Docket: 2012-3770(IT)G

BETWEEN:

SANJEEV KHATTAR,

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:

For the Appellant: The Appellant himself

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 2008 taxation year is dismissed.

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

Signed at Kingston, Ontario, this 22nd day of December 2015.

"Rommel G. Masse"

Masse D.J.

Citation: 2015 TCC 338
Date: 20151222
Docket: 2012-3770(IT)G

BETWEEN:

SANJEEV KHATTAR,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] Sanjeev Khattar is appealing the penalty for gross negligence that was imposed on him pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the "Act") in relation to his 2008 taxation year and related request for loss carryback to the 2005, 2006 and 2007 taxation years. A previously unknown tax preparer, Muntaz Rasool, led him to believe that he could get larger than usual tax refunds. In preparing the Appellant's tax return, Mr. Rasool claimed very large fictitious business losses when the Appellant never owned or operated any kind of business at all. The Canada Revenue Agency (the "CRA") disallowed the losses and imposed a penalty pursuant to subsection 163(2) of the Act. This case pertains only to the penalties that were imposed.

[2] The Court has to determine 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, Sanjeev Khattar, is 44 years old and resides in Brampton, Ontario. He went to school in India and, after a four-year program of study, he obtained a diploma in tool and die making in 1989. He worked for different engineering companies in India until 2002 when he came to Canada. He is now working for a company called StackTeck Systems Ltd. as a product designer. This is an engineering company that manufactures injection moulds. Since he came to Canada, he has always had various professionals prepare his tax returns. He always just signed the returns and sent them off to the CRA. He never personally prepared his own returns since he claims that he has no knowledge of the tax system and he does not understand tax matters.

[4] He testified that he was looking for someone to prepare his 2008 return since the person who had prepared his return in the previous year had moved to another city. A colleague at work referred him to a person named Muntaz Rasool who supposedly had been preparing the colleague's returns for the last three or four years as well as the colleague's father's returns for the last 20 years. The Appellant called and arranged to meet Mr. Rasool at a coffee shop to get to know him. Mr. Rasool had told him that he operated from his home. He used tax shelters or tax schemes that would get the Appellant the maximum benefit. Mr. Rasool never explained to him just how exactly his tax shelter scheme worked. However, the Appellant testified that, in view of the work done by Mr. Rasool for his colleague and the father of his colleague, he had no reason not to trust him. He simply accepted Mr. Rasool's assertion that he would maximize his tax refund. The Appellant provided Mr. Rasool with all the information requested and asked him to prepare his return. In the past, the Appellant would pay the person who prepared his tax returns anywhere from $40 to $100. Mr. Rasool was going to charge him 40% of any refund that the Appellant would get. The Appellant asked Mr. Rasool why such a high fee was charged and Mr. Rasool told him that it was because he would get the Appellant the maximum benefit and that there would be no loss to him.

[5] Some time later, Mr. Rasool came to the Appellant's home at around 22:00 with the completed return and asked him to sign where indicated. Mr. Rasool was in a hurry to get out of there. He was just flipping pages, indicating where the Appellant was to sign. The Appellant did not know anything about the forms and he did not know what he should look for so he signed the return just as he did in prior years. The Appellant agrees that the word "per" appears just before his signature; he did not write the word "per" and he does not know why it is there.

Mr. Rasool told him that "per" had to be on the signature line but did not explain why. When the Appellant signed his return, he did not look to see how much he would get for a refund. Yet the amount of the refund is clearly indicated on the signature page of his return. He agrees that line 490 of the return reserved for the identification of the tax preparer was not completed, but he did not look at this when he signed the return. He looked at the numbers on the return, but he did not understand how the numbers came to be calculated. He asked Mr. Rasool how they were determined. Mr. Rasool told him only that they were based on the information that the Appellant had provided to him. The Appellant claims that he did not see line 135 which showed his business income. He did not notice the request for loss carryback even though he signed this document. He admits that he read the certification that appears above his signature attesting that the information contained in the return was complete and accurate, but yet he did not ensure that the information was in fact complete and accurate. He simply states that he has always trusted the judgment of the tax preparer and he simply signed where told to sign and filed the return.

