



[2022] 1 F.C.R. D-5

INCOME TAX

PENALTIES AND INTEREST

Appeal from Federal Court decision (2019 FC 1034) dismissing application for judicial review of independent third-level review officer's refusal to afford taxpayers additional relief from obligation to pay accrued interest on outstanding tax debts — In that decision, Federal Court also dismissing applications for judicial review of several other taxpayers — Appeals from those decisions dismissed in *Belchetz v. Canada (National Revenue)*, 2020 FCA 225 (*Belchetz*) — Commencing in 1984, appellant, other taxpayers invested in limited partnerships promoted by Overseas Credit and Guaranty Corporation (OCGC) — Canada Revenue Agency (CRA) auditing OCGC, taxpayers — In 2004, some taxpayers (excluding appellant, but including appellants in *Belchetz*) made request under *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 220(3.1) for relief from obligation to pay accrued interest while their cases pending — S. 220(3.1) then placing no time limit on period in respect of which Minister could afford relief — In 2005, s. 220(3.1) amended to place ten-year limit on aforementioned period — Appellant made request for relief in 2014 — Two reviews granting greater partial relief to those who applied for relief in 2004 — Issue arising in appellant's case not arising in other taxpayers' cases — *Belchetz* concerning request for equitable treatment with group of taxpayers who received greater amount of relief because they had applied for relief in 2004, before ten-year limitation in place — Appellant only remaining taxpayer pursuing appeal to whom ten-year limitation period in s. 220(3.1) applying — In terms of request for equitable relief made on behalf of appellant, taxpayers who made their relief requests in 2014, counsel submitting that additional relief should be granted in respect of open years (i.e., over ten-year period during which relief allowed under s. 220(3.1)) to ensure equity with taxpayers who had made their requests in 2004 — First-level review officer rejecting that submission — Independent third-level review officer failing to consider same submission, declining to afford any additional relief — Determining that Minister unable to consider non-grandfathered taxpayers who made relief requests in 2014 in same fashion as grandfathered taxpayers who made relief requests in 2004 — Federal Court determining that independent third-level review officer's treatment of issue reasonable — Whether Federal Court erring in respect of its treatment of taxpayers' requests for equitable treatment — As *Belchetz* not dealing with claim for equitable treatment made by taxpayer who sought relief in 2014, that decision not deciding whether Federal Court erred in its assessment of this issue — Federal Court erred in its application of reasonableness standard of review to independent third-level review officer's treatment of appellant's request for equitable treatment — Presence of ten-year limitation period in s. 220(3.1) not complete answer to appellant's claim for equitable treatment — May be open to Minister to grant appellant additional relief from interest accrued from 2004 onward, to promote equity with group of taxpayers who had requested relief in 2004 — Appellant's claim for equality of treatment not frivolous — Independent third-level review officer failed to meaningfully address appellant's request — Failure to engage with important argument advanced by party generally rendering administrative decision unreasonable — Appropriate to remit this issue to Minister for redetermination — Federal Court's judgment in 2019 FC 1034 as pertaining to appellant set aside — Appeal allowed.

BARRS V. CANADA (NATIONAL REVENUE) (A-310-19, 2022 FCA 147, Gleason J.A., reasons for judgment dated August 19, 2022, 14 pp.)