Federal Court of Appeal | Cour d'appel fédérale

Date: 20181213

Docket: A-170-17

Citation: 2018 FCA 229

CORAM: **GAUTHIER J.A.**
STRATAS J.A.
NEAR J.A.

BETWEEN:

GLENN WALSH

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Calgary, Alberta, on December 13, 2018.
Judgment delivered from the Bench at Calgary, Alberta, on December 13, 2018.

REASONS FOR JUDGMENT OF THE COURT BY: NEAR J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Calgary, Alberta, on December 13, 2018).

NEAR J.A.

[1] The appellant, Glenn Walsh, appeals from the Judgment of the Federal Court (per Russell J.) dated April 27, 2017 (2017 FC 411). The Federal Court judge dismissed the appellant's application for judicial review of the Minister of National Revenue's October 9, 2015 decision, which denied his request for interest relief pursuant to subsection 220(3.1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

[2] In 1998, the appellant entered into a “departure trade” transaction, which creates an interest deduction to reduce the tax of an individual emigrating from Canada. On his 1998 tax return, he claimed an interest deduction of over $47 million and reported a taxable capital gain for the deemed disposition of shares as a result of no longer being a Canadian resident. In 2002, his 1998 and 1999 income tax returns were reassessed to deny the interest deduction, increase the capital gain, and deny a loss carry-forward. Three corporations under his control were also reassessed. In May 2006, the Minister reassessed the appellant’s 1999 income tax return again to include over $54 million in income based on the view that he had not ceased to be a Canadian resident in 1998, contrary to the reassessments in 2002.

[3] In June 2006, the Tax Court upheld the Minister’s denial of interest deduction in another departure trade case, *Grant v. The Queen* (2006 TCC 373). This was affirmed by the Federal Court of Appeal and leave to appeal was dismissed by the Supreme Court in November 2007. The appellant subsequently settled his claim in 2010 and was not entitled to the interest deduction, as in *Grant*.

[4] The appellant requested interest relief under subsection 220(3.1) for his 1998 tax year on the basis that his various reassessments amounted to extraordinary circumstances and left him without realistic alternatives, and that he was subject to undue delay since his appeals were linked pending the resolution of another departure trade case. He requested relief for the periods from the second 1999 reassessment to either the final disposition of *Grant* by the Supreme Court or the date of the final settlement agreement. The Minister’s delegate declined to grant interest

relief and in a detailed decision the Federal Court dismissed the appellant's application for judicial review.

[5] The sole issue on this appeal is whether the decision of the Minister's delegate was reasonable. We agree that the decision was reasonable, for essentially the same reasons as those of the Federal Court judge.

[6] We are unconvinced that the inconsistent reassessments were extraordinary circumstances or outside the appellant's control. While the appellant was subject to the Canada Revenue Agency's (CRA's) policy of not making downward assessments until the upward assessment was resolved, this did not prevent him from beginning to address his tax debt. In addition, he and his counsel were informed in advance that the CRA planned a second reassessment for 1999 based, in part, on gaps in residency information. The reassessments dramatically increased the appellant's tax liability but, as found by the Federal Court judge, if the appellant was concerned about interest running "then he could have taken action" (para. 100). The reassessments do not provide a basis for the appellant's failure to make payments after 2002 or forward information to the CRA as requested.

[7] In addition, the appellant has not established that there was undue delay by the Crown or CRA. The appellant suggests that his matters were "effectively" held in abeyance pending *Grant*, but offers no evidence that any such agreement existed or, more importantly, would have the effect of suspending interest. We agree with the Federal Court judge that there is little to distinguish the appellant's case from *Canada Revenue Agency v. Telfer*, 2009 FCA 23; [2009] 4

CTC 123, where this Court stated that a taxpayer who knowingly fails to pay a tax debt pending a decision in a related case "normally cannot complain that they should not have to pay interest" (para. 35). Quantum alone does not remove this from a "normal" situation; the significance of a particular tax burden depends on each taxpayer and the appellant had a number of options available to reduce his interest exposure.

[8] The Minister's delegate in this case considered the appellant's submissions and overall pattern of behaviour both during and outside the relief period, and offered several reasons for his decision, including the appellant's failure to act quickly, listen to his representatives or submit viable settlement offers. In light of the nature of the Minister's discretion under subsection 220(3.1) (*Telfer*, at para. 40) and the delegate's consideration of multiple factors, the Federal Court did not err in finding the decision reasonable.

[9] We will therefore dismiss the appeal with costs set at an amount of $2,500.00 (all inclusive).

"David G. Near"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

APPEAL FROM A JUDGMENT OF THE FEDERAL COURT DATED APRIL 27, 2017
DOCKET NO. T-802-16 (CITATION NO. 2017 FC 411)

DOCKET:	A-170-17
STYLE OF CAUSE:	GLENN WALSH v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Calgary, Alberta
DATE OF HEARING:	DECEMBER 13, 2018
REASONS FOR JUDGMENT OF THE COURT BY:	GAUTHIER J.A. STRATAS J.A. NEAR J.A.
DELIVERED FROM THE BENCH BY:	NEAR J.A.

APPEARANCES:

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