[6] The Appellant's 2008 tax return and related request for loss carryback to the 2005, 2006 and 2007 taxation years are found at Exhibit R-1, Tab 3 and Tab 4. Had the Appellant bothered to pay even the slightest attention to these documents, he would have detected some obviously false information. In his return, the Appellant reported business income as an "agent" totalling $63,893.70. He claimed total business expenses of $195,969.70 representing the "amount to principal in exchange for labour". This resulted in net business losses in the amount of $188,619.10. Details are provided in the statement of agent activities (Exhibit R-1, Tab 1). The Appellant requested to use $56,543.10 of the 2008 business losses against his income in the 2008 taxation year and requested that the unused balance of $132,076 be carried back to his 2005, 2006 and 2007 taxation years. According to Lorraine DuPont, senior office auditor for the CRA, had the total claimed business losses been allowed, then the Appellant's taxable income for 2005 through to 2008 would have been zero — an astounding result.

[7] It is undisputed that throughout the period of time here under consideration, the Appellant never owned or operated a business, he had no business income whatsoever and he never incurred any business expenses, let alone expenses amounting to close to $196,000, and he never suffered any business losses. This information is patently false and has no foundation in fact.

[8] The Minister of National Revenue (the "Minister") initially assessed the Appellant for the 2008 taxation year, as filed. The Appellant did get a refund of

about $12,000 as well as a child tax credit of about $3,500. This was high compared to previous years. In the past, he never received more than about $2,000.

[9] On November 13, 2009, the CRA sent a letter to the Appellant questioning the claimed business losses for the 2008 taxation year and the request for loss carryback (Exhibit R-1, Tab 5). This letter asked him to complete a business questionnaire, provide the identity of his tax preparer, provide all source documents supporting his claimed business expenses, as well as all information in support of his claim that he was operating a business such as his business registration certificate. This demand letter raised some red flags concerning the propriety of what he had done for 2008. The Appellant was confused and frustrated since he never owned or operated any kind of a business during the period in question. However, he did not respond to this letter and he never sent any of the information requested regarding his business expenses — indeed he could not since this information did not exist. Instead, the Appellant sent this letter to Mr. Rasool and asked Mr. Rasool why the CRA was questioning his return. Mr. Rasool told him this was just normal procedure and indicated that he would prepare a reply that the Appellant should sign and send in to the CRA and the matter would be settled. Mr. Rasool did prepare a response for the signature of the Appellant (Exhibit R-1, Tab 2). This response makes reference to "the corporate fantasy world that currently exists in the land commonly called Canada" and mentions "[a]s a free will man, I am not a 'person' in Canada" and "SANJEEV KHATTAR is a fictional entity with no physical body or mind". The Appellant did not sign this response since it did not make any sense to him. However, he still sent it in to the CRA.

[10] The CRA sent another letter on August 24, 2010 (Exhibit R-1, Tab 6) requesting information about the Appellant's business expenses and also informing him of the possible imposition of significant penalties pursuant to subsection 163(2) of the Act. Again, the Appellant did not directly communicate with the CRA, but instead went back to Mr. Rasool even though by this time there must have been no doubt in the Appellant's mind that Mr. Rasool was nothing more than a con man. Again, Mr. Rasool prepared a response (Exhibit R-1, Tab 7) which made even less sense than the first response. This second response made reference to the Appellant having "slave status" and mentioned "[a] slave does not have the capacity to contract with the slave owner". The Appellant signed this letter and sent it on to the CRA. The Appellant implored Mr. Rasool to please talk to the CRA and fix the problem. The Appellant pointed out that the response made no sense at all and asked what was the meaning of all this. Mr. Rasool simply responded by saying "[t]rust me, sign it, and send in" (transcript, page 23). This

behaviour on the part of the Appellant defies logic and is clearly self-defeating. The Appellant testified that he felt he had no other choice but to turn to Mr. Rasool for assistance since Mr. Rasool was the one who prepared the return and knew what was in it. He stated that he feared being arrested or having his assets seized.

[11] The Minister reassessed the Appellant, disallowed the business losses and imposed penalties pursuant to subsection 163(2) of the Act, hence the appeal to this Court.

Legislative Dispositions

[12] 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 . . .

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

Analysis

[14] As has been often stated, 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 the return. Justice Martineau stated 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."

