Docket: 2013-2945(IT)G

BETWEEN:

PAUL LAUZON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 3, 2015, at Toronto, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the Appellant: Jeffrey Radnoff

Counsel for the Respondent: Alisa Apostle

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 21st day of March 2016.

"Rommel G. Masse"

Masse D.J.

Citation: 2016 TCC 71
Date: 20160321
Docket: 2013-2945(IT)G

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PAUL LAUZON,

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and

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REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] The Appellant is appealing the penalty for gross negligence 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. The Appellant claimed very large business losses which, if allowed, would result in the refund to the Appellant of all taxes paid or deducted at source for 2008 and prior taxation years. The fact is that the Appellant never owned or operated any kind of business at all during 2008 and the claimed business losses are fictitious. The Canada Revenue Agency (the "CRA") disallowed the losses and penalized the Appellant pursuant to subsection 163(2) of the Act. This case pertains only to the penalties that were imposed.

Factual Context

[2] The Appellant is 43 years old and lives in Tiverton, a very small town in the municipality of Kincardine, Ontario. He is college educated having received a diploma in mechanical engineering technology from Durham College. He works at the Bruce Nuclear Generating Station as a field engineer project head. He has never taken any accounting or tax courses. However, in the past he has prepared his own tax returns using a commercially available computer software program known as QuickTax.

[3] In or about 2001, the Appellant had just moved to Tiverton to begin working at the nuclear power station. He met Tom Thompson early on. Mr. Thompson was an insurance salesman and initially he sold the Appellant a life insurance policy. The two men had common interests and so they became friends. In 2004, Mr. Thompson told the Appellant that he had become a financial advisor and he also did tax returns. From 2004 to 2007, Mr. Thompson would assist the Appellant with his income tax returns. At first, the Appellant believed that Mr. Thompson himself did the tax returns, but he learned very quickly that Mr. Thompson had a local tax preparer, Sharon Vanderlip, who would prepare the returns for him. The Appellant believed that he paid Mr. Thompson a percentage of his refund as a fee, perhaps 20%. He is not too sure and he allows that the fee might have been a fixed rate.

[4] Mr. Thompson convinced the Appellant to invest in charitable donation schemes. However, these became problematic since the CRA began to disallow any deductions related to these charitable donation schemes. These charitable donations are still being disputed. In 2009, the Appellant informed Mr. Thompson that he no longer wanted to be involved in the charitable donation schemes since the CRA kept disallowing them. Mr. Thompson advised the Appellant that he would go back and review returns for the past five years and see if there was anything else to claim which was missed and might result in a refund. The Appellant did obtain his tax assessments for the past five years and gave them to Mr. Thompson. Mr. Thompson went away and had the 2008 tax return completed just as in the past, or so the Appellant believed. Later, Mr. Thompson returned to the Appellant's house and had him sign the return.

[5] The Appellant never asked any questions at all about his return and Mr. Thompson never offered any explanations as to what was contained in the return. Mr. Thompson just flipped pages to the areas the Appellant needed to fill out or sign. The Appellant then signed where told without reviewing any of the documents. This whole process lasted no more than 30 seconds. He then sent the return on to the CRA.

[6] The Appellant admits that he did not review his return. Mr. Thompson was the Appellant's friend and trusted financial advisor and the Appellant believed that his 2008 tax return and related documents were prepared in the usual way just as they had always been done in the past by Ms. Vanderlip. Mr. Thompson assured him that everything was above board.

