Federal Court of Appeal | Cour d'appel fédérale

Date: 20220614

Docket: A-101-20

Citation: 2022 FCA 114

CORAM: **STRATAS J.A.**
LASKIN J.A.
MACTAVISH J.A.

BETWEEN:

SUKHWINDER GREWAL

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Vancouver, British Columbia, on June 14, 2022.
Judgment delivered from the Bench at Vancouver, British Columbia, on June 14, 2022.

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

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Vancouver, British Columbia, on June 14, 2022).

LASKIN J.A.

[1] The appellant, Mr. Grewal, appeals from a judgment of the Federal Court (2020 FC 356, Ahmed J.) dismissing his application for judicial review of a decision of the Minister of National Revenue. The Minister's decision declined to waive gross negligence penalties against Mr. Grewal under subsection 163(2) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) for his 2007 to 2013 taxation years.

[2] In 2015, Mr. Grewal was accepted into the Canada Revenue Agency's Voluntary Disclosure Program (VDP). The VDP was introduced to encourage taxpayers to disclose inaccuracies or omissions in past filings voluntarily. It provides a basis on which the Minister may exercise the discretion conferred by subsection 220(3.1) of the *Income Tax Act* to waive or cancel any penalty or interest otherwise payable under the Act.

[3] At the relevant time, the CRA's guidelines for operation of the VDP were set out in the CRA's Information Circular IC00-1R4. It set out four conditions for a valid disclosure to the VDP. Among them was the condition that the disclosure be "complete"—that it provide "full and accurate facts and documentation for all taxation years or reporting periods where there was previously inaccurate, incomplete or unreported information relating to any and all tax accounts with which the taxpayer is associated" (IC00-IR4, 35). A taxpayer accepted into the VDP was required to pay any additional tax owing as a result of the information disclosed, together with interest, but could expect to be "granted protection against penalties and possible prosecution, regarding the amounts included in the disclosure" (IC00-IR4, 51).

[4] Mr. Grewal's disclosure to the VDP sought T1 adjustments for previously unreported business income for the 2004 to 2013 taxation years. It included a listing of loans made by Panamanian companies in which Mr. Grewal had an interest to other individuals and entities. Some of the loan amounts were included in a spreadsheet showing the proposed adjustments. Mr. Grewal did not disclose any benefit he received from the listed loans.

[5] The CRA's letter accepting Mr. Grewal's disclosure under the VDP included the following statement: "Please note that the VDP has not verified the accuracy of the information you have provided in this disclosure and the Canada Revenue Agency reserves the right to open these years for audit or verification in the future."

[6] Following the CRA's acceptance of his application, Mr. Grewal was issued reassessments and granted interest relief for the years in question. No penalties were assessed.

[7] Some 2½ years later, the CRA notified Mr. Grewal that it proposed to assess gross negligence penalties for his 2007 to 2013 taxation years. These would be based on unreported taxable benefits exceeding $14 million received by Mr. Grewal from a Panamanian company in which he had an indirect interest. The CRA's position relied in part on information obtained through the audit of that company. The CRA asserted that the loans comprised taxable benefits under subsection 246(1) of the *Income Tax Act*. Mr. Grewal argued in response, among other things, that he had disclosed the loans identified by the CRA as part of his VDP application.

[8] When the Minister proceeded to assess the loans and impose penalties, Mr. Grewal sought judicial review of the Minister's decision not to waive penalties. In dismissing the application, the Federal Court rejected Mr. Grewal's submissions that the decision was unreasonable and procedurally unfair, and that he had a reasonable expectation that he would not be assessed penalties once his disclosure to the VDP was accepted. The Court found that it was clear on the face of the acceptance into the VDP that the CRA retained the right to audit, that Mr. Grewal could have had no reasonable expectation otherwise, and that Mr. Grewal was not

entitled to protection under the VDP for amounts he did not disclose as taxable, even if these amounts were mentioned in his disclosure. The Court also found that the Minister's decision was consistent with the scheme and purpose of the VDP, and that Mr. Grewal failed to establish a promissory estoppel binding the Minister not to impose penalties.

[9] Before this Court, the parties agree that the applicable standard of review is that set out in *Agraira v. Canada (Minister of Public Safety and Emergency Preparedness*, 2013 SCC 36 at paras. 45-46, and recently confirmed in *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12: we are to "step into the shoes" of the Federal Court and review the administrative decision (here the decision of the Minister not to waive penalties) without deference.

[10] The parties also agree that the Federal Court correctly identified reasonableness as the standard to be applied to the administrative decision under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 23. Thus, the central questions on this appeal are whether the Minister's decision was transparent, intelligible, and justifiable, and whether it was based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrain the decision-maker.

[11] We are all of the view, substantially for the reasons of the Federal Court set out in paragraphs 30 to 50 of its reasons for judgment, that the answer to these questions is in the affirmative. While under *Agraira*, we are to "step into the shoes" of the Federal Court, that does not mean that we are to ignore its reasons when they answer the appellant's contentions: *Bank of*

Montreal v. Canada (Attorney General), 2021 FCA 189 at para. 4. That, in our view, is the position here with respect to the portion of the reasons cited above.

[12] We are also all of the view that the Minister's decision, when viewed in light of the record, discloses the key bases on which the decision was made.

[13] In our view, the appellant's submissions, if accepted, would place this taxpayer in a better position than that of other taxpayers who did not avail themselves of the VDP. When a taxpayer makes use of the VDP, the taxpayer can still be audited and the taxpayer's filings can still be assessed like those of any other taxpayer. Additional tax, interest, and penalties arising from the failure to disclose income may be due. The appellant's submissions, if accepted, would restrict the Minister's ability to assess penalties in these circumstances. In this regard, we agree with the submissions in the respondent's memorandum of fact and law at paragraphs 39 to 47.

[14] Therefore, the appeal will be dismissed with costs. On consent, the style of cause is amended to substitute the Attorney General of Canada for The Minister of National Revenue as respondent.

"J.B. Laskin"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-101-20
STYLE OF CAUSE:	SUKHWINDER GREWAL v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	VANCOUVER, BRITISH COLUMBIA
DATE OF HEARING:	JUNE 14, 2022
REASONS FOR JUDGMENT OF THE COURT BY:	STRATAS J.A. LASKIN J.A. MACTAVISH J.A.
DELIVERED FROM THE BENCH BY:	LASKIN J.A.

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