Docket: 2013-958(IT)G

BETWEEN:

RAINFORD TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 15, 2015, at Toronto, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the Appellant:	Osborne G. Barnwell
Counsel for the Respondent:	Jan Jensen

JUDGMENT

For the attached reasons for judgment, the appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

The Respondent is entitled to her costs if she wants them.

Signed at Kingston, Ontario, this 18th day of December 2015.

"Rommel G. Masse"

Masse D.J.

Citation: 2015 TCC 335
Date: 20151218
Docket: 2013-958(IT)G

BETWEEN:

RAINFORD TAYLOR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] The Appellant's tax return for 2009 was prepared by unscrupulous tax preparers. In preparing the tax return, the tax preparer created fictitious business losses that were claimed in the return and in a related request for loss carryback to the 2006, 2007 and 2008 taxation years. Had these fictitious business losses been accepted by the Canada Revenue Agency (the "CRA"), this would have resulted in significant tax refunds such that the Appellant would not have paid any taxes at all for those years. The fact is that the Appellant never owned or operated any kind of business at all during those years and therefore did not incur any business losses at all. The CRA denied the claimed business losses and penalized the Appellant pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the "Act"). This case pertains only to the penalty.

[2] The issue is whether the Appellant either knowingly, or in circumstances amounting to gross negligence, made or acquiesced in the making of false statements in his return so as to attract the harsh penalties provided for in subsection 163(2) of the Act.

Factual Context

[3] The Appellant, Rainford Taylor, is a Jamaican born man who came to Canada in September 1990. He attended university from 1981 to 1985 and obtained a bachelor of science degree in mathematics and geology from the University of the West Indies. Before coming to Canada, he worked in Jamaica with the Bank of Nova Scotia. Taxes were deducted at source but he was not required to file any tax returns with the government of Jamaica. When he came to Canada, he was unemployed for a few months but then he was employed by the Bank of Nova Scotia in Canada as a data clerk beginning in 1991, he believes. He married his wife, who is also from Jamaica, in 1991. He stated that since coming to Canada, he prepared his own tax returns and those of his wife up until 2009. In 2009, he was being paid by IBM to do technical support work at a call centre rendering assistance to Bank of Nova Scotia employees.

[4] In 2006, the Appellant became involved with a financial advisory group called DSC Lifestyles ("DSC"). He attended weekly meetings with DSC. He says that his involvement with DSC was educational, more than anything else. It was also a place for him to make some connections and socialize. DSC also offered investment and business opportunities. In the past the Appellant acted upon advice provided by DSC and made donations to the Global Learning Gifting Initiative ("GLGI") in the amount of $24,506 for the 2006 taxation year. This donation has since been disallowed by the CRA and, according to Lorraine DuPont, senior office auditor for the CRA, the reassessment disallowing this donation was in July 2009, prior to the Appellant filing his 2009 tax return, so he knew prior to May 2010 when he filed his 2009 return that the CRA was questioning some of his prior deductions.

[5] The Appellant testified that DSC came up with a proposal that would maximize his tax refunds. No one explained to him how the tax savings scheme worked. He provided all the information that DSC requested of him to allow them to prepare his return. He did not find out until after the fact that an organization known as Fiscal Arbitrators, not DSC, had prepared his 2009 tax return and a request for loss carryback to the 2006, 2007 and 2008 taxation years.

[6] In May 2010, Mr. Taylor got a call from Janet Perry, a DSC associate, who told him that his tax return for 2009 was ready to be picked up. He met with Ms. Perry in order to sign his return. Mr. Taylor signed his 2009 tax return (Exhibit R-1, Tab 3) together with a request for loss carryback to the years 2006, 2007 and 2008 (Exhibit R-1, Tab 2). He signed these documents in front of Ms. Perry and there was no discussion about the tax return or the request for loss carryback. He did not review these documents before signing since he claims that he had a

relationship with DSC for the past four years and he had no reason at all not to trust them. He then filed his return. At the time he picked up his return, he was presented with an invoice which indicated total fees of $10,302.98 in relation to the total tax refunds of $38,639.88 for the 2006, 2007, 2008 and 2009 taxation years (Exhibit A-1, Tab 21, page 51). This invoice mentions Trem-Dy Group Inc. and Fiscal Arbitrators, but nowhere mentions DSC. This certainly should have alerted the Appellant that DSC was not the tax preparer. The Appellant testified that he was expecting $18,000 as a refund for 2009 but in the past he got sometimes $13,000 or $14,000 so he was not surprised at the amount since it was in the range that he received in previous years. However, knowing that he was expecting refunds totalling more than $38,000 and that he would have to pay fees of more than $10,000, and not knowing any of the details of the tax return or how it was that he should expect such a significant refund, he signed the return and sent it in anyways.

[7] As already indicated, Mr. Taylor did not review his return before signing and filing. Had he done so, he would have discovered some glaringly false information. In his return, Mr. Taylor claimed that he earned business income in the amount of $87,643.91. The business activity was that of "agent". He also claimed business expenses described as "amt to principal fr agent" in the amount of $332,324.41. He reported net business losses amounting to $244,680.50. These are significant business losses compared to his reported employment income of about $74,000. All these figures are set out in the statement of business or professional activities (Exhibit R-1, Tab 1) and in the 2009 tax return. All this information is patently false. The Appellant acknowledges that at no time during the period under consideration did he own or operate a business of any kind. He acknowledges that he had no idea what it meant to be in business as an "agent" nor did he understand what "receipts as agent" meant or what the business expenses reported as "amt to principal fr agent" meant.

[8] In his return, Mr. Taylor requested to use $73,774.50 of the 2009 business losses against his income in the 2009 taxation year and requested that the unused balance of $170,906 be carried back to his 2006, 2007 and 2008 taxation years. These deductions, if they were to be allowed, would have resulted in the refund of all taxes deducted at source for the years 2006 through to 2009. He would have paid no taxes at all for four years.

[9] Mr. Taylor is not a stranger to tax returns since he had prepared his own returns and those of his wife in prior years. He admits that by signing his return he certified that the information on his return and in any documents attached is correct

and complete. Just below the signature line appears a warning that "it is a serious offence to make a false return". Still, Mr. Taylor never did check to see if the information was complete and accurate before he signed the return and filed it with the CRA.

[10] Mr. Taylor acknowledges that the portion of the return reserved for the identification of the tax preparer (line 490) was left blank and was not completed by DSC, by Fiscal Arbitrators or by any other tax preparer. The word "per" appears just before his signature on the signature line of his return and on his request for loss carryback. He does not know why "per" was written just before the signature line. He did not ask Ms. Perry or anybody else for any explanation as to why he had to sign his name after the word "per".

[11] On October 25, 2010, the CRA sent a letter (Exhibit R-1, Tab 4) to the Appellant seeking further information from him in relation to his claimed business losses for 2009. The CRA was requiring proof that the Appellant was in business and proof by way of source documents that would establish the claimed business income and business expenses. The CRA also asked the Appellant to complete and return a business questionnaire and also provide the identity of his tax preparer. This is the first time Mr. Taylor became aware that he had claimed huge business losses for 2009. He testified that this alarmed him and in fact made him quite peeved or angry. He was quite taken aback by this since he was certainly aware that he had not owned or operated any business during 2009. He tried to contact DSC but was unsuccessful. He eventually tracked down Ms. Perry but she had no explanation for the claimed business losses. In spite of being upset by the letter that the CRA sent to him, he did not respond directly to the CRA in order to address the obvious problem. The letter was given to DSC, presumably Ms. Perry, who handed it off to Fiscal Arbitrators whom, we now know, were the tax preparers. Fiscal Arbitrators drafted a reply to this letter for the signature of the Appellant (Exhibit R-1, Tab 6). This letter was not in any way responsive to the concerns raised by the CRA and in no way provided any explanation to Mr. Taylor of how it came to be that he had claimed enormous business losses. In addition, this response is complete and utter nonsense. This response ends as follows:

> Sincerely,
>
> For: RAINFORD A. TAYLOR
>
> Per: [signature], authorized representative

Mr. Taylor does not know why the letter was drafted this way and, in spite of the fact that this letter makes no sense at all and is not in any way responsive to the concerns raised by the CRA or even to his concerns, he still signed it and sent it in.

[12] The CRA never did receive the information requested. The Appellant simply did not and, indeed, could not provide any details related to his business income and losses since they did not exist. The CRA sent a follow-up letter dated March 8, 2011 to the Appellant advising of its intent to disallow the net business losses claimed for 2009 and also advising of its intent to impose penalties pursuant to subsection 163(2) of the Act (Exhibit R-1, Tab 7). Again, rather than responding to the CRA, the Appellant provided this letter to Fiscal Arbitrators who prepared a short covering letter attaching a T4A summary that provided no information other than "Other Income — $332,324.41" (Exhibit R-1, Tab 8). There was also no business number reported on this T4A summary. This was signed "By: [signature], Authorized Rep". Again, this provided no information to the CRA that would support the Appellant's claim of business losses.