[7] The Appellant's 2008 tax return is reproduced at Exhibit A-1, Tab 2. The Appellant's signature appears on the last page of the return just below the certification that reads "I certify that the information given on this return and in any documents attached is correct, complete and fully discloses all my income". However, it is obvious that the Appellant never even bothered to take a look at his return at all other than to see how much of a refund he would get — the potential refund was all that interested him. He took no steps at all to verify the accuracy of the information that was contained in his return. Exhibit A-1, Tab 1, is a document entitled "Statement of Agent Activities". The Appellant admits that he was told to print his name at the bottom, but he did not read it at all. He believed it was just a formality. This was a supporting document to his tax return, "so it's just a bunch of numbers" (transcript, page 19). This certainly demonstrates an indifferent attitude on his part. The Appellant also admits that he signed the request for loss carryback, a copy of which is reproduced at Tab 3 of Exhibit A-1. Had the Appellant bothered to take even a cursory look at his tax return and his request for loss carryback, he would have easily and readily discovered some blatantly false information. In his return, the Appellant claimed gross business income in the amount of $89,196.08 and net business losses of $308,073.65. All of this is completely and utterly false. The Appellant's only significant income during the 2008 taxation year was employment income in the amount of $81,831.27. The Appellant never owned or operated any business whatsoever during 2008 and he never incurred the business expenses that were claimed. There are other unusual anomalies on the return. The word "per" appears in front of his signature in both the return and the request for loss carryback — it was there before he signed the return. There had been no discussion at all about why "per" had to appear in front of his signature. Box 490 on the return, which is reserved for the identification of professional tax preparers, was left blank. He should have seen this when he signed his return and he should have questioned why his tax preparer wished to remain unknown to the CRA. He did notice the refund of $19,178, which he in fact subsequently received. This was the first time he had ever received such a large refund. Usually, he would get a refund of $2,000 to $3,000. He thought the refund was so large because of the recalculation of tax returns of prior years and the return to him of refunds to which he was entitled but were being held back due to the charitable donations dispute. That explanation is not plausible. If the CRA was disallowing the past charitable donations and the matter was still being disputed, it does not make any sense that the CRA would somehow suddenly free up past refunds that were being withheld before resolution of the charitable donations dispute. The Appellant admits that he was only curious to know the amount of his refund and that is the only thing he looked for in his return. If the claimed business losses were allowed, and if they were carried back to the prior three years, then this would result in the Appellant

having all his taxes paid or deducted at source refunded to him for 2005 through to 2008. He would have paid no taxes at all for four years — an astounding result.

[8] The CRA sent a letter to the Appellant on December 14, 2009 questioning his claimed business losses. The Appellant contacted Mr. Thompson and inquired what this was all about. Mr. Thompson advised that this had to be a mistake since the Appellant did not have a business and so could not have any business losses. The CRA then sent the Appellant another letter on January 14, 2010, advising that since he had not responded to the prior letter, the CRA proposed to disallow the claimed business losses and also impose penalties pursuant to subsection 163(2) of the Act (Exhibit A-1, Tab 4). The Appellant again went to Mr. Thompson to ask him why this was still happening. Mr. Thompson told him he would contact Muntaz Rasool, a representative of Fiscal Arbitrators, who would draft a response for him. It was then that the Appellant found out that Ms. Vanderlip had not in fact prepared his 2008 tax return; Mr. Rasool supposedly prepared it. The Appellant never met Mr. Rasool; he only dealt with Mr. Thompson who was a "go-between" between him and Mr. Rasool. Mr. Rasool apparently prepared a response to the CRA letter for the Appellant's signature (Exhibit A-1, Tab 5). Mr. Thompson handed this letter to the Appellant for him to sign and send to the CRA. The Appellant did so without reviewing the letter other than glancing at it. This letter is non-responsive to the valid concerns raised by the CRA. The Appellant admits that this response letter did not make a lot of sense to him. In fact, this letter is very threatening in nature, demanding that the CRA pay him $5,000 for each and any future communication received by the Appellant from the CRA — what utter nonsense. I cannot believe that the Appellant would sign such a letter without reading it and, if he did read it, I cannot believe that he would actually send it to the CRA. There were further communications from the CRA. The Appellant provided these to Mr. Thompson who gave them to Mr. Rasool who supposedly drafted responses. These responses were somewhat confrontational and not at all conducive to arriving at a solution between the parties (Exhibit A-1, Tabs 6, 7 and 9).

[9] The Minister of National Revenue (the "Minister") eventually disallowed the claimed business losses, denied the request for loss carryback and applied a penalty pursuant to subsection 163(2) of the Act. The Appellant objected to this assessment but the Minister confirmed the assessment, hence the appeal to this Court.

[10] It is argued that the Appellant ought not to be liable for gross negligence penalties because he relied on his friend and financial advisor of four years. It is submitted that reliance on the advice of a trusted friend negates the finding of

intentional conduct required for the assessment of gross negligence penalties. It is submitted that the Appellant cannot be wilfully blind or otherwise grossly negligent when he relied on someone and trusted their advice. He understood that his return would be prepared correctly and in compliance with the law and he was unaware that his 2008 tax return contained false information. Therefore, it is submitted that he cannot be found to be wilfully blind when he honestly believed that his return was correctly prepared. He reposed his complete trust and confidence in his financial advisor and he had no reason to question what had been done. The Appellant therefore prays that his appeal be allowed with costs.

[11] The Respondent is of the view that the Appellant never owned or operated any kind of business during the 2008 taxation year and so his claimed business losses are obviously false. These false statements are of such a magnitude that, if allowed, would result in the refund of all taxes withheld or paid from 2005 through to 2008. The Respondent submits that the Appellant made, participated in, assented to or acquiesced in the making of, these false statements in circumstances amounting to gross negligence. The Appellant was wilfully blind or otherwise grossly negligent regarding the falseness of the statements contained in his return and the related request for loss carryback. The Respondent urges this Court to dismiss the appeal with costs.

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] Counsel for the Appellant has done a great deal of research and has supplied a book of authorities for my guidance in this case as well as other cases that he has argued before me. These authorities are: *R. v. Hinchey*, [1996] 3 S.C.R. 1128; *Udell v. M.N.R.*, [1969] C.T.C. 704 (Ex. Ct.); *Venne v. Canada*, [1984] F.C.J. No. 314 (QL); *Dunleavy v. The Queen*, [1993] 1 C.T.C. 2648 (TCC); *Farm Business*

Consultants Inc. v. Canada, [1994] T.C.J. No. 760 (QL), affirmed by the Federal Court of Appeal, [1996] F.C.J. No. 82 (QL); *R. v. Jorgensen*, [1995] 4 S.C.R. 55; *Carlson v. The Queen*, [1998] 2 C.T.C. 2476 (TCC); *897366 Ontario Ltd. v. Canada*, [2000] T.C.J. No. 117 (QL); *Findlay v. Canada*, [2000] F.C.J. No. 731 (QL); *Turcotte v. The Queen*, [2002] 2 C.T.C. 2806 (TCC); *Isaza v. The Queen*, [2002] 3 C.T.C. 2107 (TCC); *Therrien v. The Queen*, [2002] 3 C.T.C. 2141 (TCC); *410812 Ontario Ltd. v. Canada*, [2002] T.C.J. No. 176 (QL); *McGhee v. The Queen*, 2003 TCC 265; *Bernick v. The Queen*, 2003 TCC 433, affirmed by the Federal Court of Appeal, 2004 FCA 191; *Klotz v. The Queen*, 2004 TCC 147; *St-Pierre v. Canada*, [2002] T.C.J. No. 613 (QL); *Julian v. The Queen*, 2004 TCC 330; *Caron v. Canada*, [2002] T.C.J. No. 696 (QL); *Larouche v. The Queen*, 2004 TCC 629; *Mark v. The Queen*, 2006 TCC 35; *Hine v. The Queen*, 2012 TCC 295; and *Murugesu v. The Queen*, 2013 TCC 21.

[15] Counsel for the Respondent has also provided a book of authorities to be used in this case as well as other similar cases that are presently before the Court. These authorities are: *Venne v. Canada*, [1984] F.C.J. No. 314 (QL); *Canada v. Villeneuve*, 2004 FCA 20; *DeCosta v. The Queen*, 2005 TCC 545; *Panini v. Canada*, 2006 FCA 224; *Laplante v. The Queen*, 2008 TCC 335; *Gélinas v. The Queen*, 2009 TCC 136; *Chénard v. The Queen*, 2012 TCC 211; *Bhatti v. The Queen*, 2013 TCC 143; *Mullen v. Canada*, 2013 FCA 101; *Janovsky v. The Queen*, 2013 TCC 140; *McLeod v. The Queen*, 2013 TCC 228; *Brisson v. The Queen*, 2013 TCC 235; *Torres v. The Queen*, 2013 TCC 380, affirmed by the Federal Court of Appeal, 2015 FCA 60; *Allison v. The Queen* (February 4, 2014), TCC, 2013-2144(IT)I; *Guindon v. Canada*, 2015 SCC 41; *Lavoie c. La Reine*, 2015 CCI 228; and *Atutornu v. The Queen*, 2014 TCC 174.

[16] I am thankful to counsel for this helpful review of the authorities.

[17] It has been often observed that our system of taxation is both self-reporting and self-assessing. It is based on the “honour system” and relies on the honesty and integrity of the individual taxpayer. The taxpayer has a 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] The responsibilities and duties of taxpayers as well as some of the measures in the Act designed to encourage compliance were explained by the Supreme Court of Canada in the matter of *R. v. Jarvis*, 2002 SCC 73:

> 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". . . . <u>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</u>.
>
> 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.

[20] Therefore, I am of the view that the decision of whether or not a taxpayer should be subjected to the penalties under subsection 163(2) of the Act should be

determined in light of the positive 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, participating in, assenting to or acquiescing in the making of, that false statement.

[22] There can be no question that the Appellant's 2008 tax return and his request for loss carryback contained false statements. The Appellant never owned or operated any kind of business during that year and therefore could not have had any business income or business expenses amounting to some $308,000. His claim for business losses has no foundation in fact and is patently false.

[23] However, I am not satisfied that the Crown has proven to the requisite degree of proof that the Appellant knowingly made, assented to, participated in or acquiesced in the making of, the false statement contained in his tax return. He had no knowledge of what was in his 2008 tax return since he never bothered to look at it.

[24] Has the Crown proven to the requisite degree of proof that the Appellant made, participated in, assented to or acquiesced in the making of, the false statements in circumstances amounting to gross negligence? I am satisfied that the Crown has met its burden of proof and that the Appellant made, assented to, participated in or acquiesced in the making of, the false statements in circumstances amounting to gross negligence. I come to this conclusion for the reasons that follow.

[25] There is a difference between ordinary negligence and gross negligence. Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. 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*, above. In *Venne*, Justice Strayer of the Federal Court (Trial Division) stated that subsection 163(2) is a penal provision and must be construed strictly. These penalties ought to be imposed only where there is a high degree of blameworthiness involving knowing or reckless misconduct.

[26] However, in *Guindon*, above, the Supreme Court of Canada held that section 163.2 of the Act, which provides for the imposition of gross negligence penalties against third party tax preparers, is not a penal provision. The section provides for an administrative penalty that is primarily intended to maintain compliance or to regulate conduct within a limited sphere of activity — the purpose being to promote honesty and deter gross negligence, qualities that are essential to the self-reporting system of income tax assessment. I am of the view that the same can be said of the penalties provided for in subsection 163(2) with which we are dealing. One should therefore not look for proof approaching the standard of beyond a reasonable doubt before concluding that the imposition of penalties as provided by subsection 163(2) is justified. Nonetheless, the penalties are meant to capture serious conduct, not ordinary negligence or simple mistakes made by a taxpayer.

[27] It is also well-settled law that gross negligence can include "wilful blindness". The concept of "wilful blindness", well known to the criminal law, was explained by Justice Cory of the Supreme Court of Canada in *Hinchey*, above. 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.

[28] It has been held that the concept of "wilful blindness" is applicable to tax cases and is included in the term "gross negligence" as that term is used in subsection 163(2) of the Act; see *Villeneuve*, above, and *Panini*, above, at paragraph 43.

