

## INCOME TAX

### PENALTIES AND INTEREST

Appeal from Federal Court (F.C.) decision (2017 FC 642) dismissing application for judicial review of decision by respondent denying appellant relief with respect to tax return filing requirement under discretionary taxpayer relief provisions in *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1, s. 220(2.1),(3) — Appellant private corporation earning rental income, as such qualifying for partial refund of tax when its income distributed to shareholders as dividend — Dividend refund provided for in Act, s. 129(1) — Appellant failing to file tax returns, missing deadlines for 2003 to 2011 taxation years — Taking advantage of voluntary disclosure program, disclosing unreported income by filing its delinquent tax returns — Respondent issuing notices of assessment, denying appellant's claims for dividend refund — Appellant applying again pursuant to Act, s. 220 requesting waiver of dividend refund requirement to file corporate tax returns within three years; seeking extension of this deadline; seeking relief with respect to penalties, interest — Respondent denying request, taking position that Act, s. 220(3) only applicable to provisions of Act, s. 150(1), having no application to Act, s. 129(1) — F.C. concluding having no jurisdiction, as matter involving interpretation of Act within exclusive jurisdiction of Tax Court of Canada (T.C.C.) — Appellant submitting, *inter alia*, that respondent having authority under s. 220(3) to extend three year filing deadline under s. 129(1) — Whether F.C. making reviewable error in concluding not having jurisdiction; whether respondent erring in concluding having no authority to exercise discretion requested — *Per Woods J.A.*: F.C. incorrect in deciding that T.C.C. having exclusive jurisdiction to decide questions involving interpretations of Act — T.C.C.'s jurisdiction not extending to judicial review of decisions of respondent under discretionary relief provisions of Act — Appropriate for Court herein to consider appellant's application for judicial review afresh — No principled basis on which to give ss. 129(1), 220(3) restrictive meaning suggested by respondent — Respondent's decision both unreasonable, incorrect — Based on text alone, s. 220(3) providing respondent discretion to grant relief sought by appellant — This interpretation aligning with context, purpose of taxpayer relief provisions such as s. 220(3) — Ss. 220(2.1),(3) examples of relief measures having broad application, giving respondent authority to provide relief from filing requirements throughout Act — Respondent's decision failing to give due regard to breadth of this provision — In circumstances where provision providing relief to taxpayers, such as s. 220(3), provision should be given effect unless clear that Parliament intending otherwise — Parliament not doing so in s. 129(1) — If Parliament had intended that general relief provisions in s. 220(3) not apply to s. 129(1), would have been easy matter for Parliament to have provided for this explicitly — Filing deadline in s. 129(1) providing some finality, but not intended to be generous or to override general taxpayer relief provisions — Even if appellant previously granted extension under voluntary disclosure program, no reason to prohibit another extension for different purpose in Act — Matter referred back to respondent to consider appellant's application for relief under ss. 220(2.1),(3) — Appeal allowed — *Per Stratas J.A.* (dissenting): Supreme Court in *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 SCR 6 (*Delta*) not requiring Court to figure out for itself merits of matter, decide merits for administrator, then draft administrator's reasons — *Delta* underscoring that administrators must still do their job — Reviewing courts not having *carte blanche* to draft reasons for administrative decision maker — *Delta* supported by fundamental constitutional principle that Parliament's law binding all, including administrators, courts — Also supported by well-established role of reviewing court — Here respondent asserting only bottom-line position concerning s. 220(3) — Faced with silence whose meaning cannot be understood through legitimate interpretation, Court should not be conscripted into service of respondent, discharge respondent's responsibility to write reasons — Minister should do job assigned by Parliament i.e., to look at relevant provisions, interpret them, decide upon their meaning with explanation permitting meaningful review — Respondent's decision should be remitted to respondent for full consideration, decision.

BONNYBROOK INDUSTRIAL PARK DEVELOPMENT CO. LTD. V. CANADA (NATIONAL REVENUE) (A-230-17, 2018 FCA 136, Stratas and Woods, J.J.A., judgment dated July 18, 2018, 38 pp.)