[13] Consequently, the CRA denied the Appellant's business losses for 2009 as well as the loss carryback to the 2006, 2007 and 2008 taxation years. The CRA also imposed a federal gross negligence penalty pursuant to subsection 163(2) of the Act in the amount of $29,925.19 and a provincial penalty plus interest. The Appellant was assessed accordingly by way of notice of assessment. The Appellant objected to the assessment by notice of objection, but the Minister of National Revenue (the "Minister") confirmed the assessment, hence the appeal to this Court.

[14] The Appellant says that he did not review his 2009 return and attached documents before signing and filing. He states that he signed in good faith because he had no reason not to trust DSC given that he had a relationship with DSC that lasted four years. He believed that they were the experts and they knew what they were doing. He agrees that he was naive and that, if he had had any inkling that what was being done was fishy, he would never have participated. He stated in evidence: "[Y]ou may accuse me of being silly or reckless, but I didn't pay attention to these lines at all. So at the time, I wasn't aware that I was claiming a business loss". The Appellant takes the position that he may have been negligent but his conduct was not so careless as to amount to gross negligence or that high degree of negligence that would justify the imposition of the harsh penalties provided for in subsection 163(2) of the Act.

Legislative Dispositions

[15] Subsection 163(2) of the Act reads in part as follows:

> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty . . .

[16] According to subsection 163(3), the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

Analysis

[17] Our system of taxation is both self-reporting and self-assessing. It relies on the honesty and integrity of the individual taxpayer. It is the taxpayer's duty to report his taxable income completely, correctly and accurately no matter who prepares the return. Therefore, the taxpayer must be vigilant in ensuring the completeness and accuracy of the information contained in his return. As noted by Justice Martineau in *Northview Apartments Ltd. v. Canada (Attorney General)*, 2009 FC 74, at paragraph 11: "It is the essence of our tax collection system that taxpayers are sole responsible for self-assessment and self-reporting to the CRA."

[18] In the matter of *R. v. Jarvis*, 2002 SCC 73, Justices Iacobucci and Major of the Supreme Court of Canada explained the responsibilities and duties of taxpayers as well as some of the measures in the Act designed to encourage compliance:

> 49 Every person resident in Canada during a given taxation year is obligated to pay tax on his or her taxable income, as computed under rules prescribed by the Act (ITA, s. 2 . . .). The process of tax collection relies primarily upon taxpayer self-assessment and self-reporting: taxpayers are obliged to estimate their annual income tax payable (s. 151), and to disclose this estimate to the CCRA in the income return that they are required to file (s. 150(1)). . . . Upon receipt of a taxpayer's return, the Minister is directed, "with all due dispatch", to conduct an examination and original assessment of the amount of tax to be paid or refunded, and to remit a notice of assessment to this effect (ss. 152(1) and 152(2)). Subject to certain time limitations, the Minister may subsequently reassess or make an additional assessment of a taxpayer's yearly tax liability (s. 152(4)).
>
> 50 While voluntary compliance and self-assessment comprise the essence of the ITA's regulatory structure, the tax system is equipped with "persuasive inducements to encourage taxpayers to disclose their income" . . . . For example, in promotion of the scheme's self-reporting aspect, s. 162 of the ITA creates monetary penalties for persons who fail to file their income returns. Likewise, to

> encourage care and accuracy in the self-assessment task, s. 163 of the Act sets up penalties of the same sort for persons who repeatedly fail to report required amounts, or who are complicit or grossly negligent in the making of false statements or omissions.
>
> 51 It follows from the tax scheme's basic self-assessment and self-reporting characteristics that the success of its administration depends primarily upon taxpayer forthrightness. As Cory J. stated in *Knox Contracting*, *supra*, at p. 350: "The entire system of levying and collecting income tax is dependent upon the integrity of the taxpayer in reporting and assessing income. If the system is to work, the returns must be honestly completed." It is therefore not surprising that the Act exhibits a concern to limit the possibility that a taxpayer may attempt "to take advantage of the self-reporting system in order to avoid paying his or her full share of the tax burden by violating the rules set forth in the Act" . . . .
>
> [Emphasis added. Citations omitted.]

