before the decision-makers.

Background

[4] Mr. Pathak practiced as a Vedic Astrologer. His business involved providing clients with astrological analysis, horoscopes, and prayers. In 2006 and 2007, Mr. Pathak operated his business as a sole proprietorship; however, in 2008 he began operating through the Corporation, of which Mr. Pathak was the director and sole shareholder.

[5] Mr. Pathak used the services of an accountant; however, the bookkeeping for the business was not very reliable. There was a lack of invoices and numerous cash transactions. The Applicants were often late in paying their income tax, and remitting GST/HST payments. Mr. Pathak signed a form each year certifying that all the information provided to the CRA was accurate.

[6] In 2010, Mr. Pathak was charged in relation to his astrology business with pretending to practise witchcraft, fraud, and extortion, under the *Criminal Code*. It is unclear from the Record

whether he was acquitted of the charges or whether they were dropped. In any event, no conviction resulted. However, the experience caused considerable distress to Mr. Pathak and he has since been diagnosed as suffering with depression.

[7] The criminal charge triggered a CRA audit. In 2011, Mr. Pathak was audited for his 2006, 2007 and 2008 taxation years and the Corporation was audited for its 2009 and 2010 tax years. These audits concluded that Mr. Pathak had been under-reporting income and this led to a reassessment. Given the poor quality of records, the reassessment was done by way of a net worth assessment, which involved the CRA imputing the taxable income based on changes in Mr. Pathak's overall net worth.

[8] The CRA determined that Mr. Pathak and his Corporation owed a balance to the CRA for the tax arrears. Additionally, the CRA assessed interest on the arrears, and penalties were applied under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) and *Excise Tax Act*, RSC 1985, c E-15, for making false statements or omissions, either knowingly or under circumstances amounting to gross negligence.

[9] The Applicants filed notices of objection to the reassessments [the First Objection] in 2012. Although the notices of objection related to GST/HST and to Mr. Pathak's income taxes were filed late, extensions of time were granted. The CRA sent extension of time letters that advised that it would take 6 to 9 months before the CRA would be in contact, and that interest would continue to accrue during that time.

[10] During the First Objection period, the Applicants provided information about their finances that allowed the CRA to update the assessments and reduce the arrears owing. The Applicants remained unsatisfied and they filed a second series of notices of objection [the Second Objection]. These too were filed late and required an extension of time. It was granted in March 2014.

[11] The Applicants used a representative [the Representative] during the Second Objection, as an intermediary between the Applicants and the Appeals Officer [the AO]. Negotiations between the Representative and the AO over the assessment began on or around June 2014. Together they reached a new assessment value.

[12] The Representative also attempted to have the interest and penalties removed. The AO agreed to cancel the Corporation's penalty for 2009 and Mr. Pathak's for 2006. The AO said she did not believe the circumstances in the other years warranted further reduction.

[13] At the end of the Second Objection, the Applicants signed a waiver accepting the new assessment and waiving their right to appeal in the Tax Court of Canada [the Tax Court]. The waiver was first discussed in August 2014, and the signed waivers were received in October 2014.

[14] The Applicants and the Respondent disagree on the circumstances relating to the signing of this waiver. According to the AO, she told the Applicants that if they did not sign the waiver, they would be able to appeal the assessment to the Tax Court. When the Applicants asked if

they would still receive the negotiated reassessment if they did not sign the waiver, the AO told them that they would not and they would need to argue everything in front of the Tax Court. The AO affirms she never told the Applicants their penalties would be waived, but that they could apply to have the remaining interest and penalties waived after the objection closed.

[15] According to Mr. Pathak, the AO assured him that another department of the CRA would waive the penalties. He also affirms that he was pressured into signing the waiver and “she claimed that if we refused to sign the waiver almost immediately, she would revoke and null the negotiations we had conducted.”

[16] In my view, nothing hangs on this disagreement in terms of this application. Neither of the Applicants seeks to set aside the waiver, and in any event, this would not be the proper forum to do so.

