

Docket: 2005-329(IT)G

BETWEEN:

MOHSEN BOUALLEG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

---

Appeal heard on October 5, 2007, at Quebec City, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

Counsel for the Appellant: Stéphane Harvey

Counsel for the Respondent: Jean Lavigne

---

**JUDGMENT**

The appeal from the assessments under the *Income Tax Act* for the 2000, 2001 and 2002 taxation years is allowed, with costs to the Respondent, and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that the unreported income that was added using the net worth method must be reduced by \$7,000 for each of the 2001 and 2002 taxation years; for the 2000 taxation year, the unreported income that was added is confirmed to be correct.

The penalties are warranted, but must nonetheless be recalculated on the basis of the new amounts determined for the unreported income.

Signed at Ottawa, Canada, this 7th day of May 2008.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 24th day of December 2008.

Erich Klein, Revisor

Citation: 2008TCC215  
Date: 20080507  
Docket: 2005-329(IT)G

BETWEEN:

MOHSEN BOUALLEG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

### **REASONS FOR JUDGMENT**

#### **Tardif J.**

[1] This is an appeal under the *Income Tax Act* ("the Act") relating to the 2000, 2001 and 2002 taxation years. The assessments were made using the net worth method.

[2] The questions in issue are as follows:

(a) Should the Appellant's income for the 2000, 2001 and 2002 taxation years be increased by \$11,330.57 (\$14,330.57 - \$3,000.00), \$35,435.73 and \$33,247.21, respectively, in unreported income computed using the net worth method?

(b) Are the penalties imposed on the Appellant for the 2000, 2001 and 2002 taxation years under subsection 163(2) of the Act warranted in the circumstances?

[3] In making the assessments, assessing the penalties, and confirming them all, for the 2000, 2001 and 2002 taxation years, the Minister of National Revenue ("the Minister") relied on the following assumptions of fact:

[TRANSLATION]

- (a) At all relevant times, the Appellant operated in an equal partnership with another person a taxi business with three cars;
- (b) The Appellant reported low total income during the 2000 (\$13,346.00), 2001 (\$15,384.00) and 2002 (\$12,929.00) taxation years;
- (c) The Appellant's spouse also reported low income during the 2000, 2001 and 2002 taxation years, that income being essentially from part-time employment;
- (d) The internal control of the business operated at all relevant times by the Appellant was inadequate;
- (e) The Appellant had little involvement in the administration of the business;
- (f) The Appellant nonetheless was aware of the revenue generated and expenses incurred in connection with the three taxi vehicles operated by the business;
- (g) In computing his personal income, the Appellant did not report tips in the amount of \$3,500 per year for the 2000, 2001 and 2002 taxation years;
- (h) The Appellant received a gift of \$3,000 from his mother-in-law during the 2000 taxation year that he used to purchase his share of the business;
- (i) The income reported by the Appellant during the 2000, 2001 and 2002 taxation years did not explain the assets he held at all relevant times;
- (j) The Appellant's income did not explain either his cost of living during the 2000, 2001 and 2002 taxation years;
- (k) The audit of the Appellant used the indirect audit method of calculating the difference in net worth for the 2000, 2001 and 2002 taxation years, given the lack of adequate supporting documents; see, as if quoted here in full:
  - Appendix A: "Calculation of difference in net worth – For tax purposes" (re: 2000, 2001 and 2002 taxation years);
- (l) The resulting differences between the previous total income reported by the Appellant for each of the three taxation years 2000, 2001 and 2002 and

the revised total income for those three taxation years, namely \$14,330.57 for 2000, \$35,435.73 for 2001 and \$33,247.21 for 2002, from which differences were deducted, in the audit, additional depreciation amounts of \$1,950.00 ( $\$14,330.57 - \$1,950.00 = \$12,381.00$ ), \$1,670.00 ( $\$35,435.73 - \$1,670.00 = \$33,766.00$ ) and \$1,272.00 ( $\$33,247.00 - \$1,272.00 = \$31,975.00$ ) respectively, were validated by analyzing deposits into the bank accounts belonging to the Appellant and his spouse and by a third-party confirmation of the income earned by the Appellant; see Appendices B to J referred to as if quoted here in full:

- Appendix B: "Personal balance sheet at December 31" for the Appellant (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix C: "Business balance sheet/business's fiscal year at December 31" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix D: "Caisse populaire and Banks" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix E: "List of accounts receivable" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix F: "Summary of capital assets" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix G: "Investments" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix H: "List of accounts payable" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix I: "Loans and Mortgages" (re: 1999, 2000, 2001 and 2002 taxation years);
- Appendix J: "Auditor's Report" (re: 1999, 2000, 2001 and 2002 taxation years).

[4] The facts can be summarized relatively easily. The Appellant and his spouse testified. The Appellant explained that he had worked as a taxi driver in Quebec City for several years.

[5] In 1999, he took several months off and left the country, returning to his country of origin, Tunisia, to visit family and friends.

[6] He said that when he returned to Québec in January 2000 he had absolutely nothing, no assets, other than a \$3,000 gift from his parents.

[7] The Appellant and his spouse said that they live very modestly in a small apartment. When the Appellant returned to Quebec City, he went back to driving a taxi.

[8] In March of that year, one Salim Chouari, who owned about 20 taxi licences, proposed that the Appellant purchase two taxis and the licences needed to operate them in Quebec City.

[9] The documents introduced as Exhibit I-1 (contract of sale signed before M<sup>e</sup> Fecteau on November 10, 2000, Binder I-1, Tab 24, pages 2020 and 2020-1) show rather that the purchase occurred on November 10, 2000, the sale price being \$82,084.69. The parties agreed at that time that they would be equal partners in operating the two taxis.

[10] To finance the purchase, Mr. Chouari introduced the Appellant to a financial institution, which, on the strength of Mr. Chouari's guarantee, advanced the Appellant the money he needed for the transaction.

[11] A little later, on November 28, 2000, the Appellant's partner proposed that they acquire a third licence and a third taxi.

[12] All of the expenses associated with the operation of the three vehicles and the repayment of the loans were paid by the Appellant's partner using money the Appellant's spouse gave him.

[13] The Appellant's involvement and work within the partnership essentially consisted in driving a taxi. He did his work in the same manner as the other drivers. At the end of his shift, he gave his spouse a summary showing the kilometre reading at the beginning and end of his shift.

[14] He kept 40 percent of the receipts as his remuneration; he also kept the amount of his expenses, primarily the cost of gasoline.

[15] This procedure was identical for all of the drivers. The report was accompanied by a statement of the distance driven, so that his spouse could do a

quick check to determine whether the receipts corresponded to a minimum of \$1 per kilometre driven.

[16] The Appellant explained that his involvement in the business was limited to driving a taxi. His spouse and he prepared a brief report that they gave to his partner, Salim Chouari, along with the money.

[17] He did not ask any questions and did not request any report regarding repayment of the loan taken out to purchase the vehicles and taxi licences. He did not check to see whether the payments were being made, he did not seek information and he assumed that everything was being done properly. In other words, the Appellant was increasing his assets without knowing exactly at what pace.

[18] The Appellant's spouse, who was responsible for the very limited management that was being done, checked to make sure that the report was reasonable. When there was a significant amount of cash, a bank deposit was made, and the money was transferred to Salim Chouari.

[19] The Appellant's accounting and management activities did not extend beyond that. The Appellant did not make any accounting entries, nor did he and his wife have access to any books, if such there were, relating to Salim Chouari's management of the partnership's business activities.

[20] In addition to having a very passive role in the management of the partnership he belonged to, the Appellant was informed of nothing and, even more strangely, he did not question anything and requested no reports.

[21] Once the money was transferred, it was administered by Salim Chouari, who looked after having the numerous repairs done; the vehicles were generally old and needed many major repairs.

[22] On that point, the Appellant specified that he did not see the details of the bills or the amounts of money disbursed by his partner; Salim Chouari was also the owner of the repair shop that did all the repairs. As well, the Appellant said that a majority of the expenses were paid in cash, with no supporting documents. Everything was done in cash, including payment of the mechanic's wages.

[23] Salim Chouari looked after everything, and did not report to the Appellant, who said, moreover, that he did not ask for any reports.

[24] The Appellant made several important admissions, however. First, regarding the tips, he acknowledged that he had reported them when he started working as a taxi driver.

[25] Once he became associated with Salim Chouari, the new partnership's accountant, who was chosen by Mr. Chouari, also became his accountant for the purpose of preparing his personal tax return; he said that the accountant told him he did not have to add his tips to his income.

[26] He thereupon stopped reporting his tips, which generally amounted to about 10 percent of total receipts, or \$350 to \$400 per month, that is, more or less \$5,000 per year.

[27] The Appellant acknowledged that he had not reported tips for the years in issue, thereby supporting in part the correctness of the reassessments made by the net worth method.

[28] Second, Salim Chouari on three occasions gave him money representing profits from the operation of the three taxis; there was one \$800 cash payment and two other payments of about \$500, for a total of \$1,800 more or less, and he acknowledged that he had not reported those amounts in his tax returns for the years in issue. He was paid those amounts in cash with no explanation whatsoever; once again, he had blind trust in his partner, Mr. Chouari.

[29] Lastly, the Appellant also tacitly admitted that the payments his partner made on the loans taken out when the vehicles and licences were purchased in his name also constituted unreported income. An examination of the documentary evidence shows a number of facts that, again, support, at least in part, the correctness of the assessments.

[30] At the time of the sale on November 10, 2000, the purchase price was broken down as follows:



**Initial contribution by partners**

Payment to É. Martel	\$ 9,750.00	Initial investment by Mr. Boualleg:	\$3,000
Payment to É. Canuel	\$14,000.00	Initial investment by Mr. Chouari:	<u>\$3,000</u>
Loan - Caisse populaire Desjardins Sillery	<u>\$58,334.69</u>	Total:	<u>\$6,000</u>
<b>Total purchase price:</b>	<u>\$82,084.69</u>		

Total purchase price:	\$82,084.69
Loan - Caisse populaire Desjardins Sillery, assumed:	-\$58,334.69
Partners' investment:	<u>-\$ 6,000.00</u>
Unexplained origin:	<u>\$17,750.00</u>

[31] The Appellant having accepted Salim Chouari's proposal, he and Mr. Chouari also acquired a third vehicle; the Appellant gave no down payment on the acquisition of the third vehicle and the licence needed to operate it. In fact, there were two other transactions, which can be summarized as follows (Exhibit I-1, Tab 24, pages 2020-3, 2020-3 and 2020-4):

**Transactions of November 28, 2000, and February 27, 2001:**

Acquisition of November 28, 2000:	-\$50,000.00
Disposition of February 27, 2001:	<u>\$53,000.00</u>
Profit	<u>\$ 3,000.00</u>
Acquisition of February 27, 2001:	-\$73,000.00
Loan from Caisse populaire Desjardins Sillery (02/02/2001)	<u>\$64,500.00</u>
Difference	<u>-\$ 8,500.00</u>

[32] The transactions referred to in the various contracts bring to light assets that have been neither explained nor justified. First, there is an amount of \$17,750, of which \$8,875 was for the Appellant.

[33] Second, the transactions of November 28, 2000, and February 27, 2001, show that the partners took out a \$64,500 loan for a purchase costing \$73,000. They therefore must have had \$8,500, including, obviously, the \$3,000 profit from the transaction of November 28, 2000.

[34] The loan payments to be made by the two partners, namely the Appellant and Salim Chouari, were made out of operating income; it can be concluded from the figures available that large payments were made, thereby reducing the principal owing and increasing the assets in the patrimony of the partners, including the Appellant.

[35] In addition to those figures, there is the fact that the licences, the value of which obviously increased over the years, also contributed to the growth of the Appellant's patrimony.

[36] These are important items regarding which the evidence allows no conclusions to be drawn based on precise calculations, because the fair market value of the licences has to be established in a particular way.