[19] The penalties provided for in section 163 of the Act have been conceived in order to ensure the integrity of our self-assessing and self-reporting system and to encourage a taxpayer to exercise care and accuracy in the preparation of his return, no matter who prepares the return. In *Sbrollini v. The Queen*, 2015 TCC 178, Justice Boyle of this Court opined that the penalty provisions set out in subsection 163(2) of the Act reflect:

> 15 . . . the significance and importance of the requirements of honesty and accuracy in the Canadian self-reporting income tax system. Fairness to all taxpayers requires that such penalties be payable by those . . . Canadians who would seek to take advantage of our self-reporting system . . . .
>
> 16 Such penalties are properly payable . . . if [a taxpayer] knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in, the making of false statements or omissions in his returns.

[20] Therefore, the determination of whether or not a taxpayer should be subjected to the penalties under subsection 163(2) of the Act should be viewed through the lens of the responsibilities and duties of the taxpayer to accurately and completely report his income in a self-reporting and self-assessing system.

[21] There are two necessary elements that must be established in order to find liability for subsection 163(2) penalties:

(a) a false statement in a return, and
(b) knowledge or gross negligence in the making of, assenting to or acquiescing in the making of that false statement.

[22] There can be no question that the Appellant's 2009 tax return and his request for loss carryback contained false statements. The Appellant never owned or operated any kind of a business during that year and therefore could not have had any business income or business expenses. His claim for business losses has no foundation in fact and is patently false.

[23] I am satisfied, however, that the Appellant did not knowingly make a false statement since he really was not aware of what was contained in his return. It was his evidence that he did not review his tax return and request for loss carryback before he signed these documents. Therefore, the issue becomes: Did he make a false statement in circumstances amounting to gross negligence? As already indicated, the burden of proving gross negligence lies on the Crown. It is not sufficient for the Crown to prove mere negligence; it must go beyond simple negligence and prove that the Appellant was grossly negligent.

[24] Negligence is defined as the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. The concept of negligence is so well known in Anglo-Canadian jurisprudence that no authority need be cited for this definition. However, gross negligence requires something more than mere negligence. Gross negligence must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting or indifference as to whether the law is complied with or not; see *Venne v. Canada*, [1984] F.C.J. No. 314 (QL). In *Venne*, Justice Strayer of the Federal Court (Trial Division) cautions that subsection 163(2) of the Act "is a penal provision and it must be interpreted restrictively so that if there is a reasonable interpretation which will avoid the penalty in a particular case that construction should be adopted" and the taxpayer should be given the benefit of the doubt. In *Farm Business Consultants Inc. v. Canada*, [1994] T.C.J. No. 760 (QL), Justice Bowman (as he then was) of the Tax Court of Canada stated at paragraph 23 that the words "gross negligence" in subsection 163(2) imply conduct characterized by so high a degree of negligence that it borders on recklessness. In such a case a court must, even in applying a civil standard of proof, scrutinize the evidence with great care and look for a higher degree of probability than would be expected where allegations of a less serious nature are sought to be established (paragraph 28).

[25] It is also well-settled law that gross negligence can include "wilful blindness", a concept well known to the criminal law. The concept of "wilful blindness" in the context of the criminal law was fully explained by Justice Cory of the Supreme Court of Canada in the decision in *R. v. Hinchey*, [1996] 3 S.C.R.

1128. The rule is that if a party has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge. Stated otherwise, "wilful blindness" occurs where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth, preferring instead to remain ignorant. There is a suspicion which the defendant deliberately omits to turn into certain knowledge. The defendant "shut his eyes" or was "wilfully blind".

[26] It has been held that the concept of "wilful blindness" is applicable to tax cases; see *Canada v. Villeneuve*, 2004 FCA 20, and *Panini v. Canada*, 2006 FCA 224. In *Panini*, Justice Nadon made it clear that the concept of "wilful blindness" is included in "gross negligence" as that term is used in subsection 163(2) of the Act. He stated:

> 43 . . . the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest that an inquiry should be made with respect to his or her tax situation, refuses or fails to commence such an inquiry without proper justification.

[27] It has been held that in drawing the line between "ordinary" negligence or neglect and "gross" negligence, a number of factors have to be considered:

(a) the magnitude of the omission in relation to the income declared,
(b) the opportunity the taxpayer had to detect the error,
(c) the taxpayer's education and apparent intelligence,
(d) genuine effort to comply.

No single factor predominates. Each must be assigned its proper weight in the context of the overall picture that emerges from the evidence (see *DeCosta v. The Queen*, 2005 TCC 545, at paragraph 11; *Bhatti v. The Queen*, 2013 TCC 143, at paragraph 24; and *McLeod v. The Queen*, 2013 TCC 228, at paragraph 14).

[28] In *Torres v. The Queen*, 2013 TCC 380, Justice C. Miller conducted a very thorough review of the jurisprudence regarding gross negligence penalties under subsection 163(2) of the Act and, in so doing, he was able to distill the governing principles to be applied. I paraphrase his *dicta* found at paragraph 65:

a) Knowledge of a false statement can be imputed by wilful blindness.

b) The concept of wilful blindness can be applied to gross negligence penalties pursuant to subsection 163(2) of the Act . . . .

c) In determining wilful blindness, consideration must be given to the education and experience of the taxpayer.

d) To find wilful blindness there must be a need or a suspicion for an inquiry.

e) Circumstances that would indicate a need for an inquiry prior to filing, or flashing red lights . . ., include the following:

i) the magnitude of the advantage or omission;

ii) the blatantness of the false statement and how readily detectable it is;

iii) the lack of acknowledgment by the tax preparer who prepared the return in the return itself;

iv) unusual requests made by the tax preparer;

v) the tax preparer being previously unknown to the taxpayer;

vi) incomprehensible explanations by the tax preparer;

vii) whether others engaged the tax preparer or warned against doing so, or the taxpayer himself or herself expresses concern about telling others.

f) The final requirement for wilful blindness is that the taxpayer makes no inquiry of the tax preparer to understand the return, nor makes any inquiry of a third party, nor the CRA itself.

[29] This is certainly not an exhaustive list and there may be other factors that may need to be considered depending on the circumstances of any particular case. I am of the view that Justice C. Miller provides an excellent template that can be used in analyzing cases such as the one here under consideration. I will proceed to apply the factors enumerated by Justice C. Miller to the case at hand. It will be somewhat obvious that some of these factors overlap and are interrelated.

Education and Experience of the Taxpayer

[30] The Appellant is university educated and has a bachelor's degree in mathematics and geology. He presented as an intelligent, charming and articulate individual. He is familiar with the preparation of tax returns here in Canada since he had prepared his returns and his wife's returns for several years since coming to Canada. He has work experience in the banking system and with IBM. He understands basic business concepts such as profit and loss. He is interested in business and investment opportunities and, to that end, he has become involved with DSC. He has in the past taken advantage of tax savings schemes proposed by DSC such as the GLGI gifting program. The Appellant is not so lacking in education or basic understanding of concepts such as business, or taxes, as to claim

ignorance. Education, experience and intelligence are not factors that could relieve the Appellant of a finding he made false statements under circumstances amounting to gross negligence.

Suspicion or Need to Make an Inquiry

[31] There were ample warning signs or "red flags" that should have aroused the Appellant's suspicions and awakened in him the need to make further inquiries.

Warning Signs

Magnitude of the Advantage

[32] When the Appellant picked up his return and signed all the documents, he also received the invoice from Trem-Dy Group and Fiscal Arbitrators. He saw that this invoice indicated a very high fee in excess of $10,000 and that he could expect to obtain total refunds exceeding $38,000 for 2006 through to 2009. He states that the fact that he was expecting a refund of about $18,000 did not surprise him since he ordinarily got refunds in the range of $13,000 to $14,000. That may be true but the total refunds exceeding $38,000 for the years 2006 through to 2009 was in addition to the refunds already received for those years. The magnitude of the refunds is such that he would not have paid any taxes at all for all those years. The magnitude of the advantage that the Appellant was to receive as a result of the false information contained in his return was a bright red flag that must have aroused his suspicions and induced him into making further inquiries. This factor points towards a finding of wilful blindness.

Blatantly False Statement — Readily Detectable

[33] The Appellant claimed business income of about $87,650 and huge business expenses exceeding $320,000 resulting in net business losses of about $244,680 — when he was not actually engaged in business. This information is blatantly false. In addition, had the Appellant simply taken a look at his return, instead of simply signing it, he would have easily and readily detected the false information. This is another glaring factor that points towards gross negligence.

Tax Preparer does not Acknowledge Preparing Return

[34] The Appellant believed that DSC prepared his tax return. He had trust in DSC as a result of his four-year relationship with them. Yet when he got the

invoice advising that fees of more than $10,000 were to be paid to Trem-Dy Group and Fiscal Arbitrators, he became aware that DSC was not the tax preparer. This should have caused him to make inquiries as to who was actually the tax preparer. In addition, whoever prepared the tax return did not complete the box for tax professionals. This box, on the last page of the return, is at line 490 of the return and is right beside the line to be signed by the Appellant certifying the information is correct and complete. The box labelled "For professional tax preparers only" is obvious to the taxpayer who signs the return. It is to be noted that the Appellant is familiar with tax returns since he prepared them in prior years for himself and his wife. The fact that line 490 was left blank should have alerted the Appellant to the fact that the tax preparer may have wished to remain anonymous to the CRA. This may not be a major point, but when considered cumulatively with all the other red flags, it should have aroused suspicion in his mind.

Tax Preparer Makes Unusual Requests

[35] The word "per" was handwritten on the signature line just in front of the place where the Appellant was to sign. He was never told why "per" was on the signature line, nor did he ever question this odd request. This strange request, although not a strong factor, should have aroused the Appellant's suspicions when considered together with all the other factors.

Tax Preparer Previously Unknown to Taxpayer

[36] The Appellant believed that DSC prepared his return but it is clear that they did not. It is likely that Fiscal Arbitrators prepared the return since the $10,000 fee was payable to them. The Appellant must have realized this when he received the invoice at the time he signed the documents and filed the return. Fiscal Arbitrators were previously unknown to the Appellant. This is perhaps a small factor, but when taken together with all of the other factors, it should have alerted the Appellant to undertake a bit more due diligence with regard to the legitimacy of Fiscal Arbitrators. The Appellant should have asked Ms. Perry from DSC who Fiscal Arbitrators were and what their relationship with DSC was. The Appellant should have also questioned why he was never introduced to any representative from Fiscal Arbitrators. He should have asked for and checked out references. The Appellant did not do so.

Lack of Explanation by Tax Preparer

[37] The Appellant testified that DSC came up with a proposal that would maximize his tax refunds. We now know that this was going to be done through the instrumentality of falsified business losses. No one explained to the Appellant how his tax refunds would be maximized and he did not ask anyone at all how this would be done. It seems to me that a person who has experience preparing his own tax returns would be curious to know what it was that he had supposedly missed in the preparation of his returns in years gone by. Yet, he did not bother to inform himself at all about the proposed tax savings scheme. There are simply no explanations either asked for or given. He simply relied on the blind trust he reposed in DSC. He chose to remain blissfully ignorant of what was going on. Such conduct in refusing to inform himself about this tax savings scheme is evidence of gross negligence in my opinion.

Others do not do it or the Taxpayer is Warned Against it or the Taxpayer is Fearful of Telling Others

[38] This is not a factor in the circumstances of this particular case.

Lack of Inquiries of Other Professionals or of the CRA

[39] Not only did the Appellant not make any inquiries or seek any explanations from his tax preparer, he did not seek any explanations from any other tax preparer, accountant, tax lawyer or from the CRA. Again, he chose to remain blissfully ignorant, blindly trusting DSC and not bothering to inform himself regarding the legitimacy of what was being done. This is indicative of gross negligence.

The Fee Structure

[40] The tax preparer was seeking a fee of more than $10,000 on a contingency basis. This was an exorbitant fee for simply filling out a few forms. This should have led the Appellant to question the legitimacy of his tax preparer.

Appellant's Trust in his Tax Preparer

[41] This factor is interdependent with the fact that the Appellant did not review his tax return. The Appellant's entire argument hinges on the fact that he placed his trust in DSC with whom he had a relationship of four years and that he had no reason not to trust them. That is why he did not review his tax return.

[42] However, in the past, the Appellant did act upon advice provided by DSC and made contributions to the GLGI in the amount of $24,506 for the 2006 taxation year. This contribution has since been disallowed by the CRA and the Appellant was advised of this in May 2010 prior to filing his 2009 return. I do not know if this is still being disputed or is being litigated. Suffice it to say that, in view of the fact that the CRA was questioning the legitimacy of the financial opportunities provided by DSC to the Appellant, this should have given him reason to exercise a bit more due diligence before accepting without question what was being proposed to him by DSC. Therefore, the Appellant knew, at the time he signed his 2009 return, that the tax advice provided by DSC might be questionable. However, this is a minor point and is not crucial to the decision I have to make.

[43] As already indicated, the Appellant takes the position that he had no reason not to trust DSC. In some cases, a taxpayer can shed blame by pointing to negligent or dishonest professionals in whom the taxpayer reposed his trust and confidence; for example, see *Lavoie c. La Reine*, 2015 CCI 228, a case where the taxpayers relied on a lawyer whom they had known and trusted for more than 30 years and who was a trusted friend. However, cases abound where the taxpayers could not avoid penalties for gross negligence by placing blind faith and trust in their tax preparers without at least taking some steps to verify the correctness of the information supplied in their tax returns.

[44] In *Gingras v. Canada*, [2000] T.C.J. No. 541 (QL), Justice Tardif wrote:

> 19 Relying on an expert or on someone who presents himself as such in no way absolves from responsibility those who certify by their signature that their returns are truthful.
>
> . . .
>
> 30 It is the person signing a return of income who is accountable for false information provided in that return, not the agent who completed it, regardless of the agent's skills or qualifications.

[45] In *DeCosta*, above, Chief Justice Bowman stated:

> 12 . . . While of course his accountant must bear some responsibility I do not think it can be said that the appellant can nonchalantly sign his return and turn a blind eye to the omission of an amount that is almost twice as much as that which he declared. So cavalier an attitude goes beyond simple carelessness.

[46] In *Laplante v. The Queen*, 2008 TCC 335, Justice Bédard wrote:

> 15 . . . The Appellant cannot avoid liability in this case by pointing the finger at his accountant. By attempting to shield himself in this way from any liability for his income tax returns, the Appellant is recklessly abandoning his responsibilities, duties and obligations under the Act. . . .

[47] In *Brochu v. The Queen*, 2011 TCC 75, gross negligence penalties were upheld in a case where the taxpayer simply trusted her accountant's statements that everything was fine. She had quickly leafed through the return and claimed that she did not understand the words "business income" and "credit", but yet had not asked her accountant nor anyone else any questions in order to ensure that her income and expenses were properly accounted for. Justice Favreau of this Court was of the view that the fact that the taxpayer did not think it necessary to get informed amounted to carelessness, which constituted gross negligence.

[48] In *Janovsky v. The Queen*, 2013 TCC 140, Justice V.A. Miller stated:

> 22 The Appellant said he reviewed his return before he signed it and he did not ask any questions. He stated that he placed his trust in FA as they were tax experts. I find this statement to be implausible. He attended one meeting with the FA in 2009. He had never heard of them before and yet between his meeting with them and his filing his return in June 2010, he made no enquiries about the FA. He did not question their credentials or their claims. In his desire to receive a large refund, the Appellant did not try to educate himself about the FA.
>
> 23 Considering the Appellant's education and the magnitude of the false statement he reported in his 2009 return, it is my view that the Appellant knew that the amounts reported in his return were fake.

[49] Another recent example can be found in the matter of *Atutornu v. The Queen*, 2014 TCC 174, where the taxpayers simply blindly relied on the advice of their tax preparer without reading or reviewing their returns and without making any effort whatsoever to verify the accuracy of their returns.

Signing the Return Without Reviewing it

[50] This factor is intertwined with the issue of "trusting the professional tax preparer" discussed above. It is clear that the Appellant simply did not review his return before signing it. It has been held that this in and of itself may be sufficient to amount to gross negligence.

[51] As has often been stated by our courts, our tax system is one of self-assessment and each individual taxpayer has the obligation to ensure that all

the information contained in his return is truthful. The Appellant made no effort to verify the accuracy and completeness of his return. Had he made even the most minimal of effort, he would have discovered the numerous red flags that were patently obvious on even the most cursory review of his return. As stated by Justice Tardif in *Gingras*, above:

> 31 . . . it is utterly reprehensible to certify by one's signature that the information provided is correct when one knows or ought to know that it contains false statements. Such conduct is a sufficient basis for a finding of gross negligence justifying the assessment of the applicable penalties.

[52] In *Laplante*, above, Justice Bédard wrote:

> 15 In any event, the Court finds that the Appellant's negligence (in not looking at his income tax returns at all prior to signing them) was serious enough to justify the use of the somewhat pejorative epithet "gross". The Appellant's attitude was cavalier enough in this case to be tantamount to total indifference as to whether the law was complied with or not. Did the Appellant not admit that, had he looked at his income tax returns prior to signing them, he would have been bound to notice the many false statements they contained, statements allegedly made by Mr. Cloutier? . . . In this case, the Appellant had an obligation under the Act to at least quickly look at his income tax returns before signing them, especially since he himself admitted that, had he done so, he would have seen the false statements made by his accountant.
>
> [Emphasis in original.]