[17] The Minister is allowed to waive penalties or interest to provide taxpayer relief under subsection 220(3.1) of the *Income Tax Act* and section 281.1 of the *Excise Tax Act*. In July 2014, the Applicants submitted requests for relief in respect to the personal and corporate Income Tax, and in June 2015, requests for relief in respect to GST/HST [the First Level Requests].

[18] After each request for relief, the CRA sent a letter advising of the timeline for response, and recommending that the penalties/interest be paid to prevent further interest from accumulating.

[19] In the First Requests, relief was requested based on Financial Hardship/Inability to Pay, CRA Error [only in Income Tax], CRA Delay [only in Income Tax], and Death/Accident/Serious Illness/Emotional or Mental Distress [only in GST/HST].

[20] These requests were all denied for substantially the same reasons as the Second Level decisions set out below.

[21] The decision on Mr. Pathak's Personal Income Tax request also noted that he had begun making contributions of \$1,000 a month towards his balance, which indicated against financial hardship. Upon receiving the response to the Income Tax Requests, Mr. Pathak stopped making payments towards his balance.

[22] The Applicants received the response to their Personal and Corporate Income Tax requests on August 19, 2015, and their Personal and Corporate GST/HST requests on June 26, 2017.

[23] After the rejection of their First Requests, the Applicants made Second Level Requests for relief from interest and penalties. A request for relief from the Personal and Corporate Income Tax was sent November 5, 2015 and the GST/HST request was sent October 4, 2017. It is the decisions on these Second Level Requests that give rise to these judicial review applications.

[24] There are four decisions under review. The decisions were made by two different Team Leaders, based upon the record and recommendations from three Taxpayer Relief Officers [TROs].

[25] The Applicants' submitted all of the requests for relief based on Financial Hardship/Inability to Pay, and Death/Accident/Serious Illness/Emotional or Mental Distress.

[26] Unlike the First Level Requests, the Applicants did not select "Canada Revenue Agency Error" or "Canada Revenue Agency Delay" when selecting the reasons for review. However, the Second Level Requests that related to GST/HST discussed delay in the submissions when explaining why the Applicants disagreed with the first review. As a result, the GST/HST decision considered delay.

[27] For all of the Second Level Requests, the CRA sent the Applicants letters specifically outlining the financial information required for them to evaluate Financial Hardship. The Applicants responded to these letters with additional information.

[28] Given that there were similarities between the decisions, the decisions are set out in pairs to reduce repetition.

Income Tax Decisions dated June 26, 2017

[29] The Income Tax Team Leader did not grant relief in the Personal or Corporate Income Tax decisions. In both decisions, the Team Leader explained that the responsibility for ensuring

a return is correct rests ultimately on the taxpayer, and the CRA cannot be responsible for the actions of a third party.

[30] In the Personal Income Tax Decision, the Team Leader explained that financial hardship for individuals is the prolonged inability to provide necessities such as food, clothing, shelter and reasonable non-essentials. The ability to pay is determined by factors such as household income, living expenses, and the capacity to borrow. The Team Leader noted that according to Mr. Pathak's financial records, he had a monthly deficit. However, it was also noted that in 2015, he had made some remittance payments. It was further noted that his financial information indicated that he had funds in bank accounts, which were not remitted, as well as an investment property. These facts were found to be inconsistent with personal financial hardship.

[31] In the Corporate Income Tax Decision, the Team Leader explained that financial hardship for corporations exists where the continuity of business operations and the employment of a firm's employees are jeopardized. The Team Leader noted that the Applicants' representative indicated the company had been dormant for the last four years; as a result, there was no continuity of business operations to jeopardize.

[32] In both decisions, The Team Leader looked at the evidence of serious illness and mental distress, but found that the issues that gave rise to it began in 2010. The Team Leader also noted that the Corporation had been able to file the income tax returns on time; they just were not accurate. As a result, serious illness or mental distress did not explain the failure to remit income tax properly.

GST/HST Decisions dated February 5, 2018

[33] The GST/HST Team Leader also did not grant relief in the Personal or Corporate GST/HST decisions.

[34] In the Personal GST/HST decision, the Team Leader used the same definition of financial hardship used in the Income Tax decision. To determine financial hardship, Mr. Pathak had to provide full financial disclosure from all members of the household. This was not done, and as result, financial hardship could not be assessed.

[35] In the Corporate GST/HST decision, the Team Leader also used the same definition of financial hardship as in the Income Tax decision. The Team Leader noted that the business had no employees and that it had been able to pay its balance in 2012, the last year it operated. As a result, it did not meet the requirements.

[36] In both decisions, the Team Leader explained that relief for serious illness and mental distress generally requires a connection between the circumstances and the inability to file a return or pay on time. Mr. Pathak's medical condition did not begin until 2010, and as a result, it was determined that this did not explain why the earlier returns were not filed.

[37] In both decisions, the Team Leaders found that there was no delay on the part of the CRA. They noted the timeline of events surrounding the audit, including delays caused by Mr. Pathak's representative and then by Mr. Pathak being out of the country. They also noted that the Objections were all reviewed during the six to nine month time-frame promised in the

acknowledgement letters, and that none of the information provided to the Applicants told them that their penalties would be waived.

Issue and Preliminary Matter

[38] There is one issue: are the decisions reasonable? Although there are four separate decisions under review, given the similarities of the underlying decisions, they will be discussed together.

[39] The Respondent raises a preliminary issue. It is submitted that the Applicants, who were both represented by Mr. Pathak, a private individual, were attempting to challenge the Net Worth Assessment which was not under review and which was not a matter falling within this Court's jurisdiction.

[40] At the commencement of the hearing, the Applicants were advised that the sole issue within this Court's jurisdiction is the reasonableness of the decisions under review, and that if they were found to be unreasonable, the matters would be returned to a different decision-maker for decision.

[41] The Respondent is correct in the submission that section 18.5 of the *Federal Courts Act* provides that any matter that can be appealed to the Tax Court cannot be the subject of a judicial review before this Court. The correctness of an assessment should be appealed to the Tax Court: *JP Morgan Asset Management (Canada) v Minister of National Revenue*, 2013 FCA 250.

[42] As a second preliminary issue, the Applicants do not make a clear submission on the standard of review. Their materials lead me to conclude that they assume it is correctness because they ask the Court to “give consideration to all of the factors.” The Respondent correctly points out that the standard of review for discretionary decisions, such as those before the Court, is reasonableness: *Dunsmuir v New Brunswick*, 2008 SCC 9.

Submissions On The Merits

[43] The relevant provisions of the *Income Tax Act* and *Excise Tax Act* are reproduced in Appendix A.

Applicants’ Submissions

[44] The Applicants made submissions on the reasonableness of the decisions in both the Application for Judicial Review and in their Memorandum. The submissions before the Court for its consideration are only those an applicant sets out in the memorandum of argument. In *Gemstone Travel Management Systems Inc v Andrews*, 2017 FC 463, Justice Fothergill explained that the Court has discretion to nonetheless accept other submissions as long as the opposing party is not prejudiced. When a party is self-represented, this results in fairness. There is no prejudice to the Respondent here and I have considered all the submissions made by these Applicants, wherever they appear.

(1) Delay

[45] The Applicants submit that the overall process has taken seven years, which is a long time. This includes the long wait for the Second Level Request, which was submitted in November of 2015, and was not answered until June 2017.

(2) CRA Error

[46] The allegation of CRA Error was not raised in the Second Level Decisions. Here the Applicants submit that the AO assured them that the interest and penalties would be waived if they signed the waiver of appeal, and they were not. It is also submitted the decision-makers did not properly consider how Mr. Pathak was treated during the audit. He submits that he was treated unfairly and pressured into waiving his rights

(3) Net Worth

[47] Again, it is noted that this was not raised in the Second Level Decisions. The Applicants submit that the CRA refused documents that would have affected the net worth assessment. They also submit that the CRA incorrectly thinks Mr. Pathak is hiding unreported income, which he denies, and this view on the part of CRA may be a sign of bias.

