

Federal Court



Cour fédérale

Date: 20241010

Docket: T-1605-23

Citation: 2024 FC 1603

Ottawa, Ontario, October 10, 2024

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MD SHAHAB UDDIN

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, who represents himself in this matter, applies under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 for judicial review of the Canada Revenue Agency's [CRA] decision to refuse the Applicant's request to waive the taxes that he has incurred because of the over-contribution to his Tax Free Savings Account [TFSA] during the 2021 taxation year.

[2] The Applicant requested the waiver by way of letter. The CRA rejected the Applicant's request and the Applicant subsequently requested a second review. The CRA again refused the waiver request on July 21, 2023. This Application relates to the second refusal.

II. Background

[3] On July 20, 2021, the CRA issued a TFSA Notice of Assessment for the 2020 tax year [2020 NOA] advising the Applicant :

- A. That he had over contributed to his TFSA account in October, November, and December of 2020.
- B. That tax was due on the excess contribution in the amount of \$2408.32; the tax having been calculated based on 1% of the amount of the excess contribution for each month an excess contribution remained in the account.
- C. That, to limit future tax, the Applicant should immediately withdraw from his TFSA any excess amount that may be held there.
- D. That he had negative contribution room in 2021 because the over contribution in the 2020 tax year exceeded his 2021 contribution limit.
- E. Of steps to take should he require an explanation, or the Applicant did not agree with the assessment.

[4] On July 26, 2022, the CRA issued to the Applicant a second TFSA Notice of Assessment for the 2021 tax year [2021 NOA]. The 2021 NOA discloses that the Applicant did not withdraw

the over contributions reported in the 2020 NOA, but instead made significant additional contributions to this TFSA account in 2021. The amount due in tax and penalties was assessed to be \$57,623.26.

[5] By letter dated September 29, 2022, the Applicant contacted the CRA stating that he had logged into his CRA account after receiving a notice of collection and became aware of the amount due. He stated he had not received a letter or email; suggesting an email notice may have been routed to his “junk email” folder. The Applicant further states that he was unaware that TFSA contributions were limited, and it was now impossible for him to withdraw the over contributions as he had lost those funds.

[6] The CRA treated the September 29, 2022 correspondence as a request to cancel the tax assessed in the 2021 NOA.

[7] In a response dated February 3, 2023, the Assessment Processing Officer [Officer] acknowledged the discretion to cancel tax on excess TFSA contributions in certain circumstances. The Officer noted that the Applicant’s TFSA contributions continued after issuance of the 2020 NOA; the Applicant had indicated his delivery preference was by way of email; that email notices would be sent to the email address provided; and, where notices are eligible for electronic delivery, they are not printed and mailed. The Officer acknowledged the Applicant’s report that funds had been lost and therefore could not be withdrawn, but also noted that CRA records indicated that the Applicant still had active TFSAs, and that all funds needed

to be withdrawn before the CRA completed and evaluated the request. The Officer therefore refused the Applicant's request.

[8] On February 7, 2023, the Applicant again wrote to CRA requesting it cancel or waive the assessed tax, reiterating that the over contribution was a mistake and he was unaware of contribution limits.

III. Decision under review

[9] By letter dated July 21, 2023, the CRA again refused the request to cancel or waive the assessed taxes. The decision letter first notes that the second request had been considered by an Officer that had not been involved in the initial decision and again detailed the circumstances in which the discretion provided by the *Income Tax Act*, RSC 1985, c 1 (5th Supp) [ITA] to cancel tax on excess TFSA contributions could be exercised.

[10] After summarizing the Applicant's submissions, the Officer stated that CRA records demonstrate the Applicant made excess contributions to his TFSA after having been notified of excess contributions in 2020 by way of the 2020 NOA. The Officer acknowledged that the Applicant did not view that Notice until September 29, 2022. Having specifically identified an active TFSA account and the amount remaining in that account as of December 31, 2022, the Officer further noted that full withdrawal of excess TFSA contributions had not occurred. The Officer again noted that the Applicant had expressed a preference for electronic delivery of notices and that the email address provided was the address used to provide notice.