[53] Even more recently, Justice Bowie stated in *Brown v. The Queen*, 2009 TCC 28:

> 20 Quite apart from all of that, in respect of the gross negligence penalties under the *Income Tax Act*, the Appellant in his own evidence early on made it clear that he signed his returns for each of the four years under appeal without having paid the least attention to what income was included in them and what expenses were claimed in them. He said that he kept the records that he kept, prepared spreadsheets from them and gave them to a tax preparer who, in each year, prepared the returns for him based on the material that he gave her. We did not hear from her on that, but taking that statement at its face value, it still leaves the Appellant with an onus to look at the completed return before signing it and filing it with the Minister. The declaration that the taxpayer makes when he signs that form is,
>
> > I certify that the information given on this return and in any documents attached is correct, complete and fully discloses all my income.

> To sign an income tax return and make that certification without having even glanced at the contents of the return, because that is what I understood his evidence to be is of itself, in my view, gross negligence that justifies the penalties.
>
> [Emphasis added.]

[54] In *Bhatti*, above, Justice C. Miller pointed out:

> 30 . . . It is simply insufficient to say I did not review my returns. Blindly entrusting your affairs to another without even a minimal amount of verifying the correctness of the return goes beyond carelessness. So, even if she did not knowingly make a false omission, she certainly displayed the cavalier attitude of not caring one way or the other . . . .

[55] This is a very important factor that points towards gross negligence.

Genuine Effort to Comply

[56] I am of the view that the Appellant made no effort to comply with the law. This is certainly borne out by his after-the-fact conduct. When he got a letter from the CRA questioning his business losses, he stated that this was the first time he was made aware of the fact that he was indeed claiming huge business losses. The letter from the CRA most certainly alerted him to the fact that there was something dreadfully wrong with his tax return and that the tax preparer had obviously included some fictitious information about business losses in his return. He says this made him angry and he wanted his tax preparer to fix the problem. However, rather than respond directly to the CRA and take his tax preparer to task, he gave the CRA letter to Ms. Perry who supposedly gave it to the tax preparer. He never did respond to the concerns raised by the CRA. The tax preparer drafted nonsensical responses to any correspondence received from the CRA. Even realizing that these responses were complete and utter nonsense, he still sent them on to the CRA. This gives a clear indication as to his mindset throughout.

Conclusion

[57] There is no doubt that the Appellant's 2009 tax return and his request for loss carryback contained false statements — the Appellant did not carry on a business and he did not incur any business losses whatsoever, let alone business losses exceeding $244,000. I can come to no other conclusion than that the Appellant was wilfully blind and grossly negligent as to the falsity of these statements. This is especially so since he signed his return and thus certified the accuracy of the information contained therein without bothering to make any

efforts to verify the return's accuracy. As such, he is properly subject to the penalties imposed on him pursuant to subsection 163(2) of the Act.

[58] I have much sympathy for the Appellant. He and his wife are good people of modest means who were taken in by unscrupulous people. However, he should have known better, given all of the circumstances, and all of this could have been avoided had Mr. Taylor simply taken a look at the information contained in his return. These penalties are very harsh and will undoubtedly cause much hardship to this family. I wish I had the authority to alleviate the harshness of these penalties, but unfortunately I do not. The only question I can decide is whether the penalties are well founded or not.

[59] The Court draws to the Appellant's attention the fact that a waiver of the penalty and interest may be sought from the CRA pursuant to the taxpayer relief provisions in subsection 220(3.1) of the Act. This Court has no role to play in relation to such applications and it should be made clear that a waiver of penalty and interest lies entirely in the discretion of the Minister. Such an application is made to the CRA; the CRA publishes an information circular (IC07-1) as well as a form (RC4288) for making taxpayer relief applications.

[60] For all the foregoing reasons, this appeal is dismissed. The Respondent is entitled to her costs if she wants them.

Signed at Kingston, Ontario, this 18th day of December 2015.

"Rommel G. Masse"

Masse D.J.

CITATION:	2015 TCC 335
COURT FILE NO.:	2013-958(IT)G
STYLE OF CAUSE:	RAINFORD TAYLOR v. THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 15, 2015
REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
DATE OF JUDGMENT:	December 18, 2015

APPEARANCES:

Counsel for the Appellant:	Osborne G. Barnwell
Counsel for the Respondent:	Jan Jensen

COUNSEL OF RECORD:

For the Appellant:	Osborne G. Barnwell
Firm:	North York, Ontario
For the Respondent:	William F. Pentney Deputy Attorney General of Canada Ottawa, Canada