[15] In the matter of *R. v. Jarvis*, 2002 SCC 73, Justices Iacobucci and Major of the Supreme Court of Canada took the opportunity to explain the responsibilities and duties of taxpayers and also discussed 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.]

[16] Section 163 of the Act provides for penalties 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 stated 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.

[17] 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.

[18] 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.

[19] There can be no question that the Appellant's 2008 tax return and his request for loss carryback contained false statements. During that taxation year, the Appellant never owned or operated any kind of a business 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.

[20] The Appellant testified that he saw the numbers on the return, but he did not understand how they came to be calculated. He asked Mr. Rasool how they were determined and Mr. Rasool told him only that they were based on the information that the Appellant had provided to him. I find this explanation to be implausible. Elsewhere in his testimony, he states that he simply did not review his return since Mr. Rasool just flipped pages and told him where to sign since he was in a hurry. If the Appellant in fact saw the numbers, then he must have known that they were false and this alone is sufficient to justify a finding that the subsection 163(2) penalties are appropriate. However, even if the Appellant did not know that his return contained false information, then I am satisfied on a balance of probabilities that he made or acquiesced in the making of a false return in circumstances amounting to gross negligence.

[21] 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 involves greater neglect than simply a failure to use reasonable care. It involves 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 *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).

[22] 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".

[23] 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.

[24] 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).

[25] 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.

[26] 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. However, I am of the view that Justice C. Miller provides a useful template that can be used in the analysis of cases such as the one here under consideration. In any such analysis, it is obvious that some of these factors overlap and are interrelated.

Education and Experience of the Taxpayer

[27] The Appellant is an intelligent and educated individual who has succeeded in becoming a tool and die maker after a four-year course of study. This trade requires an understanding of mathematics, principles of design, engineering concepts and an appreciation of precision and close tolerances. He has been in Canada for 13 years and he has been successful in his chosen field of endeavour having attained the position of product designer in his employer's business. The Appellant claims that he is ignorant and unsophisticated when it comes to matters such as the preparation of tax returns. Yet, he was able to teach himself about the preparation of pleadings in this Court since he drafted a professional looking amended notice of appeal based on precedents that he obtained throughout the process of this appeal. This shows ability on his part to inform himself on important matters and react accordingly. This belies any purported lack of sophistication. This is an intelligent man who is not so lacking in education or basic understanding of concepts such as business 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

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

Warning Signs

The Fee Structure

[29] In the past, the Appellant paid his tax preparer a fee ranging anywhere from $40 to $100. Mr. Rasool was seeking a fee of 40% of the amount of any refunds received on a contingency basis. This fee structure was so out of the ordinary that it should have led the Appellant to question the legitimacy of his tax preparer.

Magnitude of the Advantage

[30] The Appellant states that he did not know the amount of the expected refund. I find this assertion to be implausible since the amount of the refund appears just to the right and just above the signature line on the last page of the return. He would have seen the refund in the glance of an eye. In addition, it is to

be noted that Mr. Rasool had promised to maximize the amount of the Appellant's refund. It is only natural and perfectly understandable that the Appellant would want to know how much the refund actually was. I reject the Appellant's contention that he did not know how much of a refund he could expect. In fact, the amount of the refund was $12,000 plus a child tax credit of about $3,500. This is a significant refund when one considers that in the past he never got a refund of more than $2,000. Had the CRA allowed the total business loss deduction in the 2008 return and the request for loss carryback, the Appellant would not have paid any taxes at all for the period extending from 2005 through to 2008. 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 should 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

[31] The Appellant claimed business income of about $64,000 and huge business expenses close to $196,000 resulting in net business losses exceeding $188,000 — 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

[32] Mr. Rasool did not complete the box on the return that is reserved for the identification of the tax professional who prepared the return. 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 and he should have seen this. 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

[33] The word "per" was handwritten on the signature line just in front of the place where the Appellant was to sign. This is so obvious that he must have seen it.

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

[34] Mr. Rasool was previously unknown to the Appellant. Mr. Rasool was not affiliated with any well-known tax preparers or accounting firms. The Appellant retained his services on the recommendation of just one colleague. Other than this one recommendation, the Appellant did not ask for or check out any other references. This is perhaps a small factor, but when taken together with all the other factors, it should have alerted the Appellant to undertake a bit more due diligence with regard to the legitimacy of Mr. Rasool.

Initial Interaction with the Tax Preparer

[35] The Appellant's initial meeting with Mr. Rasool was at a coffee shop, not at Mr. Rasool's office. When it came time to sign the tax return, Mr. Rasool went to the Appellant's home and this was late at night, again not at Mr. Rasool's place of business. These are certainly very small points, but they could lead one to question why a professional tax preparer with allegedly 20 years of experience would receive clients elsewhere than at his place of business. A desire to provide a very high level of personal service comes to mind and could explain this behaviour, but a more cynical person would question this motivation. What is more revealing, however, is the fact that when Mr. Rasool attended at the Appellant's residence late at night in order to have him sign the return, Mr. Rasool was in a hurry and he was anxious to leave. He was rushing the Appellant to sign the documents, just flipping through the pages. Mr. Rasool did not take the time required to explain what had been done in order to maximize the Appellant's tax refund. A reasonable and diligent taxpayer would certainly question why the tax preparer would rush through this critical stage and why the tax preparer would be in such a hurry that he could not be bothered to take the time to explain his work. In addition, there is no evidence that Mr. Rasool left a copy of the return with the Appellant. This was certainly a bright red flag that would lead one to question what was going on. This weighs in favour of a finding of wilful blindness or gross negligence.

Lack of Explanation by Tax Preparer

[36] The Appellant testified that Mr. Rasool made use of tax shelter schemes in order to minimize his taxes and to maximize his tax refunds. Mr. Rasool did not explain to the Appellant how these tax shelters worked and the Appellant did not ask Mr. Rasool or anyone else how this would all happen. An honest professional would explain to a client how such tax shelters work. We now know that this was going to be done through the instrumentality of falsified business losses. The Appellant testified that he did not know how Mr. Rasool arrived at the numbers that were generated and inserted into his return other than saying that it was based on information provided by the Appellant himself. He did not bother to inform himself at all about the proposed tax shelter scheme. There are simply no explanations either asked for or given. He simply relied on the blind trust he reposed in Mr. Rasool. The Appellant was blissfully ignorant of what was going on. This lack of explanation by Mr. Rasool and the refusal of the Appellant 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

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

Appellant's Trust in his Tax Preparer

[38] 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 Mr. Rasool whom he believed to be an honest professional. He did not review his return and he did not attempt to understand the nature of what Mr. Rasool was doing since he had no reason to distrust Mr. Rasool.

[39] 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.

[40] 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.

[41] 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.

[42] 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. . . .

[43] 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.

[44] 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.

[45] 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

[46] 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.

[47] As has often been stated by our courts and as I myself stated above, 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.

[48] 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.]

[49] 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.]

[50] 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 . . . .

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

Genuine Effort to Comply

[52] 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 that he was 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. However, rather than respond directly to the CRA and take his tax preparer to task, he gave the CRA

letter to Mr. Rasool. He never did respond to the concerns raised by the CRA. Mr. Rasool drafted nonsensical responses to any correspondence received from the CRA. Even realizing that these responses were complete and utter nonsense, the Appellant still sent them on to the CRA. This gives a clear indication as to his mindset throughout. The Appellant was willing to send in any nonsensical letters whatsoever to the CRA without any regard to his obligations, even though he knew the responses made no sense at all.

Lack of Inquiries of Other Professionals or of the CRA

[53] 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 Mr. Rasool and not bothering to inform himself regarding the legitimacy of what was being done. This is indicative of gross negligence.

Conclusion

[54] The Appellant admits that he should have read his return before signing it. It is clear that had he taken a closer look at the tax return, he would have seen the questionable numbers and he would have seen that he was claiming outrageous business expenses. The Appellant acknowledges that he made a mistake and that imposing a penalty is the right way to encourage people not to make such mistakes, but he feels that the penalties imposed are too harsh and will ruin his life. He agrees that he should pay a penalty, but the penalty should be manageable given his personal circumstances. Unfortunately, I cannot alleviate the harshness of the penalties. I can only decide if the imposition of the penalties is appropriate as a result of intentionally making a false statement or acquiescing in the making of a false statement in circumstances amounting to gross negligence.

[55] There is no doubt that the Appellant's 2008 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 $188,000. 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.

[56] 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 22nd day of December 2015.

"Rommel G. Masse"

Masse D.J.

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