[29] 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*, above, at paragraph 11; *Bhatti*, above, at paragraph 24; and *McLeod*, above, at paragraph 14).

[30] In *Torres*, above, Justice C. Miller of this Court conducted a very thorough review of the jurisprudence regarding gross negligence penalties under subsection

163(2) of the Act. He summarized the governing principles to be applied 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 . . . 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.

This is certainly not an exhaustive list.

[31] The Appellant is an intelligent, sophisticated and well-educated man. He is an engineering technologist who occupies a position of significant responsibility with his employer, the Bruce Nuclear Generating Station. He understands basic concepts of business organization such as profit and loss. In the past, he prepared his own tax returns using QuickTax and so I have no difficulty concluding that he knows his way around a T1 short form (individual tax return). The Appellant is not so lacking in education, intelligence or life experience as to claim ignorance. Education, experience and intelligence are not factors that could relieve the Appellant of a finding that he made false statements under circumstances amounting to gross negligence.

[32] In the case at bar, the Appellant simply took no interest at all in verifying the accuracy of the contents of his tax return. All the Appellant did was sign his return without even looking at it. The only thing he was interested in was receiving a large refund. Even though he certified by his signature that the information contained in his return was complete and accurate, he chose not to look at his return and therefore he chose not to verify the accuracy of the information contained therein, preferring instead to stick his head in the sand and remain blissfully ignorant. Had the Appellant bothered to take even a cursory look at his return, he would have immediately discovered the blatantly false information contained therein. Such conduct in refusing to inform himself, even in general terms of what was contained in his return, is not only evidence of wilful blindness but is conduct otherwise amounting to gross negligence in my opinion.

[33] The Appellant takes the position that he placed his complete trust and confidence in Mr. Thompson. He argues that he is the innocent victim of his friend and financial advisor whom he had known for four years and who betrayed him. 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*, above, 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. Counsel for the Appellant has also provided other examples of cases where it has been held that a taxpayer ought not to be responsible for gross negligence penalties where the taxpayer honestly relies on a trusted financial advisor, tax preparer, friend or family member (see *Mark*, above, at paragraphs 18 and 19; *Findlay*, above, at paragraph 27; *Hine*, above, at paragraphs 9, 35, 42 and 51 — reliance on spouse; *Udell*, above, at paragraph 44 — reliance on accountant; *Murugesu*, above, at paragraphs 54 and 55 — recent immigrant chose an accountant recommended by members of his community; and *Klotz*, above, at paragraphs 70 and 72 — reliance on financial advisor). Counsel for the Appellant also argues that when a taxpayer honestly but wrongly believes that what the tax preparer has done is right, he cannot be liable for gross negligence penalties. Reliance on a trusted advisor will negate a finding of wilful blindness because a person does not question something that he believes and would not bother to verify something about which he has no doubt (see *Larouche*, above, at paragraphs 25 and 26; *McGhee*, above, at paragraph 27; *Dunleavy*, above, at paragraph 50; and *Carlson*, above, at paragraphs 33 and 36).

[34] However, there is a significant body of jurisprudence to the effect that taxpayers cannot 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. Quite apart from wilful blindness, taxpayers who take no steps whatsoever to verify the completeness and accuracy of the information contained in their returns may thereby face penalties for gross negligence.

[35] In *Gingras v. Canada*, [2000] T.C.J. No. 541 (QL), the appellants contended that they had always acted in good faith and that they believed that their tax preparer was conducting a responsible and reliable business, adding that they had little or no knowledge of tax matters. 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.
>
> 20 The appellants signed returns of income containing false and untruthful information and cannot claim that this was done without their knowledge. They had an obligation to ensure that all the information contained in their returns was truthful. If, as the theory put forward by Ratelle [the tax preparer] goes, every taxpayer is entitled to a total exemption from tax once in his life, which is not the case, this did not allow the appellants to submit false statements in order to exercise the alleged privilege, or justify them in so doing.

[36] Justice Tardif further wrote:

> 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.
>
> 31 With respect to penalties, the burden of proof is on the respondent. It was clearly shown on a preponderance of the evidence adduced that the appellants submitted in their respective returns major false statements which had significant impact on their tax burden. They could not have been unaware that these statements were false. The Court can understand that the taxpayers might have been incapable, inexperienced and incompetent when it came to preparing their income tax returns. However, 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.
>
> [Emphasis added.]

[37] 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.

[38] In *Laplante*, above, the appellant, just as in the case at bar, did not look at his tax return at all before signing. This was held to be gross negligence. 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? 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. 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 added.]

[39] In *Brown v. The Queen*, 2009 TCC 28, Justice Bowie stated:

> 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.]

[40] Of particular relevance is the decision of Justice Bédard in *Gélinas*, above, where he stated:

> 11 In my opinion, the Appellant also committed gross negligence in 2004. I am of the opinion that the Appellant's negligence (based on the fact that he did not check his entire return before his accountant sent it to the Canada Customs and Revenue Agency) was serious enough to justify using the somewhat pejorative epithet "gross". The Appellant's attitude was so cavalier that it translates to a complete indifference in terms of respecting the Act. If the Appellant had examined his income tax return for the 2004 taxation year, he would likely have discovered the false statement contained within (a statement which apparently was made by his accountant) in terms of the size of the amounts of unreported income and other factors analyzed above. The Appellant cannot absolve himself of his responsibility by pointing the finger at his accountant. By attempting to absolve himself of all responsibility with respect to his income tax returns, the Appellant is being negligent by ignoring the responsibilities, duties and obligations imposed by the Act. Also, the Act imposes a minimum obligation to the Appellant to check his income tax return for the 2004 taxation year before his accountant sends it in; in addition, a more than cursory glance would have permitted him, in my opinion to find the false statement that his accountant had made.
>
> [Emphasis added.]

[41] 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 or 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 amounting to gross negligence. This is not much different from the case at hand.

[42] In *Janovsky*, above, 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.
>
> 24 If I am incorrect and the Appellant did not knowingly make the false statement, then I find that he was wilfully blind. If he indeed did not understand the terminology used by FA in his return and if he did not understand how FA calculated his expenses, then he had a duty to ask others aside from FA. In a self-assessing system such as ours, the Appellant had a duty to ensure that his income and expenses were correctly reported. Our system of taxation is both self-reporting and self-assessing and it depends on the honesty and integrity of the taxpayers for its success: *R. v. McKinlay Transport Ltd.*, [1990] 1 SCR 627. The Appellant's cavalier attitude demonstrated such a high degree of negligence of wilful blindness that it qualified as gross negligence: *Chénard v. The Queen*, 2012 TCC 211.
>
> [Emphasis added.]

[43] 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. . . .

[44] Another recent example can be found in the matter of *Atutornu*, above, where the taxpayers simply signed their returns where they were told to sign and 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. Justice Jorré held that gross negligence penalties pursuant to subsection 163(2) were appropriate in the circumstances.

Conclusion

[45] It cannot be disputed 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 losses amounting to more than $308,000. On considering the entirety of the evidence and recent jurisprudence, I come to the conclusion that the Appellant made, participated in, assented to or acquiesced in the making of, a false statement in his return in circumstances of gross negligence. He was content to let Mr. Thompson take care of everything and he did not care to know what was done in completing his tax return. He could not be bothered to inform himself. He simply signed his

return where he was instructed to sign without looking at it. In so doing, he certified that the return was complete and accurate — it was not. He had a duty to exercise care and accuracy in the completion of his return and he failed in this duty, making no effort at all to verify the accuracy and completeness of his return. Had he made even the most minimal effort, he would have quickly and easily discovered the blatantly false information contained in the return. His actions are not only negligent but are grossly negligent. As such, he is properly subject to the penalties imposed on him pursuant to subsection 163(2) of the Act.

[46] 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 21st day of March 2016.

"Rommel G. Masse"

Masse D.J.

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