

Federal Court



Cour fédérale

**Date: 20231215**

**Docket: T-1629-22**

**Citation: 2023 FC 1702**

**Ottawa, Ontario, December 15, 2023**

**PRESENT: The Honourable Mr. Justice Manson**

**BETWEEN:**

**CHENG DONG WANG**

**Applicant**

**and**

**CANADA REVENUE AGENCY**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] This is an application for judicial review of a decision by the Canada Revenue Agency (the “CRA”) finding that Mr. Cheng Dong Wang (the “Applicant”) owed a balance of \$870 due to overpayment.

[2] For the reasons that follow, the application is dismissed.

II. Background

[3] The Applicant filed his 2018 income tax return in October 2019. He was entitled to the GST/HST credit, to be paid in instalments. However, he had not updated his address with the CRA. Instalments were therefore withheld until the Applicant updated his address.

[4] The Applicant updated his address with the CRA in September 2020. By then, the total amount of withheld instalment payments was \$435. The CRA issued a payment for the amount and sent it to the Applicant as a cheque (the “first cheque” or “first payment”). The Applicant contacted the CRA in October 2020 and said that he had not received the payment. The CRA issued another payment for the amount and sent it to the Applicant as a cheque (the “second cheque” or “second payment”).

[5] In November 2020, the Applicant updated his banking information to allow direct deposits. He subsequently contacted the CRA and informed them that neither the first cheque nor the second cheque had arrived. The CRA issued another payment on November 30, 2020, by direct deposit (the “third payment”), which was received by the Applicant that same day.

[6] The first cheque was redeemed in December 2020, and the second cheque was redeemed in June 2021. Because all payments were assigned the same Payment Reference Number in the CRA’s internal system, the redemption of the first and second cheques triggered an investigation.

[7] The CRA sent a notice to the Applicant on March 4, 2022 informing him that he was reassessed and had a balance owing of \$870, being the sum of the first and second cheques. Further GST/HST credit instalment payments were to be applied towards the balance owing.

[8] On August 5, 2022, the CRA notified the Applicant that he is entitled to a GST/HST credit for the 2021 tax year, separate from the initial credit. The notice also informed the Applicant that the first instalment will be applied towards the balance owing.

[9] It is not immediately clear from the Applicant's submissions which notice he seeks to challenge. The Applicant's Notice of Application begins by stating that the Applicant is seeking "judicial review in respect of [the CRA's] decision in detaining the due payment", which suggests that he challenges the August 5, 2022 notice. However, on closer inspection, the Notice of Application does not allege that the CRA was wrong to *apply* the Applicant's second tax credit against the balance he owed. Rather, it challenges the CRA's conclusion that the Applicant was overpaid. His written submissions are also centered on that finding.

[10] Therefore, the Applicant is challenging the notice dated March 4, 2022 – that is, the decision that he was overpaid \$870 (the "Decision").

### III. Issue

[11] Is the application for judicial review of the Decision outside this Court's jurisdiction?

[12] If not, is the application out of time?

[13] If not, was the Decision reasonable?

#### IV. Analysis

##### A. *Jurisdiction*

[14] Section 12(1) of the *Tax Court of Canada Act*, RSC, 1985, c T-2 (the “*ITA*”), provides as follows:

12 (1) The Court has exclusive original jurisdiction to hear and determine references and appeals to the Court on matters arising under [...] the *Income Tax Act* [...] when references or appeals to the Court are provided for in those Acts.

[Emphasis added]

[15] Therefore, if the Decision’s subject matter may be appealed to the Tax Court of Canada, the Federal Court has no jurisdiction to consider it.

[16] The Minister assesses a taxpayer’s tax liability pursuant to section 152 of the *ITA*. A taxpayer may seek reconsideration of an assessment by filing a Notice of Objection under section 165 of the *ITA*. A taxpayer may subsequently *appeal* the assessment to the Tax Court of Canada under section 169 of the *ITA*. Since assessments may be appealed to the Tax Court of Canada, they are not within this Court’s jurisdiction.

[17] The GST/HST credit is computed and issued as a tax refund pursuant to section 122.5 of the *ITA*. Recovery of overpayments (including GST/HST credit overpayments) is governed by

section 160.1 of the *ITA*. Recovery of overpayments may be by means of a tax *assessment* that takes account of the amount that was overpaid, pursuant subsection 160.1(3) of the *ITA*.

[18] Here, the Minister assessed the Applicant for the 2021 tax year and took account of the overpayments in that assessment. The Applicant may therefore file a Notice of Objection against the assessment and then appeal the matter to the Tax Court of Canada. Consequently, the Tax Court of Canada has exclusive jurisdiction over the subject matter of this application. The application is therefore outside this Court's jurisdiction and may be dismissed for this reason.

B. *Time Limitation*

[19] Even if the application is within this Court's jurisdiction under section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7 (the "*FCA*"), subsection 18.1(2) requires applications for judicial review to this Court be filed within 30 days from when the decision was communicated, unless this Court exercises its discretion to allow a late filing.

[20] The Decision was communicated to the Applicant on March 4, 2022. He filed the application for judicial review on August 4, 2022, well beyond the 30-day limit. As a result, the Applicant cannot proceed unless the Court exercises its discretion to grant a time extension.

[21] In *Exeter v Canada (Attorney General)*, 2011 FCA 253 at paragraph 4, the Federal Court of Appeal held that the Court's discretion under subsection 18.1(2) may be exercised by reference to the following four questions:

- A. Does the party seeking an extension have a continuing intention to pursue an application for judicial review?
- B. Has the other party suffered any prejudice as a result of the delay?
- C. Has the party seeking an extension offered a reasonable explanation for the delay?
- D. Does the intended application for judicial review have any prospect of success?

[22] The onus lies on the Applicant to satisfy the Court that it should exercise its discretion to grant an extension (*Sander Holdings Ltd v Canada (Minister of Agriculture)*, 2006 FC 327 at para 30, citing *Virdi v Canada (Minister of National Revenue)*, 2006 FCA 38 at paras 2-3).

[23] Although the Applicant has filed a number of motions prior to the hearing, none of them seek an extension under subsection 18.1(2) of the *FCA*. Nor does the Applicant raise the issue informally in his submissions. There is therefore no reasonable explanation for the delay before me.

[24] While it is clear that the Applicant is already pursuing an application for judicial review, and there is no evidence that the Respondent has suffered any prejudice by the delay, those two factors are not sufficient to justify granting an extension, since there was no reasonable explanation for the delay. Therefore, even if this application was within this Court's jurisdiction, I would decline to grant an extension on the time limit under subsection 18.1(2) and that application may be dismissed for that reason.

C. *Merits and Remedies*

[25] Given my decision above that this application is not within the Court's jurisdiction and is out of time, I need not consider the merits of the alleged payments made to the Applicant by the CRA, or the remedies requested by the Applicant.

[26] I have reviewed the Respondent's bill of costs and in my discretion award the Respondent \$1000 on costs.

V. Conclusion

[27] The application is dismissed.

[28] Costs to the respondent in the amount of \$1000.

**JUDGMENT in T-1629-22**

**THIS COURT'S JUDGMENT is that:**

1. This application is dismissed.
2. Costs to the Respondent in the amount of \$1000.

"Michael D. Manson"

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1629-22

**STYLE OF CAUSE:** CHENG DONG WANG v CANADA REVENUE  
AGENCY

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 7, 2023

**JUDGMENT AND REASONS:** MANSON J.

**DATED:** DECEMBER 15, 2023

**APPEARANCES:**

Cheng Dong Wang

FOR THE APPLICANT  
ON HIS OWN BEHALF

Sarah Mackenzie

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT