

Federal Court



Cour fédérale

Date: 20240229

Docket: T-757-23

Citation: 2024 FC 333

Ottawa, Ontario, February 29, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

ADYA AFSHAR

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Adya Afshar [Ms. Afshar], seeks judicial review of a decision of the Minister of National Revenue [Minister] dated February 2, 2023 [the Decision]. In the Decision, made by an officer of the Canada Revenue Agency [CRA] with delegated authority [Officer], the Officer declined to exercise their discretion to cancel tax imposed upon Ms. Afshar arising from excess contributions to her Tax-Free Savings Account [TFSA] in 2020.

[2] The Officer found that Ms. Afshar did not meet the criteria under subsection 207.06(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] in order to consider whether to exercise discretion to grant the relief sought.

[3] For the reasons set out below, the Application is dismissed. While this will be troubling for Ms. Afshar, the Court cannot find any error in the Officer's decision. The decision bears all the hallmarks of reasonableness.

I. Background

[4] Ms. Afshar opened a TFSA account in 2010. She recounts that she began to use it in 2020. She attests that due to the onset of COVID-19, she had to take time off work to care for her daughter. She then decided to do some investing and used her savings and money lent to her from family members. She used her TFSA as a platform for her investments.

[5] As of January 1, 2020, Ms. Afshar's TFSA contribution limit was \$68,113.40. During 2020, she contributed \$396,400 and made withdrawals totaling \$299,296.17. By the end of 2020, she had an excess balance in her TFSA of -\$28,990.43. In other words, she over-contributed to her TFSA by \$28,990.43.

[6] In the 2021 taxation year, Ms. Afshar's TFSA contribution limit increased by \$6,000, resulting in a reduction of her excess balance to -\$22,990.43. Ms. Afshar did not make any contributions or withdrawals to her TFSA in 2021.

[7] On July 20, 2021, the CRA issued Ms. Afshar a TFSA Notice of Assessment [NOA] for the 2020 taxation year indicating that she owed \$10,814.79 in tax based on her excess contributions to her TFSA, plus a late penalty charge and arrears interest.

[8] The NOA set out the highest amount of the excess contribution in her TFSA in each month in 2020. The NOA noted that the cumulative total of the highest excess contributions in each month amounted to \$1,027,161.95 and a tax of 1% was imposed on that amount.

[9] Six months later, on January 12, 2022, Ms. Afshar requested that the CRA cancel the tax assessed on her excess TFSA contributions. Ms. Afshar noted that she did not have sufficient information regarding the rules governing the use of TFSAs, and that she thought that a TFSA operated in the same manner as a regular savings account. She noted that once she became aware of her excess contribution, she called the CRA to obtain further information.

[10] On July 26, 2022, the CRA issued a NOA for the excess TFSA amount in the 2021 taxation year, notifying Ms. Afshar that she now owed \$14,748.42 (all in relation to her remaining excess contributions from 2020, a balance of which remained in her account in 2021, plus interest and penalties).

II. CRA's Decisions

[11] On March 17, 2022, the CRA refused Ms. Afshar's first request to cancel the tax assessed on her over contributions [initial decision]. The CRA's initial decision noted that the Minister has the discretion under the ITA to cancel all or part of any tax on excess TFSA contributions

owed by a taxpayer but, to exercise this discretion, the tax owed must have arisen due to a reasonable error by the taxpayer and the taxpayer must act immediately to remove the excess contribution from their TFSA. The Officer stated: “[a] lack of knowledge of taxation rules cannot be considered beyond a taxpayer’s control as information is readily available on our website and through our General Enquiries telephone line”.

[12] The letter provided additional information, noting that “depending on the type of investment in your TFSA, you can generally withdraw any amount from the TFSA at any time. Withdrawing funds from your TFSA does not reduce the total amount of contributions you have already made for the year”. The letter elaborated, noting that over contributions result in “a tax equal to 1% of the highest excess TFSA amount in the month for each month that the excess amount remains in your account”.

[13] The Officer indicated that after reviewing the information provided and the facts, they concluded that the excess amount had not been removed. The Officer noted that it is the responsibility of the taxpayer to be aware of the rules governing the administration of their TFSA, and also noted that Ms. Afshar had held the TFSA since 2010.

[14] On August 17, 2022, Ms. Afshar requested that the CRA review the initial decision. Ms. Afshar reiterated that she was unaware of the rules, but had sought to correct her error. She stated that she had called CRA and was advised to withdraw only the excess amount by the end of the year. She noted that she was unaware that interest on the original amount owed was continuing to be charged, and that she had since lost the money she invested through her TFSA.

She also noted that she was recently on maternity leave, and had not returned to the workplace for childcare and pandemic-related reasons and did not have the ability to pay.

[15] On February 2, 2023, a second Officer reviewed the initial decision and again denied Ms. Afshar's request to cancel the tax assess on excess TFSA contributions for 2020. The letter confirmed that the Officer who reviewed her file had not been involved in the initial decision.

[16] The Officer provided several reasons for not exercising their discretion to cancel the tax in whole or part:

- Ms. Afshar had held a TFSA account since 2010 and was responsible for familiarising herself with the rules and regulations governing TFSAs;
- Ms. Afshar's lack of knowledge of the rules could not be considered beyond her control because information and resources were publicly available through the CRA website and General Enquiries telephone line;
- Ms. Afshar was advised via the NOA on July 20, 2021 of her excess contributions but the excess contribution remained in her account until 2022, and as such, she was considered to not have taken action within a reasonable time frame;
- The investment losses she incurred within her TFSA were not considered a "withdrawal" and did not create TFSA contribution room; and
- Given the information on Ms. Afshar's file and the documents she submitted, there were no circumstances to support granting her request.

III. The Standard of Review

[17] The issue is whether the Officer's Decision refusing Ms. Afshar's request for tax relief is reasonable.

[18] The presumptive standard of review is reasonableness and there are no circumstances to warrant a departure from the reasonableness standard: *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65 at para 25 [*Vavilov*]; *Keystone v Canada (Attorney General)*, 2023 FC 820 at para 4 [*Keystone*].

[19] 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” (*Vavilov* at para 85). The reviewing court must also ensure that the decision is justifiable, intelligible, and transparent (*Vavilov* at para 95).

[20] In the present case, the provisions constraining the decision-maker are sections 207.02 and 207.06(1) of the ITA, which are set out below.

[21] The person challenging the decision (in this case, Ms. Afshar) bears the burden of demonstrating that the decision is unreasonable (*Vavilov* at para 100). Any shortcomings or flaws relied upon by the person challenging the decision must be “sufficiently central or significant to render the decision unreasonable” (*Vavilov* at para 100).

IV. The Relevant Statutory Provisions

[22] Section 207.02 of the ITA provides that individuals are subject to pay tax on excess

TFSA contributions:

Tax payable on excess TFSA amount

207.02 If, at any time in a calendar month, an individual has an excess TFSA amount, the individual shall, in respect of that month, pay a tax under this Part equal to 1% of the highest such amount in that month.

Impôt à payer sur l'excédent CÉLI

207.02 Le particulier qui a un excédent CÉLI au cours d'un mois civil est tenu de payer pour le mois, en vertu de la présente partie, un impôt égal à 1 % du montant le plus élevé de cet excédent pour le mois.

[23] Pursuant to subsection 207.06(1), the Minister may waive or cancel all or part of an individual's tax liability under section 207.02 if two conditions are met: first, the excess contributions must have been made as a "consequence of a reasonable error", and second, the taxpayer must remove the excess contributions "without delay":

Waiver of tax payable

207.06 (1) If an individual would otherwise be liable to pay a tax under this Part because of section 207.02 or 207.03, the Minister may waive or cancel all or part of the liability if

(a) the individual establishes to the satisfaction of the Minister that the liability arose as a consequence of a reasonable error; and

(b) one or more distributions are made without delay under

Renonciation

207.06 (1) Le ministre peut renoncer à tout ou partie de l'impôt dont un particulier serait redevable par ailleurs en vertu de la présente partie par l'effet des articles 207.02 ou 207.03, ou l'annuler en tout ou en partie, si, à la fois :

a) le particulier convainc le ministre que l'obligation de payer l'impôt fait suite à une erreur raisonnable;

b) sont effectuées sans délai sur un compte d'épargne libre

a TFSA of which the individual is the holder, the total amount of which is not less than the total of

(i) the amount in respect of which the individual would otherwise be liable to pay the tax, and

(ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).

[Emphasis added.]

d'impôt dont le particulier est titulaire une ou plusieurs distributions dont le total est au moins égal au total des sommes suivantes :

(i) la somme sur laquelle le particulier serait par ailleurs redevable de l'impôt,

(ii) le revenu, y compris le gain en capital, qu'il est raisonnable d'attribuer, directement ou indirectement, à la somme visée au sous-alinéa (i).

[Je souligne.]

V. The Applicant's Submissions

[24] Ms. Afshar does not dispute that she made excess contributions to her TFSA. She explains that she misunderstood the rules and the notices indicating a negative balance expressed through the use of brackets; in other words, she did not understand that she needed to withdraw the amount of the negative balance. She claims that when she became aware of her excess contribution, she received “very misleading” information from a CRA agent over the phone instructing her to withdraw only the amount of her excess contribution by the end of the year. She contends that she did withdraw the excess amount as she understood it to be, given that she used her TFSA for investments and that she lost money due to selling shares at a loss. She points to her bank statements from July 2020 showing a closing balance of \$879.85 and bank statements in 2022 showing a zero balance. She explains that she does not have the resources to pay the tax owed.

[25] Ms. Afshar notes that she did not receive an “educational letter” or warning letters from CRA to inform her about her excess contributions. She understood her TFSA contribution room as of January 1, 2021 to be \$22,990.43, when in fact she had a negative contribution room. The Notice of Assessment from the CRA stated “(\$22,990.43)”; the brackets denote a negative balance.

[26] Ms. Afshar points to several cases considered by this Court where the applicants either received “education letters” from the CRA, or had a similar misunderstanding of the rules regarding excess contributions as she did: *Keystone*; *Yew v Canada (Revenue Agency)*, 2022 FC 904 [*Yew*]; *Messenger v Canada (Attorney General)*, 2021 FC 95 [*Messenger*]; *Zazula v Canada (Attorney General)*, 2022 FC 1156 [*Zazula*]; *Posmyk v Canada (Attorney General)*, 2021 FC 393 [*Posmyk*].

[27] Ms. Afshar appears to argue that the Officer, when determining if she made a reasonable error, failed to consider that she never received any such communications. She submits that she did not understand the rules and also disputes that she did not act promptly to remove the excess amount. She suggests that the CRA’s records are not accurate.

VI. The Respondent’s Submissions

[28] The Respondent submits that the Officer addressed all of the arguments presented by Ms. Afshar, considered the documents she submitted and the CRA’s records, and applied the law constraining the Officer.

[29] The Respondent submits that the tax imposed on excess contributions to TFSAs is a matter of law by the operation of the ITA; it is not a discretionary decision of the CRA or the Minister responsible for administering the ITA (citing *Jenkins v Canada (Revenue)*, 2007 FC 295 at para 13). The Respondent explains that the Minister may only exercise their discretion to cancel all or part of the tax payable on the over contributions if the criteria in subsection 207.06(1) of the ITA – conditions precedent – are satisfied. The Minister must be satisfied that the taxpayer’s error was reasonable and that the taxpayer took immediate steps to remove the excess contributions. If both criteria are met, the Minister may then consider whether to exercising their discretion to provide relief (citing *Levenson v Canada (Attorney General)*, 2016 FC 10 at paras 10, 54).

[30] The Respondent submits that a reasonable error resulting in an over-contribution is determined on an objective assessment of the evidence (citing *Connolly v Canada (National Revenue)*, 2019 FCA 161 at para 69 [*Connolly*]). Lack of knowledge of taxation rules cannot be considered a reasonable error or beyond a taxpayer’s control because information is readily available through the CRA’s website and General Enquiries telephone line.

[31] The Respondent points to *Weldegebriel v Canada (Attorney General)*, 2019 FC 1565 at para 15 [*Weldegebriel*], where the Court found that “[i]nnocent mistakes, however, do not absolve ignorance of the law” (at para 15).

[32] The Respondent points to paragraph 207.06(1)(b) of the ITA to note that even if Ms. Afshar’s excess contribution was the result of a reasonable error (which the Respondent denies), the CRA would still have been unable to exercise its discretion because Ms. Afshar

failed to take steps to remove the full excess contribution “without delay” (*Perinpanayagam v TSFA Processing Unit*, 2020 FC 1111 at para 32 [*Perinpanayagam*]). The Respondent notes that the excess contribution remained in Ms. Afshar’s TFSA into 2022.

[33] The Respondent notes that Ms. Afshar’s submission to the Court – i.e., that she did not receive an educational letter and that she did not understand that the use of brackets indicated a negative contribution limit – were not before the Officer in the first or second cancellation requests. Regardless, the Respondent submits that it was Ms. Afshar’s responsibility to understand that the brackets indicated a negative figure (citing *Keystone* at paras 22-23).

VII. The Decision is Reasonable

[34] Ms. Afshar’s misunderstanding of the rules governing TFSA’s has resulted in unfortunate consequences. However, as noted at the hearing, the Court’s role is to determine whether the Officer’s decision is reasonable; the Court has no discretion to provide relief to a taxpayer. Even if the Court found an error in the Officer’s decision, the Court would not make a new decision but would remit the matter to the CRA. The Court does not find any error in the Officer’s decision.

[35] The Officer’s decision is justified by the facts and the law, and is intelligible and transparent (*Vavilov* at para 95).

[36] As noted by the Respondent, the CRA officer was bound by subsection 207.06(1) of the ITA; the conditions or criteria must first be met before considering whether to grant relief. The jurisprudence is clear that an applicant’s own misunderstanding of taxation rules or ignorance

regarding TFSA contribution limits is not, on its own, a reasonable error (*Weldegebriel; Connolly; Keystone; Perinpanayagam*).

[37] Ms. Afshar has held her TFSA since 2010. Her explanation that she thought it was the same as an ordinary savings account does not exempt her from the rules governing TFSAs in Canada. She notes that she used the TFSA for investing, which appears to suggest that she was aware or should have been aware that it was not an ordinary savings account.

[38] The Officer reasonably found that Ms. Afshar's error in over contributing was not reasonable; her lack of knowledge was not beyond her control given the accessible information from the CRA website and telephone line.

[39] The Officer also reasonably found that despite receiving the NOA from the CRA, Ms. Afshar did not act to withdraw her excess contributions "without delay". Ms. Afshar states that she was advised by phone in July 2020 to withdraw the excess amount. The record indicates that CRA issued the NOA in July 2021 indicating the excess amounts by the month. The CRA records indicate that she did not withdraw all of her excess contribution until 2022. Although this could be due to her misunderstanding of the use of brackets to indicate a negative balance, it was Ms. Afshar's responsibility to understand the rules governing TFSAs and to make inquiries or seek advice.

[40] The Court notes that the NOA explained that the use of brackets indicates a negative balance (i.e., excess contribution). The March 2022 initial decision also explained the calculation of over contributions, noting that the highest amount in the month is the basis for the calculation

of the over-contribution. In other words, if a taxpayer had a \$200,000 over-contribution on the first day of the month and withdrew \$150,000 on the 15th day of the month, the over-contribution noted by the CRA and upon which tax would be imposed, remains \$200,000 (the highest excess amount in the month). Ms. Afshar's arguments – that she withdrew money and lost money due to poor investment choices and did not have the amounts in her TFSA as noted by CRA – may be based on her misunderstanding that the highest amount in the month is the relevant amount.

[41] Similarly, Ms. Afshar's submission that she has had a zero balance in her TFSA since 2022 despite the CRA continuing to seek the tax on her over-contributions overlooks that the over-contributions at issue arose in 2020 and carried into 2021 and 2022, albeit of lesser amounts.

[42] Ms. Afshar's current argument that she did not receive an "educational letter" does not assist her. The Court notes that in all the cases cited by Ms. Afshar, the Court dismissed the applications for judicial review; i.e., the decisions of the CRA refusing to cancel the tax on the over-contributions were found to be reasonable (*Yew* at paras 46-53; *Messenger* at para 20; *Keystone* at paras 23-24; *Zazula* at para 38; *Posmyk* at paras 16-17, 22).

[43] The Court observes that the rules governing TFSAs are strict and the calculation of tax on TFSA over-contributions by the month is complicated. However, as noted by the Respondent, a taxpayer's lack of knowledge or misunderstanding does not render a CRA's discretionary decision to not grant tax relief under subsection 207.06(1) of the ITA unreasonable.

[44] As noted by the Respondent, in accordance with Rule 303(2) of the *Federal Courts Rules*, the style of cause will be changed to reflect that the Respondent is the Attorney General of Canada.

JUDGMENT in file T-757-23

THIS COURT'S JUDGMENT is that

1. The Application is dismissed.
2. The Respondent does not seek costs and no costs are ordered.
3. The style of cause is amended to name the Attorney General of Canada as the proper respondent.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-757-23

STYLE OF CAUSE: ADYA AFSHAR v CANADA REVENUE AGENCY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 14, 2024

JUDGMENT AND REASONS: KANE J.

DATED: FEBRUARY 29, 2024

APPEARANCES:

Adya Afshar ON HER OWN BEHALF

Ian Pillai FOR THE RESPONDENT

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