Federal Court Cour fédérale

Date: 20221125

Docket: T-456-22

Citation: 2022 FC 1617

Ottawa, Ontario, November 25, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

DIEGO RUIZ RODRIGUEZ

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Diego Ruiz Rodriguez, a self-represented litigant, seeks judicial review of a decision by the Minister of National Revenue [Minister] rejecting his request for relief from tax liability under the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA]. This matter arises from Mr. Rodriguez having over-contributed to his Tax-Free Savings Account [TFSA] for the 2020 taxation year.

[2] Although the consequences of the decision rendered by the Canada Revenue Agency [CRA] officer [Officer] who assessed his second request for relief – his first request was denied, so he requested relief again and a different CRA officer reviewed that second request – were understandably harsh for Mr. Rodriguez, I have not been convinced that her decision was unreasonable; furthermore, she neither acted outside of her discretion nor committed a reviewable error. Therefore, while I am sympathetic to Mr. Rodriguez's situation, I must dismiss his application for judicial review.

II. Facts and Underlying Decisions

[3] At the beginning of the 2020 taxation year, needing to move closer to his young daughter following his separation from his wife, Mr. Rodriguez withdrew $50,000 from his TFSA with the intention of making an offer on a new home – in a hot housing market in which there were often bidding wars for the same home, a competitive bid necessitated that funds be in hand for an offer to be accepted within a very short period of time. Mr. Rodriguez, however, quickly realized that the housing market was simply too hot for his financial wherewithal, so he did what he thought was the reasonable thing to do: on February 6, 2020, he deposited the same funds back into his TFSA. Mr. Rodriguez's TFSA contribution room for the 2020 taxation year was $10,008.88; however the redeposit of $50,000 – which, in the eyes of Mr. Rodriguez, were not new funds, but the same funds that were withdrawn from the account a couple of weeks earlier – triggered an over-contribution for the month of February of about $40,000. Then Mr. Rodriguez did something else. Realizing that he had two TFSAs, on February 20, 2020, he transferred the $50,000 from the TFSA into which he had redeposited the funds on February 6, 2020, into his regular savings account and then directed the funds to a second TFSA on the same day. From

Mr. Rodriguez's perspective, he was simply transferring funds from one TFSA to another. However, from the CRA's perspective, the transfer via the savings account on February 20, 2020, triggered a second contribution of $50,000 for the month of February 2020. To Mr. Rodriguez, it was simply an honest mistake because he thought that he was able to shift funds in and out of his TFSA, or between TFSAs, without affecting his contribution limit for the year; he was wrong. In the end, and in addition to what seemed to be two more contributions of what were admitted to be "new" funds, Mr. Rodriguez ended up contributing – in the eyes of the CRA – a total of $122,000 to his TFSA in 2020, an over-contribution of $111,991.12 [2020 Over-contribution], as follows:

i. February 6, 2020 – $50,000
ii. February 20, 2020 – $50,000
iii. May 11, 2020 – $10,000
iv. December 29, 2020 – $6,000
v. December 30, 2020 – $6,000

[4] Neither party was able to explain why the CRA determined that Mr. Rodriguez had contributed $6,000 twice at the end of the year when Mr. Rodriguez himself asserts that he made only one contribution of this amount at the end of December. From what I can tell, nothing turns on this issue as Mr. Rodriguez never raised any concerns of possible "double-counting" of his year-end contribution; it is possible that Mr. Rodriguez transferred these funds from one TFSA to another via a non-TFSA savings vehicle, undertaking the same transfer operations as he did with the $50,000 on February 20, 2020, and that the $6,000 was simply counted twice. In any event, in July 2021, some 18 months following what Mr. Rodriguez states was an honest mistake on his part, the CRA issued a notice of assessment to Mr. Rodriguez relating to his 2020 Over-contribution [Notice of Assessment]; the amount to be paid was $6,270.00 plus $331.56 in penalties and interest.

[5] Later that month, Mr. Rodriguez made a first request to cancel the Notice of Assessment; he asserted that he was not aware that redepositing the same funds that were withdrawn during the same taxation year would constitute additional contributions, but he undertook not to repeat what he called an honest mistake. He argues that he did not think that his redeposit of $50,000 would affect his contribution limit, based on his assumption that only the total contribution room at the end of the year would be taken into account for the yearly contribution limit; he saw his total contribution room for 2020 as being $69,500. In other words, Mr. Rodriguez was under the impression that the TFSA contributions would only be assessed in accordance with the amount in his TFSA at the end of the taxation year – which meant that he could withdraw and redeposit funds throughout the year as long as at the end of the year, he remained under his limit. However, as he was to find out, each deposit is generally considered a separate contribution applied against one's contribution limit, and although one may withdraw funds from one's TFSA at any time, withdrawing funds does not reduce the total amount of contributions that have already been made for that year. Put another way, the withdrawal of funds does not increase one's contribution limit going forward during the applicable year. Withdrawals will generally only be added back to one's TFSA contribution room at the beginning of the following year (subsection 207.01(1) of the ITA, paragraph (b) of the definition of "unused TFSA contribution room").

[6] Mr. Rodriguez's request was denied by the CRA in September 2021 on the basis that even though the 2020 Over-contribution was unintentional, the CRA did not consider the fact that Mr. Rodriguez had misinterpreted the rules for TFSA contribution limits to be a "reasonable error" on his part that justified the exercise of its discretion to cancel the assessment, in particular

as Mr. Rodriguez had, back in 2013, already been granted relief on account of over-contributions to his TFSA at that time. For 2020, Mr. Rodriguez's withdrawal of $50,000 may have been for justifiable reasons; however, it remains that the deposit was deemed a contribution pursuant to the ITA. The fact that this was the second incident of over-contribution by Mr. Rodriguez did not help his cause.

[7] In October 2021, Mr. Rodriguez submitted a second request for the CRA to cancel its Notice of Assessment. In this request, Mr. Rodriguez again submitted that the 2020 Over-contribution was an honest mistake on his part; this time, Mr. Rodriguez asserted that although he was aware of his annual contribution limit, he was under the impression that an accumulated limit would apply, i.e., that the contributions would be averaged out over, say, three years to determine if the annual limits were being respected. The basis of that assumption is not clear. Mr. Rodriguez also seems to suggest that his bank should have warned him that he was over-contributing when he redeposited the funds, which would have allowed him to rectify the situation and not wait until he received the Notice of Assessment 18 months later, with accumulated interest and penalties tacked on.

[8] Mr. Rodriguez's second request was denied on February 17, 2022; the Officer acknowledged that she had discretion under the ITA to cancel all or part of any tax on an excess TFSA contribution where a reasonable error on the part of the taxpayer occurred and where he or she acted quickly to remove the excess contribution from his or her TFSA. In short, the Officer explained that if Mr. Rodriguez decided to replace or re-contribute all or a portion of his withdrawals into his TFSA in the same year, he was only able to do so if he had available TFSA

contribution room; in this case, he did not. In addition, the Officer found that Mr. Rodriguez had been previously notified in 2013 about TFSA excess contributions and was granted relief, with the 1% tax being waived at the time. Considering that this was the second time that Mr. Rodriguez had been made aware of over-contributions on his part, the CRA did not consider his circumstances to be a "reasonable error"; the initial assessment would not be modified. It is this second denial that is the subject matter of the present application for judicial review.

III. Issue and Standard of Review

[9] The sole issue is whether the Officer's refusal to exercise her discretion and her decision to deny Mr. Rodriguez's second request for relief from tax liability with respect to excess TFSA contributions was reasonable (*Badesha v Canada (Attorney General)*, 2021 FC 215 at paras 15-16 [*Badesha*]; *Zazula v Canada (Attorney General)*, 2022 FC 1156 at paras 11-12). 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 85, 102, 105–107 [*Vavilov*]). A decision should not be set aside unless it contains "sufficiently serious shortcomings … such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). Courts should generally refrain from reweighing and reassessing the evidence, although "[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (*Vavilov* at paras 125-126). In the end, the role of this Court is to consider

whether the decision is justified in light of the facts and the law set out by Parliament (*Vavilov* at para 85). This Court cannot interfere with Parliament's intent or change legislation.

IV. Analysis

[10] Section 207.02 of the ITA provides that if, at any time in a calendar month, an individual has an excess TFSA amount, that individual is to pay tax under Part XI.01 of the ITA equal to 1% of the highest excess TFSA amount in that month. Subsection 207.06(1) of the ITA provides for ministerial discretion to grant relief and states that a CRA officer, as the Minister's delegate, may waive or cancel tax payable on any excess TFSA amount if the excess arose through "reasonable error" and is rectified by the individual "without delay". Here, the only question is that of reasonable error as there is no issue that Mr. Rodriguez rectified the situation without delay given that the funds were eventually withdrawn on account of his successful bid to purchase a home.

[11] In matters of judicial review under subsection 207.06(1) of the ITA, submissions limited to one's general ignorance of the law cannot, by themselves, demonstrate that an error was reasonable (*Connolly v Canada (National Revenue)*, 2019 FCA 161 at para 69 [*Connolly*]). What constitutes a "reasonable error" for the purpose of granting relief in the context of the present matter would tend to be limited to situations where the over-contributions occurred for reasons outside Mr. Rodriguez's control (*Badesha* at para 18), which have been understood to include, for example, bank errors (*Gekas v Canada (Attorney General)*, 2019 FC 1031 [*Gekas*]), physical disasters, civil disruptions, a serious illness or accident, or distress (*Connolly* at para 32 – admittedly that was in the context of subsection 204.1(4), which deals with excess Registered

Retirement Savings Plan contributions, although these provisions are similar to the provisions relating to TFSA contributions).

[12] The threshold for the determination of a reasonable error is high as our tax rules are based on a self-reporting system that relies on taxpayers to understand or be informed of the law and to take reasonable steps to comply with the ITA. For TFSA purposes, taxpayers are responsible for being aware of their contribution limits and for ensuring that their contributions comply with applicable rules (*Yew v Canada (Revenue Agency)*, 2022 FC 904 at paras 49-52). While Mr. Rodriguez's innocence may be a relevant factor, it is not determinative (*Weldegebriel v Canada (Attorney General)*, 2019 FC 1565 at para 10).

[13] Before me, Mr. Rodriguez again argues that his 2020 Over-contribution was an honest mistake and that the CRA should have exercised its discretion to relieve him from tax liability; he cites several factors from the CRA's Relief Procedures that he believes were not properly considered. As for the fact that this is not the first time that he is seeking relief for over-contribution, Mr. Rodriguez asserts that his 2013 over-contribution occurred for a different reason – he was unfamiliar with his contribution limit at the time – whereas in 2020, he simply was not aware of the rule that redeposited funds went towards one's contribution limit. He also states that in any event, his 2013 over-contribution was seven years ago and should be irrelevant under the "statute of limitations".

[14] For his part, the Minister submits that the Officer reasonably concluded that Mr. Rodriguez's liability did not result from a reasonable error and that the decision shows a

rational chain of analysis, consistent with the Relief Procedures, and demonstrates that Mr. Rodriguez's submissions and the evidence in the record were considered. In this case, Mr. Rodriguez has not advanced any reviewable error, but rather seems to challenge the perceived fairness of the decision given the amount of tax that he is being asked to pay in comparison with the few hundred dollars of interest that he earned on the funds while they were in his account.

[15] I agree with the Minister. Mr. Rodriguez's situation was considered, including the fact that his mistake was made honestly. The Relief Procedures have separate considerations for first-time over-contributors and repeat over-contributors. The Relief Procedures describe a repeat over-contributor as "a holder … who continues to make excess contributions after contact." This category describes the applicant even though this is only his second over-contribution. That said, the Relief Procedures do not foreclose the possibility of relief for repeat over-contributors:

> As a general rule, an individual will only be granted relief once. However, discretion to grant relief multiple times may be used:
>
> - where the same error spanned two years but was corrected without delay (30 days) after the individual was notified, or
> - where the excess contribution resulted from an unintentional error that was corrected immediately.
>
> The Relief Procedures also specify the following: "Immediate correction means the withdrawal of the excess occurred in a short period of time after the over contribution."