(4) Serious Illness / Mental Stress

[48] Mr. Pathak submits that this case has led to mental stress and caused his depressive disorder and generalized anxiety disorder.

(5) Other

[49] Mr. Pathak explains that he feels that the behaviour of the CRA is unprofessional and violates his rights as explained in the CRA Taxpayer Bill of Rights. At the hearing he also raised the issue of financial hardship.

Respondent's Submissions

[50] The Respondent submits that the decisions were an exercise of discretion, and as a result there is a high burden on the Applicants to show they are unreasonable because a large part of discretion is assigning weight to facts: *Telfer v Canada Revenue Agency*, 2009 FCA 23.

[51] The Respondent submits that the CRA conducted three separate second level reviews on the requests, and all reached the same conclusion that relief be denied based on the same following factors, set out in the Respondent's Memorandum, as follows:

- i. Mr. Pathak's illness did not begin until after his income tax and GST/HST returns for 2006, 2007 and 2008 were due;
- ii. similarly, Mr. Pathak's illness did not begin until after the income tax and GST/HST returns for the corporation were due;
- iii. Mr. Pathak and the Corporation remain responsible for complying with the financial and payment obligations for tax in a self-assessing system;
- iv. the CRA is not responsible for errors of third parties, such as accountants;
- v. Mr. Pathak was not suffering financial hardship, as he did not provide full financial disclosure;
- vi. Mr. Pathak engaged in discretionary spending rather than pay off his tax liabilities;
- vii. the Corporation was not suffering from financial hardship as there was no possibility of jeopardizing the continued operations of the business or the employment of its staff;
- viii. the CRA did not provide any assurances that interest and penalties would be waived;
- ix. the objections were resolved by the agreement of Mr. Pathak and his Corporation (as they signed waivers of their rights to appeal);
- x. there was no delay on the part of the CRA:

- a) Mr. Pathak and his Corporation were audited and re-assessed;
- b) they each filed two notices of objection, some of which required extensions of time;
- c) the CRA assigned officers within the time period in their letters;
- d) the CRA notified Mr. Pathak and the Corporation on multiple occasions that interest would continue to accumulate on any unpaid balance.

[52] The Respondent submits that on these facts, the decisions to deny relief from interest and penalties were reasonable, as there were no extraordinary circumstances, financial hardship, or CRA delay, and the CRA considered all of the factors put forward.

Analysis

[53] The relevant statutes regarding relief give no explanation as to what conditions are required for penalties and interest should be waived. As a result, the Team Leaders relied on the Minister's Guidelines: IC07-1R1. There has been no suggestion that the Guidelines are inappropriate or that they have led to fettering. Accordingly, assessing the decision against the Guidelines to determine whether the decisions were reasonable is appropriate.

[54] I will examine first the matters raised by the Applicants in their written materials and then turn to financial hardship, which was considered by CRA and addressed by both parties.

Delay

[55] The Applicants complain that the delay in the audit led to an increase in the penalties. However, the decision-makers considered that the Applicants were warned in all of the letters

and was advised to pay to avoid the accumulation of interest. The Applicants could have paid the assessed penalties and then still conducted their various appeals.

[56] Additionally, the record shows that the length of the process is not the fault of the CRA. The Applicants complain that the audit has taken seven years; this is not correct. The audit was completed and both levels of objections dealt with by October, 2014. The Team Leaders considered the dates for the audit and the objections and determined that the Applicants always received their response before the timelines provided. Indeed, it was the Applicants who were late twice filing their objections and had to be given additional time.

[57] For these reasons, I find the decision of the Team Leaders that the factor of delay did not warrant waiver of the penalties or interest to be reasonable.

CRA Error

[58] As noted above, no allegation relating to an alleged error on the part of CRA was raised at the Second Level. Accordingly, it is inappropriate to complain that the decision-makers failed to consider it. In any event, these allegations are matters that could have been dealt with by the Tax Court as they are within its jurisdiction and are not the sort of errors considered by the Guidelines, which contemplates errors which could cause penalties and interest, such as processing errors.

Net Worth

[59] As with their submissions on the alleged CRA Error, the challenge to the Net Worth Assessment was not before the decision-makers. The Applicants accepted that assessment and

waived their right to challenge it in the Tax Court. It cannot form a basis on which to challenge the reasonableness of the decisions under review.

Serious Illness / Mental Stress

[60] The Guideline provision on this point says:

25. Penalties and interest may be waived or cancelled in whole or in part, if they result from circumstances beyond a taxpayer's control. Extraordinary circumstances that may have prevented a taxpayer from making a payment when due, filing a return on time, or otherwise complying with an obligation under the act include, but are not limited to, the following examples:

- a) natural or human-made disasters, such as flood or fire
- b) civil disturbances or disruptions in services, such as a postal strike
- c) serious illness or accident
- d) serious emotional or mental distress, such as death in the immediate family.

[emphasis added]

[61] The Applicants misunderstand the focus of the decision-maker's examination. The question is whether the mental distress or illness prevented the taxpayer from complying: in other words, did the mental distress or illness cause the penalties and interest by preventing compliance? The Applicants have it backwards: they say that the penalties and interest caused mental distress. This might be true, although it is noted that Dr. Buttar's report seems to suggest that the criminal charges were the cause of Mr. Pathak's condition, but it is not relevant to granting relief.

[62] In all four decisions, the decision-makers identified that the failures to comply which gave rise to the penalties and interest occurred before any suggestion of illness or mental distress. The Applicants do not suggest that Mr. Pathak's illness or mental distress started before 2010, and as a result denying the request based on this ground is reasonable.

Financial Hardship

[63] The Guidelines explain the relevance of this consideration:

27. It may be appropriate, in circumstances where there is a confirmed inability to pay all amounts owing, to consider waiving or cancelling all or part of the interest, to enable taxpayers to pay their debt. For example:

[...]

c) when payment of the accumulated interest would cause a prolonged inability to provide basic necessities (financial hardship) such as food, medical care, transportation, or accommodation

[...]

28.1. The CRA will review in detail a taxpayer's financial situation to determine their ability to pay amounts owing and the interest charges that will continue to accrue. A financial review considers such things as:

- income and expenses
- assets and liabilities
- the ability to borrow funds and sell assets
- actions and efforts to pay amounts owing

The review may confirm a taxpayer's inability to pay and to what extent it may be appropriate to cancel current interest charges. For an individual taxpayer, the review will also consider the income, expenses, assets, and liabilities of household members (for example, spouse or common-law partner). All relevant factors that affect the individual taxpayer's benefits and obligations in connection with their financial and living requirements may be reviewed to determine the taxpayer's ability to pay a balance owing.

[64] The Income Tax decision on personal financial hardship reached a reasonable decision that the Applicants did not demonstrate financial hardship. Based on the information provided by Mr. Pathak and that from the CRA Collections Diary, the Team Leader was aware that Mr. Pathak had \$16,950.00 in his bank account, had previously made payments towards his GST/HST arrears, and that his family had an investment property. The Team Leader also had the recommendation explaining Mr. Pathak had recently purchased plane tickets and electronics each valued at several thousand dollars and had been paying off his credit card balances in full.

[65] Given that Mr. Pathak, or his close family, had valuable investment property, money, and had been purchasing expensive non-essentials, deciding that the payment of interest would not cause a prolonged inability to provide the “basic necessities” in this situation is reasonable.

[66] The GST/HST decision on personal financial hardship was also reasonable. The Team Leader who made that decision had different information than the Income Tax decision-maker. This Request was submitted after the Second Level Income Tax decision had already been rejected and Mr. Pathak attempted to provide a further explanation. Mr. Pathak advised this Team Leader that the money in the bank account and the investment property were not his. He also told them that he was living with his brother and helping pay household expenses. However, he did not submit financial disclosure from everyone in that household.

[67] The Team Leader also had the recommendations that explained that Mr. Pathak’s spouse, according to her income tax returns, was receiving rental income on a rental property.

[68] Given the lack of information on Mr. Pathak's finances, it was not unreasonable to find that there would be no inability to provide basic necessities. Mr. Pathak was living in a house with his spouse, his brother, and potentially other individuals. There was no evidence that the other people in the household would not be able to help Mr. Pathak receive basic necessities.

[69] The denials related to corporate financial hardship were also reasonable. As explained in the Guidelines:

28. Cancelling a penalty based on an inability to pay or financial hardship would not generally be considered, unless an extraordinary circumstance prevents compliance. See ¶ 25. However, there may be exceptional situations for which penalties are cancelled, in whole or in part. For example, when a business is experiencing extreme financial difficulty, and enforcement of such penalties would jeopardize the continuity of its operations, the jobs of the employees, and the welfare of the community as a whole, providing relief from the penalties may be considered.

[70] Both decisions related to the Corporation noted that it had ceased operation. This was based on the explanation of the Applicants' Representative. Given that the business was not operating, it was reasonable to conclude that there was no threat to jobs or the community from it being shut down, and, as a result, there was no exceptional situation warranting the cancellation of the penalties.

Conclusion

[71] I find that the exercise in discretion by these decision-makers was reasonable. Mr. Pathak and the Corporation did not properly pay their income taxes and GST/HST. This failure was met with an assessment of penalties and interest. They do not want to pay them; however, none of the circumstances which could excuse the payment exists. Although Mr. Pathak has

mental health problems now, he did not at the time of the events resulting in the penalty being assessed and the interest being imposed. Although he might not be personally wealthy, he has assets and continues to receive support through his family. The decision that the penalties and interest imposed will not result in him being unable to provide basic necessities is thus reasonable. Finally, the underlying audit had no delays and the Applicants were advised on many occasions how interest would accumulate.

[72] The Respondent sought costs, if successful. In the exercise of my discretion, I award costs to the Respondent, inclusive of fees, disbursements, and taxes in the amount of \$500.00.

JUDGMENT in T-1147-17, T-437-18, T-253-18, T-968-18

THIS COURT'S JUDGMENT is that these applications are dismissed, with costs payable to the Respondent in the fixed amount of \$500.00.

"Russel W. Zinn"

Judge

Appendix A

Income Tax Act, RSC 1985, c 1 (5th Supp)

False statements or omissions

163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a “return”) filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty of the greater of \$100 and 50% of the total of [...]

Waiver of penalty or interest

220(3.1) The Minister may, on or before the day that is ten calendar years after the end of a taxation year of a taxpayer (or in the case of a partnership, a fiscal period of the partnership) or on application by the taxpayer or partnership on or before that day, waive or cancel all or any portion of any penalty or interest otherwise payable under this Act by the taxpayer or partnership in respect of that taxation year or fiscal period, and notwithstanding subsections 152(4) to (5), any assessment of the interest and penalties payable by the taxpayer or partnership shall be made that is necessary to take into account the cancellation of the penalty or interest.

Excise Tax Act, RSC 1985 c E-15

False statements or omissions

95.2 (1) Every person who knowingly, or under circumstances amounting to gross

Loi de l'impôt sur le revenu (L.R.C. 1985), ch. 1 (5e suppl.)

Faux énoncés ou omissions

163(2) Toute personne qui, sciemment ou dans des circonstances équivalant à faute lourde, fait un faux énoncé ou une omission dans une déclaration, un formulaire, un certificat, un état ou une réponse (appelé « déclaration » au présent article) rempli, produit ou présenté, selon le cas, pour une année d'imposition pour l'application de la présente loi, ou y participe, y consent ou y acquiesce est passible d'une pénalité égale, sans être inférieure à 100 \$, à 50 % du total des montants suivants : [...]

Renonciation aux pénalités et aux intérêts

220(3.1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin de l'année d'imposition d'un contribuable ou de l'exercice d'une société de personnes ou sur demande du contribuable ou de la société de personnes faite au plus tard ce jour-là, renoncer à tout ou partie d'un montant de pénalité ou d'intérêts payable par ailleurs par le contribuable ou la société de personnes en application de la présente loi pour cette année d'imposition ou cet exercice, ou l'annuler en tout ou en partie. Malgré les paragraphes 152(4) à (5), le ministre établit les cotisations voulues concernant les intérêts et pénalités payables par le contribuable ou la société de personnes pour tenir compte de pareille annulation.

Loi sur la taxe d'accise (L.R.C. (1985), ch. E-15)

Faux énoncés ou omissions

95.2 (1) Toute personne qui, sciemment ou dans des circonstances équivalant à faute

negligence, makes or participates in, assents to or acquiesces in the making of, a false statement or omission in a return, application, form, certificate, statement, invoice, answer or report (each of which is in this section referred to as a “return”) made in respect of a reporting period is liable to a penalty of the greater of \$250 and 25% of the total of [...]

Waiving or cancelling interest

281.1 (1) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel interest payable by the person under section 280 on an amount that is required to be remitted or paid by the person under this Part in respect of the reporting period.

Waiving or cancelling penalties

(2) The Minister may, on or before the day that is 10 calendar years after the end of a reporting period of a person, or on application by the person on or before that day, waive or cancel all or any portion of any

(a) penalty that became payable by the person under section 280 before April 1, 2007, in respect of the reporting period; and

(b) penalty payable by the person under section 280.1, 280.11 or 284.01 in respect of a return for the reporting period.

lourde, fait un faux énoncé ou une omission dans une déclaration, une demande, un formulaire, un certificat, un état, une facture, une réponse ou un rapport (appelés « déclaration » au présent article) établi pour une période de déclaration, ou y participe, y consent ou y acquiesce, est passible d’une pénalité de 250 \$ ou, s’il est plus élevé, d’un montant égal à 25 % de la somme des montants suivants : [...]

Renonciation ou annulation — intérêts

281.1 (1) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d’une période de déclaration d’une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler les intérêts payables par la personne en application de l’article 280 sur tout montant qu’elle est tenue de verser ou de payer en vertu de la présente partie relativement à la période de déclaration, ou y renoncer.

Renonciation ou annulation — pénalité pour production tardive

(2) Le ministre peut, au plus tard le jour qui suit de dix années civiles la fin d’une période de déclaration d’une personne ou sur demande de la personne présentée au plus tard ce jour-là, annuler tout ou partie des pénalités ci-après, ou y renoncer :

a) toute pénalité devenue payable par la personne en application de l’article 280 avant le 1er avril 2007 relativement à la période de déclaration;

b) toute pénalité payable par la personne en application des articles 280.1, 280.11 ou 284.01 relativement à une déclaration pour la période de déclaration.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: T-1147-17 & T-437-18

STYLE OF CAUSE: YOGENDRA PATHAK v MINISTER OF NATIONAL REVENUE

DOCKETS: T-253-18 & T-968-18

STYLE OF CAUSE: ASTRO HORA INC v MINISTER OF NATIONAL REVENUE

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 21, 2019

JUDGMENT AND REASONS: ZINN. J.

DATED: MARCH 1, 2019

APPEARANCES:

Yogendra Pathak

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Cherylyn Dickson

FOR THE RESPONDENT

SOLICITORS OF RECORD:

- NIL -

SELF-REPRESENTED APPLICANT

Attorney General of Canada
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FOR THE RESPONDENT