Citation: 2003TCC206
Date: 20030728
Docket: 2000-3277(IT)I

BETWEEN:

MARTIN BLACKBURN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

AMENDED REASONS FOR JUDGMENT

Tardif, J.T.C.C.

[1] These appeals deal with the June 14, 1999, Notices of Reassessment for the 1995, 1996 and 1997 taxation years.

[2] In issuing the Notices of Reassessment, the Minister of National Revenue ("the Minister") relied on the following assumptions of fact:

[TRANSLATION]

(a) at all relevant times, the appellant operated a transportation, snow removal and farm business;

(b) in addition to farm income, the farming income reported by the appellant for the taxation years at issue included snow removal income and transportation income;

(c) the appellant reported income from farming as follows:

	1995	**1996**	**1997**
Gross income	$383,649	$460,305	$226,408
Net income	$18,038	$35,744	($39,985)

(d) during the taxation years at issue, the appellant operated a garage at La Baie; the return trip from La Baie to the appellant's home at 6961, boulevard Martel, St-Honoré, was approximately 70 kilometres;

(e) the amendments made to the appellant's income from farming for the 1995, 1996 and 1997 taxation years were as follows:

Description	**1997**	**1996**	**1995**
Unreported income	$2,409		
Disallowed expenses	$33,938	$39,599	$21,372
Total	$36,347	$39,599	$21,372
Capital cost allowance (CCA) adjustment	($3,886)	($2,159)	$1,100
Total (see Appendix A)	**$32,460**	**$38,440**	**$22,472**

(f) at all relevant times, the appellant owned, among other things, a 1969 Corvette, a 1979 Pontiac Trans Am and a 1956 Dodge truck; according to the information provided by the Société de l'assurance automobile du Québec (SAAQ), these three vehicles were registered as off-road vehicles;

(g) during the taxation years at issue, the appellant engaged in car racing, known as "drag racing", and claimed farming expenses for some of the vehicles used for that purpose;

(h) some expenses were disallowed as being personal expenses; they were as follows:

Description	**1995**	**1996**	**1997**
Fuel	$316	$455	$223
Maintenance	14,966	13,513	7,744
Supplies	248	686	
Electricity (70%)	1,368	1,494	1,678
Telephone (70%)	761	823	736
Hardware	891	1,525	137
Truck (50%)	3,738	3,738	4,344
Registration	510	981	736
Registration		665	
Insurance		1,633	
Custom work		4,330	450
Custom work		569	
Municipal taxes			1,257

Rental	806		
Administration		92	
Total	**$23,604**	**$30,504**	**$17,305**

(i) the expenses listed in the previous paragraph included:

- expenses related to car racing
- expenses for maintenance of the appellant's home
- expenses for the appellant's home and vehicles, a percentage of which were personal expenses
- expenses for the purchase of a camera, video equipment, lenses and photographs
- expenses for traffic tickets and violations
- expenses for insurance on the appellant's home and motorcycles, etc.
- expenses for meals, etc.;

(j) a few errors were made in the appellant's accounting records for the 1995 taxation year: an amount of $1,615 representing the total Quebec sales tax (QST) claimed as fuel expenses; and an arithmetical error in the amount of $759 in the maintenance expenses item;

(k) during the 1996 taxation year, a maintenance expense in the amount of $9,095 incurred for the installation of a radio system in the appellant's trucks was disallowed as being a capital expense; this amount was added to the class 8 assets on the appellant's CCA schedule;

(l) an amount of $6,032 claimed for the 1997 taxation year as maintenance expenses and an amount of $1,693 claimed for the 1995 taxation year as honorarium expenses were disallowed because no vouchers were submitted to support them;

(m) in claiming as farming expenses personal expenses in the amount of $10,547 for the 1995 taxation year, $22,807 for the 1996 taxation year, and $17,736 for the 1997 taxation year, the appellant knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in the making of a false statement or omission in the federal income tax returns filed for the 1995, 1996 and 1997 taxation years, with the result that the amount of the income tax he would have been required to pay according to the information provided on the federal income tax returns filed for the taxation years at issue was less than the amount of the income tax owing for those taxation years;

(n) since the appellant knowingly made a false statement on his income tax return by claiming personal expenses, in issuing the Notices of Reassessment dated June 14, 1999, the Minister assessed penalties in the amount of $796.30 for the 1995 taxation year, $2,564.77 for the 1996 taxation year, and $748.52 for the 1997 taxation year, under subsection 163(2) of the *Income Tax Act* (hereinafter "the *Act*");

(o) since the appellant filed his income tax return for the 1995 taxation year on August 16, 1996, he did not file his tax return for that taxation year in accordance with the terms and conditions or within the time period set out in subsection 150(1) of the *Act* and is therefore subject to a penalty in the amount of $412.10, computed under subsection 162(1) of the *Act*.

[3] The issues were set out in the Reply to the Notice of Appeal, as follows:

(a) whether the Minister was justified in increasing the appellant's net income from farming by the amounts of $22,472, $38,440 and $32,461 for the 1995, 1996 and 1997 taxation years respectively;

(b) whether the Minister was justified in assessing on the appellant a penalty under subsection 163(2) of the *Income Tax Act* ("the *I.T.A.*"), computed on the basis of the amount of personal expenses the appellant claimed as farming expenses for the 1995, 1996 and 1997 taxation years; and

(c) whether the Minister was justified in assessing on the appellant a late filing penalty in the amount of $412.10 under subsection 162(1) of the *I.T.A.*

[4] The evidence has established that the appellant divided his time between income-generating business activities and two hobbies: drag racing and acquiring collector vehicles.

[5] The appellant's income was derived from farming, forestry, bulk trucking operations and highway snow removal contracts.

[6] The appellant had a passion for mechanics and spent a considerable portion of his time on that pursuit, both in his business activities and in his hobbies.

[7] The appellant personally directed all the activities in his own name. He had set up a somewhat sketchy and makeshift accounting system. He also used the services of a person who looked after his bookkeeping in a more formal manner. The bookkeeper's function was more to perform the work than to act as an advisor or consultant.

[8] The Notices of Assessment were issued on the basis of a painstaking analysis of numerous documents summarizing a great many invoices. The appeals deal mainly with the nature of a number of expenses. Were these expenses personal or were they incurred in order to gain income?

[9] The parties agreed to structure the various items forming the basis of the Notices of Reassessment as follows:

(1) Omitted income
(2) Disallowed fuel
(3) Personal maintenance
(4) Maintenance, no vouchers
(5) Capitalized maintenance
(6) Personal supplies
(7) Personal use of electricity (70 per cent)
(8) Personal use of telephone (70 per cent)
(9) Personal hardware
(10) Disallowed honorariums
(11) Personal use of truck (50 per cent)
(12) Registration
(13) Insurance
(14) Disallowed custom work
(15) Municipal taxes
(16) Rental
(17) Administration
(18) Penalties under subsection **163(2)** of the *I.T.A.*
(19) Penalties under subsection **162(1)** of the *I.T.A.*

[10] The parties made a certain number of admissions.

[11] Thus, the respondent acknowledged that an amount of $2,800, that is, $2,409 before the Goods and Services Tax (G.S.T.) and the Quebec sales tax (Q.S.T.), had to be deducted from the income attributed to the appellant for the 1997 taxation year.

[12] As well, the appellant acknowledged that item 5, in the amount of $9,095 for the purchase of radio transmitters installed in the trucks should indeed be capitalized, in accordance with the way the respondent treated it. The appellant also admitted that items 12, 13 and 15 were essentially personal expenses.

[13] It was simply not possible for the appellant to deny that the Minister was justified in disallowing the items about which the appellant made admissions, since the disallowance of those items was supported by indisputable evidence.

[14] It was possible to question whether the Minister was justified in disallowing the other items, since the appellant's many activities meant that certain disallowed expenses could theoretically have been incurred in the course of his many business operations.

[15] As well, the appellant's evidence consisted essentially in explaining orally that these expenses were incurred in order to gain income.

[16] The evidence adduced by the appellant was based mainly on his testimony and that of witnesses who came to state that the explanations provided by the appellant were plausible. Moreover, counsel for the appellant summarized that position very well in stating, at pages 11 and 12 of his written argument, the following:

> [TRANSLATION]
>
> ...
>
> In this case, the Court will have to take into account the fact that the appellant has specialized knowledge of the maintenance and repair of all sorts of vehicles. There is no need for him to be financially penalized because he installed high quality parts in his machinery in order to obtain better performance. Regardless of the Department's opinion of this way of maintaining machinery, it is a personal choice that is solely the taxpayer's business.
>
> All the witnesses heard who had knowledge of auto mechanics acknowledged that old vehicle parts can be purchased from dealers in what are referred to as high-performance parts.
>
> The Department adduced as Exhibit I-8 excerpts from documents taken from the Internet sites of these dealers. On day two of the

> hearing in November, why did the Department not call representatives of these dealers as witnesses in order to establish that all these parts purchased by the appellant could be used only in racing cars? In our view, on the basis of the testimony of its witnesses, the Department was unable to establish the truth of its hypothesis and to contradict the testimony of the witnesses for the appellant.

[17] The appellant did not appear to understand that the burden of proof was on him and that, in order to discharge that burden, it was not enough to deny the assumptions of fact relied on by the Minister in issuing the Notices of Reassessment.