[16] Mr. Rodriguez argues that the first point applies to his case. I disagree. The first point contemplates a single error that lasts for several years. This is not the case here as Mr. Rodriguez's 2013 error was resolved, seven years passed, and then a new and separate error

occurred in 2020. The Relief Procedures explicitly prevent relief from being granted "[w]here an individual was granted relief in an earlier year and continues to make excess or non-resident contributions after being advised by the CRA." Here, Mr. Rodriguez had been notified of his need for compliance in 2013 and has now made another over-contribution, albeit in a different way. This reason for refusing relief does not require that the error be similar and suggests that after any infraction, an individual should have increased their vigilance and compliance.

[17] The Relief Procedures list factors to be considered for over-contributors:

- The holder was contacted or assessed in a previous year concerning excess or non-resident contributions.
- What activity occurred after the first CRA contact – did excess contributions continue?
- After a review of the activity and timelines of CRA contact, is the holder a repeat over-contributor who should have managed their account within their room limits?
- Are there extenuating circumstances that should be reviewed?

[18] In his second request for cancellation, Mr. Rodriguez mentioned that he was "struggling in a very difficult time", without giving more detail. However, before me, Mr. Rodriguez pointed out that he was going through an extremely stressful time in 2020; he was in the process of separating from his spouse and needed to find a suitable place to live that was close to where his spouse lived so that he could be near his daughter given the likelihood of joint custody. However such evidence was not before the Officer and therefore, I can hardly fault the Officer for not taking it into consideration. In any event, it seems to me that even if details of what Mr. Rodriguez was going through in 2020 were before the Officer, she would have had to assess whether this rose to the level of "serious distress" as contemplated in *Connolly*. What is clear,

however, is that the Officer's finding that Mr. Rodriguez's lack of awareness did not rise to the threshold of being a "reasonable error" under the ITA was not an unreasonable finding given the evidence before her. I also find nothing unreasonable in the Minister's delegate considering Mr. Rodriguez's error in the context of the 2013 over-contribution.

[19] There have been cases where this Court has granted applications for judicial review in what may arguably be cases similar to that of Mr. Rodriguez; however, they are all quite distinguishable on the facts. In *Gekas*, Mr. Justice Boswell found that it was unreasonable for the applicant in that case to be categorized as a repeat over-contributor since the applicant's second over-contribution was the result of a miscommunication between him and his financial institution and was thus outside of the applicant's control; that is not the case here. In *Sangha v Canada (Attorney General)*, 2020 FC 712, Madam Justice Walker found fundamental gaps in the decision by the Minister's delegate; I cannot find any gaps of reasoning here. Finally, in *Ifi v Canada (Attorney General)*, 2020 FC 1150, Madam Justice Pallotta found no evidence that the applicant in that case was granted relief on a previous occasion; again, that is not the situation here.

[20] Finally, I have considered Mr. Rodriguez's July 2021 telephone call with the CRA, where a CRA agent purportedly indicated that Mr. Rodriguez should likely obtain the relief he seeks. However, I am not convinced that the agent would have made a substantial promise to Mr. Rodriguez in respect of the relief he sought or that the agent would have had the authority to do so even if he or she did make such a promise. I would understand that if the agent, within the scope of his or her authority, had made representations to Mr. Rodriguez as to the process that

was to be followed, such representations may well have given rise to legitimate expectations on the part of Mr. Rodriguez. However, such representations would need to have been strictly procedural in nature and not conflict with the ultimate decision-maker's statutory duty on the merits of Mr. Rodriguez's claim for relief (*Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 68). But that does not seem to be the case here.

[21] In the end, I find that the Officer's decision denying Mr. Rodriguez's request for relief was internally coherent and displayed a rational chain of analysis that allowed Mr. Rodriguez to understand why he did not receive taxpayer relief for the 2020 taxation year. It is clear that the excess contributions in the present case were made by Mr. Rodriguez because of his misunderstanding of the rules governing TFSAs and are not therefore the consequence of a reasonable error. Nothing in the decision suggests that the Officer did not properly exercise her discretion under the circumstances, and although I understand Mr. Rodriguez's displeasure with the results, I see no reason to set the decision aside. I will, therefore, be dismissing his application for judicial review.

[22] The Minister seeks costs; however, I do not believe that they are warranted in this case.

JUDGMENT in T-456-22

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

"Peter G. Pamel"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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