[11] The Officer acknowledged the excess contributions were not intentional but concluded they were not the result of a reasonable error. The Officer cited the Applicant's responsibility in a self-assessment tax system to maintain records, review statements and when necessary request information. The Officer concluded that there were no circumstances to support the cancellation or waiver of the assessed tax.

IV. Issues and Standard of Review

[12] The Application raises a single issue – was the decision refusing the request to cancel the assessed tax reasonable.

[13] The Officer's decision is reviewable on the reasonableness standard. A reasonable decision is one that is internally coherent, follows a rational chain of analysis, and is justified in relation to the facts and the law that constrains the decision-maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 25, 32, 85, 102, 105, 108; *Connolly v Canada (National Revenue)*, 2019 FCA 161 at para 56; *Kapil v Canada (Revenue Agency)*, 2011 FC 1373 at para 19).

V. Analysis

[14] In written submissions, the Applicant restates that he was unaware of TFSA contribution limits, that he was a novice investor, and asserts his TFSA account now contains a zero balance. The Applicant acknowledges his actions resulted in the over contribution, but submits his mis-

understanding and the compassionate nature of his circumstances justify relief. He does not identify a specific concern with either the Officer's analysis or the July 21, 2023 decision.

[15] In oral submissions, the Applicant argued that notice of the excess contribution was deficient as he did not review the 2020 NOA until September 2022, and was therefore unaware of the excess contributions for which the tax in issue was assessed in 2021.

[16] While I am sympathetic to the Applicant's circumstances, he has not demonstrated that the Officer's July 2023 decision is unreasonable.

[17] Section 270.06 of the ITA states:

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

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

total des sommes suivantes :

(i) the amount in respect of which the individual would otherwise be liable to pay the tax, and	(i) la somme sur laquelle le particulier serait par ailleurs redevable de l'impôt,
(ii) income (including a capital gain) that is reasonably attributable, directly or indirectly, to the amount described in subparagraph (i).	(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).

[18] The Officer accurately identified the circumstances in which the CRA may exercise the discretion provided for in section 207.06 of ITA – that is, (1) a reasonable error resulted in the excess contribution, and (2) action was taken right away to remove the excess contribution.

[19] The Officer identified and addressed each of the arguments advanced by the Applicant in his request for cancellation or waiver of the assessed tax. The Officer acknowledged that the Applicant had not reviewed the 2020 Notice until September 2022, but also noted that the Applicant had opted to receive notices electronically, and detailed the responsibilities of a taxpayer in a self-assessment tax system to understand and review relevant tax rules. The Officer also detailed why they concluded TFSA funds had not been fully withdrawn from active accounts.

[20] In the circumstances, it was open to the Officer to conclude that the excess contributions, while not intentional, were not the result of a reasonable error and that all available funds had not been removed from the Applicant's active TFSAs. A transparent and intelligible analysis supports the Officer's conclusions.

[21] The fact that the Applicant did not have actual knowledge of the excess contribution in the 2020 tax year until September 2022 does not raise an issue of fairness on these facts. The Applicant does not dispute that the CRA notified him of the 2020 and 2021 NOAs electronically, as specified by his selected method of delivery. Having selected electronic notice, the Applicant cannot argue that notice was insufficient, particularly where he acknowledges a failure to check his account regularly.

VI. Conclusion

[22] For the above reasons the Application is dismissed. The Respondent has not sought costs and none are awarded.

JUDGMENT IN T-1605-23

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.
2. No costs.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1605-23

STYLE OF CAUSE: MD SHAHAB UDDIN v CANADA REVENUE
AGENCY

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: APRIL 29, 2024

JUDGMENT AND REASONS: GLEESON J.

DATED: OCTOBER 10, 2024

APPEARANCES:

Shahab Uddin

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Patrick Cashman

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT