

Federal Court



Cour fédérale

Date: 20220314

Docket: T-456-21

Citation: 2022 FC 346

Ottawa, Ontario, March 14, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

SUSIE SINGH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. This Application

[1] The Applicant, Ms. Singh, is a self represented litigant. She has applied under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, for judicial review of a decision by the Minister of National Revenue (the Minister) made on February 12, 2021 (the Decision).

[2] The Decision denied Ms. Singh a waiver or cancellation of the tax penalty she had incurred as a result of making excess contributions to her TFSA during the three tax years 2015, 2016 and 2017.

[3] Ms. Singh seeks elimination of the penalty she paid so that it may be returned to her or, that the penalty be significantly reduced.

[4] For the reasons that follow, despite the sympathy I have for Ms. Singh's position, her application is dismissed based on the evidence and the applicable law.

II. Preliminary Matters

[5] Further to Rule 303 of the *Federal Courts Rules*, the name of the Respondent in this matter is changed to Attorney General of Canada, effective immediately.

[6] Ms. Singh filed an affidavit with Exhibits A to G attached. The Minister originally objected to Exhibits A, E, F and G, being considered as they were not before the decision maker. At the hearing of this application, objection was made only to Exhibits A, E and G.

[7] This is an application for a judicial review from a decision on its merits. As this application is not a redetermination, evidence that was not before the Minister and that goes to the merits of the matter is not admissible: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22 at para 19. While there are limited exceptions to this general rule, none of them are present here.

[8] Ms. Singh's Exhibits A, E and G are excluded. I will not consider them.

III. **Background Facts**

[9] In 2015 Ms. Singh was divorced and her house was sold. As she had never made an investment before Ms. Singh took \$41,000 from the house sale proceeds and sought advice from her bank as to how she might best deal with the money.

[10] A bank advisor told Ms. Singh to put the money in her Tax-Free Savings Account (TFSA). The advisor however failed to mention there were limits as to the amount of money that could be contributed to a TFSA.

[11] After the house sale, Ms. Singh's former husband, who prepared and filed their tax returns, failed to update her mailing address with CRA. The address therefore remained that of the house which had been sold.

[12] The result of these two events was that in 2015 Ms. Singh made an over-contribution of \$16,802.42 to her TFSA. This caused her to owe tax of \$1,174.07 plus penalties and interest for a 2015 total of \$1,267.52.

[13] On January 1, 2016, the TFSA contribution limit was increased to \$5,550. This change reduced the excess contribution amount in Ms. Singh's TFSA to \$11,302.42.

[14] Unaware of the excess contribution, Ms. Singh had contributed \$10 per month to her TFSA by auto-debit during all of 2016. That total of \$120 raised her 2016 excess contribution amount to \$11,422.42. The resulting tax payable was \$1,363.69 plus penalties and interest for a 2016 total owing of \$1,434.23.

[15] On January 1, 2017, the TFSA contribution limit for 2017 was again \$5,500. This reduced the excess contribution amount of Ms. Singh to \$5,922.42. She had contributed the \$10 monthly auto-debit that year for 11 months making her year-end total 2017 excess contribution \$6,042.42.

[16] Ms. Singh's 2017 Notice of Assessment, dated July 17, 2018, indicates that as a result of the excess TFSA contributions she had made, the total amount of tax, interest and penalty owing was \$3,733.04 as of that date.

[17] Ms. Singh first learned of her TFSA problem when she was speaking with Canada Revenue Agency [CRA] about another matter. She was not initially advised that non-payment would lead to additional charges. As soon as she learned that fact, Ms. Singh paid the outstanding amount in full.

[18] Ms. Singh applied for taxpayer relief twice in 2019. Both applications were denied but the Minister agreed to send the second one back for redetermination after Ms. Singh applied for judicial review.

[19] The matter now being reviewed is the redetermination decision.

IV. **The issue to be determined**

[20] The only issue to be decided is whether the Decision is reasonable. Ms. Singh submits it is not.

[21] The Minister submits that in order to waive the tax assessed against Ms. Singh, the legislation imposes two conditions: (1) that Ms. Singh's error was reasonable and (2) that the excess contribution was removed right away: *Income Tax Act*, RSC 1985, c 1 (5th Supp), paras 207.06(1)(a) and (b).

[22] The Minister states that the second condition noted above need not be considered because Ms. Singh fails at the first step of whether her error was reasonable. I agree.

V. **The standard of review**

[23] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 23. While this presumption is rebuttable, none of the exceptions to the presumption are present here.

[24] A court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker. It does not attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem: *Vavilov* at para 83.

[25] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *Vavilov* at para 125.

[26] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision: *Vavilov* at para 85.

VI. Analysis

[27] The onus is on Ms. Singh, as the Applicant, to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

[28] Ms. Singh states that she innocently made the excess TFSA contributions. They were not made purposefully.

[29] She submits that she had a “reasonable excuse” as she did not know the bank gave her wrong advice nor did she know that her husband failed to update her mailing address with CRA. As a result, she did not receive the correspondence from CRA advising her of the TFSA problem so she could not rectify it.

[30] On a day-to-day basis, the points that Ms. Singh raises could be seen as showing the outcome was “unreasonable” in the ordinary sense of the word. However, as discussed above and applied in case law, the notion of “reasonableness” in the context of judicial review of administrative action does not share the same meaning as the ordinary understanding of the word.

[31] The Decision set out the Applicant’s TFSA history. It acknowledges Ms. Singh’s statements about the bank giving her advice to put the funds in her TFSA and not telling her there were limits as to the amount that could be contributed. The Decision also set out the process by which an excess TFSA amount is taxed and the paperwork required from Ms. Singh to pay the tax.

[32] The Minister considered all of Ms. Singh’s arguments and explained why each of them was rejected.

[33] The Minister considered the fact that Ms. Singh had trusted her bank advisor, the argument that her oversight in making excess contributions was innocent and that the failure to update her address was that of her former spouse.

[34] The Minister reasonably noted that an error made by her financial institution is a matter between Ms. Singh and her bank. This finding is supported in case law: *Jiang v Canada (Attorney General)*, 2019 FC 629 at paras 11 and 12.

[35] Regarding the bank's advice being wrong and Ms. Singh innocently contributing the funds to her TFSA, it has been held that poor advice from a bank coupled with the innocence and lack of intent of a taxpayer are not determinative of reasonableness. While those factors are part of the Minister's consideration, the issue is the reasonableness of the error when objectively assessed: *Dimovski v Canada (Revenue Agency)*, 2011 FC 721 at para 16.

[36] The Minister found that Ms. Singh's unintentional excess contributions were not a reasonable error as she was responsible for making contributions within the guidelines set out in the legislation. The reasons in the Decision explain that Canada's taxation system relies on self-assessment. While it was acknowledged that Ms. Singh's excess contributions may have been unintentional, the Minister found that she bore the responsibility of ensuring compliance with TFSA limits. The Minister reasonably concluded that Ms. Singh's circumstances did not constitute a reasonable error by her.

[37] With respect to the mail not being received by Ms. Singh, the Decision reviewed Ms. Singh's statements and noted that CRA sends correspondence to the address on file. It was noted that three Notices of Assessment - for 2015, 2016 and 2017 tax years - had been sent to the address of the house that was sold.

[38] It has been held that CRA is not obliged to prove receipt by a taxpayer of a notice. It is reasonable that CRA only show that the relevant notice was sent to the taxpayer: *Weldegebiel v Canada (Attorney General)*, 2019 FC 1565 at paras 8 - 11.

[39] Ms. Singh's request for reconsideration was thoroughly considered along with her prior submissions for the two previous requests.

[40] Ms. Singh had also indicated in her submissions to the Minister that she was suffering from financial hardship as she was supporting her two daughters. The Minister responded to this concern by noting the contact information available to make payment arrangements with the CRA. I find that to be a reasonable and appropriate consideration of the financial hardship concern raised by Ms. Singh.

VII. **Conclusion**

[41] For all the foregoing reasons, I find the Decision meets the requirements of reasonableness as set out in *Vavilov*.

[42] This application for judicial review is dismissed.

[43] The Respondent has requested costs. In the exercise of my discretion I do not find this to be an appropriate case for costs.

JUDGMENT in T-456-21

THIS COURT'S JUDGMENT is that:

1. The name of the Respondent in this matter is changed to Attorney General of Canada, effective immediately.
2. This application for judicial review is dismissed.
3. No costs are awarded.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-456-21

STYLE OF CAUSE: SUSIE SINGH v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: MARCH 9, 2022

JUDGMENT AND REASONS: ELLIOTT J.

DATED: MARCH 14, 2022

APPEARANCES:

Susie Singh

FOR THE APPLICANT
(ON HER OWN BEHALF)

Jesse Epp-Fransen

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT