Tax Court of Canada  Cour canadienne de l'impôt

Docket: 2025-883(IT)I

BETWEEN:

REENA UPPAL,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on July 2, 2025, at Toronto, Ontario

Before: The Honourable Justice John A. Sorensen

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Jesse Toma

JUDGMENT

1. The appeal is allowed and the disputed 2022 assessment is referred back to the Minister for reconsideration and reassessment in accordance with these reasons; and,

2. There will be no order as to costs.

Signed this 28th day of July 2025.

"J. A. Sorensen"

Sorensen J

Tax Court of Canada | Cour canadienne de l'impôt

Docket: 2024-1615(IT)I

BETWEEN:

ABHISHEK SONI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on July 2, 2025, at Toronto, Ontario

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"J. A. Sorensen"

Sorensen J.

Tax Court of Canada Cour canadienne de l'impôt

Citation: 2025 TCC 103
Date: 20250728
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Docket: 2024-1615(IT)I

AND BETWEEN:

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HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Sorensen J.

I. Introduction

[1] These are Home Buyers Plan or "HBP" cases. Under the HBP program, individuals can draw funds from their Registered Retirement Savings Plans ("RRSP") to fund the purchase or building of a home without paying tax on the withdrawal. The individual is required to recontribute to their RRSP over time, otherwise they have to pay tax. The HBP program is a housing and economic policy tool that facilitates social justice.

[2] Abhishek Soni and Reena Uppal (the "appellants") are married and they both work in the service industry. They dreamt the Canadian dream of homeownership. They took the outstretched helping hand of the HBP, purchasing a pre-construction home by agreement of purchase and sale dated December 21, 2020. They each

intended that the amounts withdrawn from their RRSPs be sheltered from tax by the HBP.

[3] The appellants were deprived of HBP treatment for amounts drawn from RRSPs in 2022. Their appeals were heard together,[1] and these reasons apply to both of them.[2]

[4] In brief, the Minister of National Revenue (the "Minister") failed to correctly apply a special interpretive provision, and that negates the basis for the disputed assessments. Consequently, the appeals are allowed.

II. Facts

[5] As noted, the appellants bought a pre-build home on December 21, 2020, and withdrew from their RRSPs to fund the purchase. Unavoidable delays by the builder resulted in them moving into their home in 2023. They still live there today, although like many Canadians they are burdened by the cost of housing, including high interest rates.

[6] The appellants first withdrew funds from their RRSPs under the HBP in 2021. Then, in 2022, Abhishek withdrew $17,686 from his RRSP and Reena withdrew $20,793 from hers. The Minister assessed both withdrawals as income, not covered by the HBP. This was because the withdrawals were made in 2022, outside the

[1] A procedural issue was raised and dispensed with in Reena's case. Her disputed 2022 notice of assessment was dated May 9, 2023. In the reply, the respondent alleged that she "purportedly" objected to the 2022 assessment against her on June 17, 2024. The respondent also alleged that on October 31, 2024, the Minister told her that her objection was invalid because it did not pertain to an assessment of tax, penalty and interest. If the objection was served on June 17, 2024, then it was within the time limited for seeking an extension of time to object. And if the Minister said the objection was invalid because it did not concern a tax assessment, then the Minister was mistaken since the matter in dispute was assuredly a tax assessment. The content of Reena's objection did not need to have been detailed or comprehensive to be acceptable. There was no allegation that the Minister refused the objection because it was late. I therefore conclude that lateness was not the issue, and the merits could not have been an issue. No argument was raised regarding the timing of Reena's Tax Court appeal with reference to the timing of the seemingly late notice of objection. No affidavit attaching any documents in support of the respondent's position was filed and no Canada Revenue Agency ("CRA") witness testified, so no factual basis for the motion to quash was established. Reena's matter proceeded on its merits.

[2] When I first reviewed this matter, it was by reading the pleadings in Abhishek's case. It appeared that he intended that his notice of appeal would start his appeal and an appeal for his spouse, Reena. Ordinarily, of course, a taxpayer must file their own individual notice of appeal and the Court's Registry would accordingly open a file. In this case, the single notice of appeal filed by Abhishek resulted in one file being opened, as one would expect. However, the underlying intention was for the appellants to each appeal, so the Registry opened a second file, based on the same notice of appeal and Reena's notice of appeal was deemed to have been filed on time. Crown counsel was accommodating and given time to prepare a reply to file in Reena's case. Hence, although the docket numbers in these matters look like they are a year apart, the appeals are factually the same and were heard together.

statutory calendar-year window,[3] and the Minister did not apply a deeming rule to allocate the 2022 withdrawals back to 2021, ostensibly because there were insufficient funds in their RRSPs on December 31, 2021.[4]

[7] There is no other evidence about the basis for the disputed assessments.

[8] The appellants pled that the CRA denied HBP treatment for the 2022 withdrawals, because the CRA said the period for withdrawal is limited to 12 months from the first withdrawal.[5] The respondent pled no knowledge of that statement and placed it in issue.

[9] The appellants also pled that they unsuccessfully asked the CRA to accept the 2022 withdrawals under the HBP.[6] The respondent pled no knowledge of that statement and placed it in issue too. Based on the evidence in review, it cannot be confirmed what the appellants meant when they said that they asked the CRA to accept the 2022 withdrawals under the HBP. They might have been referring to notices of objection.

III. Issue

[10] The question in this case is whether the 2022 withdrawals can be deemed received in 2021 by the special interpretive rule in s. 146.01(2)(d). The answer is yes.

[11] The bases for the assessments were set out in paragraph 9 of the reply for Reena and paragraph 11 of the reply for Abhishek. The respondent argued that the Minister properly assessed them for the 2022 taxation year because:

a) They made their 2022 withdrawals after January 31 of the year after their first withdrawals (being 2021);

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[3] There is apparently a timing limitation for HBP withdrawals so, while multiple withdrawals are allowed, they must be within the same calendar year. This requirement is subject to s. 146.01(2)(d).

[4] At the hearing, respondent's counsel admitted that assumption (f) of Reena's reply was wrong and her RRSP balance on December 31, 2021, was not nil but rather was $4,023.58. Abhishek's December 31, 2021 RRSP balance was nil.

[5] The exact phrase was "CRA is not accepting my 2022 withdrawal towards HBP as they state the period for withdrawal is limited to 12 months from 1st withdrawal."

[6] The exact phrase was "We have requested CRA to also accept the withdrawals done in 2022 under HBP but the request was not accepted."

b) They did not have the funds in their RRSPs as of December 31 of the year of the first withdrawals (2021) to cover the second withdrawals (2022), pursuant to s. 146.01(2)(d);[7] and

c) The second withdrawals were therefore RRSP income in 2022, pursuant to s. 56(1)(h).

[12] This position was echoed in factual assumptions[8] set out in the replies: they made RRSP withdrawals in 2022; were allowed to make more than one eligible withdrawal under the HBP within the same permissible period; but the value of their RRSPs as of December 31, 2021, was $0; therefore, the 2022 withdrawals were ineligible under the HBP. The factual portions of the Ministerial assumptions were unchallenged. The respondent's position echoes the confirmation notice for Abhishek, which was in evidence and which said:

> "For your 2022 withdrawal to be considered an eligible HBP withdrawal as the 2021 withdrawal [sic], the amount of $17,686.00 withdrawn in 2022 must have been in the account on December 31, 2021, in accordance with paragraph 146.01(2)(d) of the Income Tax Act. Therefore, the assessment is correct."

[13] For greater certainty, as discussed further below, the disputes were not framed in terms of any exercise of Ministerial discretion: the assessments were open to challenge under s. 165(1) by notices of objection without limitation,[9] and to challenge under s. 169(1) by way of an appeal to this Court. The focal point of these appeals was s. 146.01(2)(d), and I have not conducted a 360-degree review of the HBP legislation towards developing any alternate theories of these cases. Rather, the cases were decided based on their facts and the operation of s. 146.01(2)(d).

IV. Analysis

[14] Subsection 146.01(2) sets out special interpretive rules. The relevant portion of s. 146.01(2)(d) reads as follows:

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[7] All statutory references are to the *Income Tax Act* (Canada) (the "Act").

[8] The assumptions were not purely factual and some involved mixed questions of law and fact. However, they all had factual underpinnings, those facts connect with the case for the appellants to meet, and inferences may be drawn from them including inferences unfavourable to the respondent's position.

[9] In other words, no limitations on notices of objection would apply, for example, pursuant to s. 165(1.2). That provision prevents a taxpayer from, among other things, objecting to assessments arising out of certain exercises of Ministerial discretion.

> For the purposes of this section… (d) an amount received by an individual in a particular calendar year is deemed to have been received by the individual at the end of the preceding calendar year and not at any other time if
>
> > (i) the amount is received in January of the particular year (or at such later time as is acceptable to the Minister)…

[15] Paragraph (d) is a deeming rule to help taxpayers who make withdrawals over the span of more than one calendar year, and it is the nucleus of these cases. The provision operates to deem an amount received in a particular year to have been received by the end of the preceding calendar year, to cure a straddling problem and ensure that the later withdrawal qualifies. The amount must be received in January of the particular calendar year to be deemed received at the end of the prior year, *or* it may be received at some later date that is acceptable to the Minister.

[16] The logic underlying the assessing position is limited. The Minister's impulse was that you cannot make a withdrawal from nil or insufficient funds for purposes of s. 146.01(2)(d). However, there is no statutory criterion in s. 146.01(2)(d) concerning an individual's prior year-end RRSP balance. Ultimately, the special interpretive provision in s. 146.01(2)(d) ousts the hunch that you cannot "overdraw", because the provision is a deeming rule.

[17] A deeming rule creates a legal fiction and imposes an alternate reality for certain purposes.[10] For example, a notice could be deemed received on the date it is sent, even though that is not true. The legal fiction imposed by a deeming rule is neither rebuttable nor a presumption. It is treated as a concrete actuality.

[18] Paragraph 146.01(2)(d) is unconstrained by reality, including whether there was a positive account balance at prior year-end. So the argument that there could not be a deemed withdrawal for the appellants at the end of 2021 fails. The "late" 2022 withdrawals certainly could be backed into 2021 and thus covered by the HBP.

[19] The analysis cannot stop there though, because of the parenthetical clause: "or at such later time as is acceptable to the Minister."

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[10] As the Supreme Court of Canada stated in *R v Verette*, [1978] 2 SCR 838, at 845: "A deeming provision is a statutory fiction; as a rule it implicitly admits that a thing is not what it is deemed to be but decrees that for some particular purpose it shall be taken as if it were that thing although it is not or there is doubt as to whether it is. A deeming provision artificially imports into a word or an expression an additional meaning which they would not otherwise convey beside the normal meaning which they retain where they are used."

[20] The clause "or at such later time as is acceptable to the Minister" is a *temporal* consideration. The provision does not say "or at such later time and on such bases as are acceptable to the Minister", nor "or at such later time and in accordance with prescribed criteria", or anything of the sort. What is it that must be acceptable to the Minister? The later time. Which criteria are typically considered? More to the point, which criteria were considered in the cases of Abhishek and Reena? Details are limited. All we have are assessments, a notice of confirmation, and the replies, all of which frame the assessment dispute as concerning the 2021 year-end RRSP balances. However, the facts presented in those documents create a basis for inferences.[11]

[21] The respondent's written submissions argued that a sufficient year-end RRSP balance is a factor that the Minister considers in connection with applying s. 146.01(2)(d), according to administrative guidance.[12] That administrative guidance was from a conference roundtable in 2018. Among other things, it says that the Minister considers all of the facts and circumstances concerning a late withdrawal in determining whether to apply s. 146.01(2)(d).

[22] The respondent's submission concerning the parenthetical clause has no traction, for factual and interpretive reasons.

[23] First, factually, while there may be (or may have been) a Ministerial policy concerning s. 146.01(2)(d), there is no evidence that the policy was considered and applied in these cases – no affidavit, and no CRA witness. Further, the cited policy was from 2018. Perhaps it was entirely revoked or changed in ways great or small by the time 2022 rolled around. We have no clues on the record. In any case, what we know is that the basis for the assessments was a perception of insufficient RRSP balances at year-end. That argument seems more or less intuitive on its face: how can you withdraw funds from nothing? And the persuasiveness of that initial notion might hold up, but for the effect of the deeming rule, as discussed.

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[11] Inferences are permitted to be drawn from indirect evidence that is properly before a Court. As noted in *R v Villaroman*, 2016 SCC 33, at para. 23 (citing published guidance from the Canadian Judicial Council), if you see someone in a lobby wearing a wet raincoat and carrying a wet umbrella, you may infer that it was raining. An inference is drawn from proven facts and must be logically and rationally connected to those facts, not based on generalizations or stereotypes.

[12] That administrative guidance was from a 2018 APFF Roundtable and is described as 2018-0761541C6. As noted above, that policy document says that the Minister would consider all of the facts and circumstances associated with a late withdrawal. Again, without venturing into a review of the assessing process or Ministerial conduct, it is entirely fair to say that in the absence of any evidence it is open to the Court to make any reasonable inference including that lateness was not an issue in this case and that the only issue concerned the operation of the deeming rule in s. 146.01(2)(d) in relation to the correctness of the assessment.

[24] Second, interpretively, administrative guidance is not law and while it might carry some weight some of the time, it does not assist the respondent in these cases because it does nothing more than propose some self-imposed criterion without interpreting the language of the provision whatsoever. So even if the administrative guidance had not been revoked or changed since 2018, it sheds no light on the operation of s. 146.01(2)(d) or the basis of the assessments. More to the point, the alleged criterion in that guidance, that there must be sufficient RRSP funds on account at year-end finds no purchase in the wording of s. 146.01(2)(d), which considers acceptable timing, not financial criteria.

[25] The *Loh* case provides some helpful guidance.[13] In *Loh*, the taxpayer made two RRSP withdrawals under the HBP regime, in two different years. The Court pointed out that the HBP provisions are integrated into the RRSP regime and, consistent with the legislative scheme for reporting and paying tax, these regimes follow a calendar year. However, life does not always fit tidily into a calendar year. The system recognizes that buying and selling houses can sometimes be chaotic, especially new builds. Deals fall through, deals close late and so on.

[26] The Court summarized Mr. Loh's concern: he made two withdrawals across two years, and the second withdrawal was taxed because it was not an excluded withdrawal. In fact, Mr. Loh used the money to buy a house but was taxed just because the first deal fell through. He thought that was unfair.

[27] The Court correctly stated that it does not have discretion and must apply the law as we find it in the Act. That said, it is a trite proposition that the Minister must apply the Act too, including the special interpretive rule in s. 146.01(2)(d). That provision does not expressly set out relief that a taxpayer must apply for, but rather a rule for the Minister to follow.

[28] In *Loh*, there was not enough information on the record to determine whether the HBP provisions, including s. 146.01(2)(d) were correctly applied, and the respondent did not lead evidence on that point. More specifically, the Court did not know if the "late" withdrawal date was unacceptable to the Minister. As a result, the basis for the assessment collapsed and the Court allowed Mr. Loh's appeal.

[29] The respondent argued in writing that Abhishek and Reena's cases are distinguishable from *Loh*, since in that case there was no information on the record regarding the application of s. 146.01(2)(d), including whether the "late" withdrawal

[13] *Loh v R*, 2007 TCC 740 (*"Loh"*).

was unacceptable to the Minister. However, as noted above, the statement in the notices of appeal that the appellants sought some solution from the CRA does not establish that they sought discretionary relief *per se*, or that the disputed assessments were predicated on some "late" withdrawal *date* that the Minister did not accept. In the appellants' cases, and as already noted, the Minister's legal argument is concerned with the RRSP account balances on December 31, 2021. That is clear from the notice of confirmation, and pleadings, including the Ministerial factual assumptions and the reasons in the replies. An adverse Ministerial conclusion regarding *lateness* cannot be conjured up from the simple fact that assessments were issued, but I can infer from the information that is properly before me that the 2022 date of the second withdrawal was not a problem for the Minister. If it was, that would have been mentioned somewhere in the numerous places where the bases for the assessments were described and established on the record with evidence.

[30] *Loh* is perhaps distinguishable in the appellants' cases only in ways that are worse for the respondent: in the appellants' cases, I am prepared to make a factual inference, unlike *Loh*, that the Minister considered s. 146.01(2)(d) and did *not* find the timing of the second withdrawal unacceptable. The field is open for that inference, for the reasons articulated in the paragraph immediately above. Arising from this inference is the conclusion that s. 146.01(2)(d) is fully operational: the deeming rule must apply to oust the idea that a supposedly insufficient balance prevents a late withdrawal from qualifying under the HBP.

V. Respondent's Written Submissions

[31] I allowed the respondent to make written submissions to address interpretive questions I asked at the hearing. Counsel of course confirmed that no new evidence would be filed, and that the written submissions would be restricted to points of law.

[32] That said, in written submissions filed 16 days after the hearing, the respondent asserted that it mistakenly pled "no knowledge" of the facts referenced at paragraphs [8] and [9] above, that it wished to admit them and that, if admitted, they would be part of the Minister's assumptions. The initial reply for Abhishek was not prepared by counsel but by a CRA officer, and the reply for Reena was based on that.

[33] The request to amend the replies after the hearing to admit facts and insert them as Ministerial assumptions was denied. Permitting the respondent to patch up its factual position in post-hearing submissions, or reconvening the hearing, would be procedurally unfair to these self-represented litigants. The respondent can lie in

the bed the reply drafter made. Additionally, as I see it, facts were asserted in the written submissions that were not established on the record. They were not relied upon.[14]

[34] The respondent's written argument included the assertion that the appellants sought discretionary relief, asking the Minister to accept the 2022 withdrawal under the HBP. That is not reflected in the factual record.

[35] The respondent's written argument stressed the wording in the parenthetical clause in s. 146.01(2)(d). The respondent argued that the Minister's decision regarding a supposed request for discretionary relief was communicated in the notice of confirmation. That is not at all how discretionary relief programs, appeals and notices of confirmation work.

[36] As a matter of ordinary experience, correspondence by which the CRA delivers a conclusion will invariably refer to a taxpayer's next steps. Correspondence concerning a failed voluntary disclosure or fairness application will be issued as a letter setting out the result, the reason, and would include advice for challenging the conclusion. A notice of confirmation would be expected to include next steps too, and that was the case here – the appellants were told they could appeal their assessments to the Tax Court. In case I have not made this sufficiently clear: the Minister did not communicate a decision concerning discretionary relief in the notice of confirmation in these cases.

[37] The respondent stuck to its guns (metaphorically) without raising any purported exercise of Ministerial discretion throughout the appeals process until it composed its written argument and filed it more than two weeks after the hearing. In this context, it would be unfair for the respondent to now try to make the

[14] Paragraph 7 of the respondent's written submissions asserted that the Minister assessed on a particular basis. However, that supposed basis was unsupported by and, in fact, inconsistent with the record. Paragraph 8 of the respondent's written submissions characterizes the appellants' interactions with the CRA after being reassessed as though they requested discretionary relief, which request was denied by the Minister. That characterization does considerable violence to the facts as pled and the evidence on the record. Nothing in the record expressly affirms any request for discretionary relief and the notice of confirmation clearly confirms the basis for reassessment: the amounts withdrawn in 2022 had to have been in an RRSP on December 31, 2021, which they were not. The confirmation notice also: stated that based on the preceding legal conclusion, the assessment was correct; invited an appeal to this Court under s. 169 of the Act; and did not propose a second administrative review or application for judicial review, which is telling. Paragraph 15 of the respondent's written submissions reiterated without basis that the appellants sought and were denied discretionary relief, which was communicated in the notice of confirmation. Again, this argument by the respondent lacks an evidentiary foundation.

assessments unappealable after all, because of an afterthought about how perhaps the Minister may have made a discretionary decision.

VI. Conclusion

[38] Counsel for the respondent argued that I cannot grant an equitable remedy, so if the application of the Act to the facts is right and the assessments are correct, that is the end of the matter. Of course, it is true that assessment disputes cannot be resolved based on the sympathies of the case. Therefore, I offer some further comments, to avoid any confusion about the basis for the reasoning and outcome in these appeals - it was not necessary for me to: decide anything based on the Minister's assessing process or rely on that process to conclude the assessments were wrong; step outside the Tax Court's jurisdiction to reach a conclusion regarding s. 146.01(2)(d); or make any impermissible foray into equitable principles. To the contrary, these reasons include none of that. Rejecting the respondent's position concerning the application of s. 146.01(2)(d) is not based on a grouse about some notional, unproven exercise of Ministerial discretion, but rather an exercise of statutory interpretation and fact-finding, including permissible inferences, in a dispute that was appropriately and exclusively framed as an assessment dispute: the Minister assessed at the conclusion of a process that I infer included considering the parenthetical clause and she determined that the 2021 year-end RRSP balances were a problem; the assessing position was disputed at the appeals stage; the Minister expressly confirmed the basis for the assessment in a confirmation notice (including specifically advising that the next step was the Tax Court); and the respondent framed the dispute in terms articulated above. The assessing position (not the process of reaching it) was wrong because the Minister did not properly interpret and apply the deeming rule, which trumps the Minister's notions about the limits of year-end RRSP balances.

Signed this 28th day of July 2025.

"J. A. Sorensen"

Sorensen J.

CITATION:	2025 TCC 103
COURT FILE NO.:	2025-883(IT)I 2024-1615(IT)I
STYLE OF CAUSE:	REENA UPPAL & ABHISHEK SONI AND HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	July 2, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice John A. Sorensen
DATE OF JUDGMENT:	July 28, 2025

APPEARANCES:

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