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INCOME TAX

PENALTIES AND INTEREST

Consolidated application for judicial review of three review decisions of Minister of National Revenue on behalf of Canada Revenue Agency (CRA) concerning applications made by applicants for relief from interest, penalties accrued during their 2014–2020 taxation years — Applicants providing oilfield services, related trucking and transportation services — Mike Schnell, director of applicants, wishing to semi-retire, hiring Chief Executive Officer (CEO) in 2012 to run both applicants — CEO in turn hiring Chief Financial Officer (CFO) — Prior to 2016, applicants largely compliant with their source deduction, remittance obligations under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 153 — Applicants starting to file requests for taxpayer relief in 2016 — These requests relating to late remittance penalties, failure to remit penalties, associated interest — Director of applicants became aware of applicants' failures to make required remittances in 2018 — In efforts to mitigate applicants' liabilities, Director entered into payment arrangement with CRA in April 2018 — In 2020, applicants filed joint requests for taxpayer relief from penalties, interest incurred in their 2014–2020 taxation years — Basis for requests for relief described as “extraordinary circumstances leading to [...] financial hardship.” — CRA decisions accompanied by CRA's Taxpayer Relief Fact Sheets — Fact sheets also addressing factors, considerations set out in Part II of CRA's Information Circular IC07-1R1, *Taxpayer Relief Provisions*, August 18, 2017 (Guidelines) — CRA denying applicants' requests for further relief from penalties and interest — CRA finding that compliance history just one factor Minister considers in determining whether to grant relief under Act, s. 220(3.1) — CRA stating that “[w]hen noncompliance lasts for years, we cannot conclude of extraordinary circumstances” — Related fact sheet, indicating that applicants' claim for relief based on “other circumstances,” recommended against granting relief because Director had “ultimate responsibility to ensure remittances were properly made as required by the CRA” — Fact sheet noting that CRA not responsible to inform owner of his company's remittance negligence — Issues whether: CRA fettered its discretion in rendering decisions; erred by misapplying relevant principles or ignoring relevant evidence in rendering decisions; decisions reasonable — Guidelines providing guidance on factors Minister may use in arriving at decision to grant or deny relief under subsection 220(3.1) — Applicants submitted, *inter alia*, that decisions failed to reflect scope of Minister's discretion under subsection 220(3.1); in particular, that scope goes beyond Guidelines — Decisions showed that Minister looked beyond Guidelines, with fact sheets explicitly referencing how Minister considered “other circumstances” when assessing applicants' claims for relief — Mere reference to Guidelines not enough to find that Minister fettered her discretion — Contrary to applicants' submissions, “other circumstances” as phrase used in decisions not circumstance mentioned in current Guidelines — By referencing consideration of “other circumstances,” Minister demonstrated that her consideration went beyond what current Guidelines provide — Minister afforded broad discretion under subsection 220(3.1) — Act silent on what factors Minister may include in her assessment — Erroneous to state these considerations are limitations on Minister's discretion; rather, considering them ought to be properly understood as Minister exercising her discretion, considering “other circumstances” not mentioned in Guidelines — Reasonable for Minister to consider Director's quick actions in creating, following payment plan upon becoming aware of applicants' situation — However, at least three aspects of decisions unreasonable — Minister based

her denial of applicants' requests for relief on fact that she found that Director had failed to monitor applicants' compliance with their remittance obligations — But Minister failed to address facts in record that demonstrated that individuals who were at fault for mismanaging applicants' finances had taken steps to keep Director in the dark — Given impact of decisions on applicants, owners, decision maker had obligation to consider, address above-noted deficiencies — Minister required to consider facts in full in determining how to exercise her discretion, fact that she did not reviewable error rendering decisions unreasonable — No basis for Minister to find that extraordinary circumstances cannot exist over extended periods of time like cases here — No temporal limitation on extraordinary circumstances — While Guidelines not binding, cannot be used to fetter Minister's discretion, they nonetheless play useful, important role in guiding exercise of discretion under relief provision — Unreasonable for Minister to fail to consider long-term impact of mismanagement of applicants' finances on subsequent taxation years — Decisions of Minister quashed — Applicants' requests for relief remitted to different decision maker — Application allowed.

MAVERICK OILFIELD SERVICES LTD. V. CANADA (ATTORNEY GENERAL) (T-1836-21, T-472-23, T-540-23, 2023 FC 1728, Zinn J., reasons for judgment dated December 20, 2023, 27 pp.)