[18] In this case, the expenses were disallowed after a review and analysis of the relevant vouchers. Denying the soundness of the respondent's claims, the appellant essentially argued that the goods, products and supplies specified on the various invoices had been used in one or another of his business activities and were not personal expenses at all.

[19] After acknowledging that he had made a number of errors and had claimed a number of personal expenses, the disallowance of which, I reiterate, was supported by indisputable evidence, the appellant stated that he used special fuel and high-performance mechanical parts to render operative old machines, some of them from the armed forces. He referred to photos and called witnesses to confirm the various hypotheses he put forth.

[20] The appellant owned a truck, which was obviously indispensable for transporting his drag racing car and his collector vehicles; he stated that he never used the truck for personal purposes, adding that he used only his spouse's small car for his personal travel.

[21] In order for the appellant to achieve partial success, the Court would have had to give some weight to his testimony. I believe, however, that the appellant assumed that this Court would accept implausible explanations and his completely hare-brained hypotheses.

[22] I attach no credibility to the explanations provided or to any of the evidence adduced in support of the appellant's appeals. The appellant assumed that the burden of proof was on the respondent to establish that the Minister was justified in issuing the Notices of Reassessment, whereas the burden of proof was on him.

[23] The appellant could have called as witnesses the persons from which the various expense items resulted. I refer in particular to the sponsor of the drag racing car, the suppliers of high-performance parts, the aircraft fuel dealers, and the suppliers of certain construction materials, for example. The appellant did nothing of the sort, assuming that the burden of proof was on the respondent.

[24] The appellant stated that his collector vehicles had very little kilometrage on them. I must assume that at shows, which are usually the pride of owners of similar vehicles, the cars were transported using a trailer hitched to the small car of the appellant's spouse, while his truck was parked in the garage. Here again, I attach no value to the appellant's testimony that he never made personal use of his truck.

[25] I have noted enough nonsense and ridiculous and trivial explanations to dismiss all of the evidence adduced by the appellant.

Penalties

[26] Unlike the other aspects of these appeals where the burden of proof was on the appellant, that was not the case for the penalties under subsection **163(2)** of the *I.T.A.* where the burden of proof was on the respondent.

[27] On the balance of evidence, it has been established that the appellant, by his own admission, made a number of errors. Granted, in itself an error is not a sufficient ground for assessing penalties if the evidence establishes that the error could be explained or was the result of a situation in which good faith could not be questioned.

[28] In this case, the evidence has established a number of errors, some of which were so obvious that the appellant simply had no choice but to acknowledge them. Concerning certain other expenses claimed, the appellant maintained his claims that these expenses were incurred in order to gain income by providing essentially oral explanations, a number of which in my view were simply implausible.

[29] I refer in particular to the purchase of certain mechanical parts and the use of high-octane aircraft fuel, supposedly to power some of his snow removal vehicles and to clean certain mechanical parts. However, the appellant owned a car that was used in drag races in which the use of this type of fuel is the norm. I therefore have no hesitation in concluding that the explanations provided were not credible and that the appellant deliberately wanted to falsify the nature of the expense.

[30] Assuming that the onus was on the respondent to establish that the appellant's allegations were false, the appellant merely provided vague explanations to state that it was possible to use a special fuel for certain machines and that he chose to boost the performance of old machinery by using high-performance parts.

[31] Unfortunately, things were not that simple. Given the poor quality of the evidence adduced by the appellant, his admission of numerous errors and his stubborn attempts to support the relevance of certain expenses by means of unfounded and completely hare-brained explanations, I find that the respondent has discharged her burden of proof, on the balance of evidence, establishing that the appellant deliberately and knowingly prepared his income tax returns for the 1995, 1996 and 1997 taxation years so as to claim essentially personal expenses in order to reduce his business income.

[32] Such behaviour corresponds to gross negligence and justifies the assessment of penalties. The late-filing penalty has not been disputed and is therefore upheld.

[33] Since the respondent acknowledged that an amount of $2,409 had to be deducted from the appellant's income for the 1997 taxation year, the appeal must be allowed with regard to that amount. The case must be returned to the Canada Customs and Revenue Agency for reassessment for the 1997 taxation year, taking into account a reduction of $2,409 in the appellant's income.

[34] Concerning the other aspects forming the basis of the appeals regarding the 1995 and 1996 taxation years, I confirm that these aspects were justified, and I dismiss the appeals.

[35] The penalties assessed under subsections **163(2)** and **162(1)** of the *I.T.A.* were justified, and consequently, the appeals with respect to the penalties are also dismissed.

Signed at Ottawa, Canada, this 28th day of July 2003.

"Alain Tardif"

J.T.C.C.

Translation certified true

on this 23rd day of June 2004.

Sophie Debbané, Revisor