[37] In the circumstances, I cannot disregard those aspects, which have an effect on the assessments.

[38] Notwithstanding these facts and the very modest income reported by the Appellant, the auditor identified a number of acquisitions that suggest that the Appellant had income that was obviously higher than that reported.

		2000	2001	2002
<b>Additional income used as basis of reassessments</b>		\$11,330.57	\$35,435.73	\$33,247.21
<b>Unreported amounts admitted</b>	<b>Distributed surpluses</b>	(\$600)	(\$600)	(\$600)
	<b>Tips</b>	(\$5,000)	(\$5,000)	(\$5,000)
	<b>Principal payments</b>	(\$961)	(\$11,515)	(\$11,147)
<b>Total admitted</b>		(\$6,561)	(\$17,115)	(\$16,747)
<b>Difference between Minister's assessment and estimate of amount Appellant should normally have paid</b>		<b>\$4,920</b>	<b>\$15,961</b>	<b>\$15,079</b>

[39] The Appellant acted extremely unwisely by placing that much trust in an individual he did not know; he also said he had not made any enquiries to learn the good or bad qualities of the individual with whom he had decided to go into partnership.

[40] Certainly the Appellant did not have a lot to lose, given his financial situation. That is not sufficient, however, to excuse his indifference with regard to the management of the partnership he belonged to; his conduct can be characterized as wilful blindness.

[41] Moreover, Salim Chouari's way of doing things should have made him wary, indeed suspicious (cash payments, advice that tips need not be reported). Some minimal vigilance was called for, because his tax liability was directly affected by how the partnership was managed.

[42] The Appellant was somewhat naive, but I doubt that he was as indifferent and as uninvolved in the business of the partnership as he made out. He could have called Mr. Chouari as a witness to confirm some of his explanations.

[43] Other than making one fruitless attempt, he chose to do nothing to have Mr. Chouari testify. The rules allow coercive measures to be taken when a person refuses to cooperate; in the circumstances, the Appellant cannot invoke to his benefit his unconvincing attempt to have Mr. Chouari testify.

[44] In light of the evidence, the net worth method was definitely the appropriate one to use. Moreover, the validity of that approach was confirmed by the explanations given by the Appellant himself.

[45] The Appellant admitted three different income components that should have been reported and were not. The tips and the payments received from his partner are two items on which the admissions are unequivocal; on the matter of the payments on the principal of the loans for which he was the co-borrower, the Appellant did not deny or dispute the obvious: the enrichment resulting from the portion of the loan payments that went to the principal therefore cannot be disputed.

[46] It seems that the auditor took into account the increase in the value of the licences that occurred over time.

[47] Certainly that brought about enrichment, but it will have to be added to income on the disposition of the property, and not as part of an essentially theoretical exercise. The Appellant presented an incomplete case; he could have put forward certain arguments that might have worked to his advantage. He did not do so, arguing impossibility; he is challenging the correctness of the assessments, but he explicitly admits that he did not report very large amounts of income.

[48] Do the amounts he admits not reporting correspond to the income added using the net worth method? Perhaps not exactly. On the other hand, there is no evidence that would justify completely disregarding the results obtained by using the net worth method to make the reassessments that are under appeal.

[49] The effect of accepting the Appellant's arguments and admissions and disposing of his appeal solely on the basis of those arguments and omissions would be to reward negligence, naivety and a sort of carelessness sustained by indifference or even unacceptable tacit complicity.

[50] Counsel for the Appellant argued that there was no real partnership between the Appellant and Salim Chouari. That argument simply cannot be accepted: it neither explains nor justifies the lack of accounting records. If the Appellant was negligent, unwise or even naive, he has no one to blame but himself.

[51] There is no basis for that argument. Indeed, the existence of a partnership cannot be denied or disputed simply because one of the partners is indifferent as to the ways and means by which his partner operates.

[52] When someone decides to operate a business, whatever the legal form thereof, it implies that the person has the qualifications that are needed to comply with all the rules of the game, particularly in relation to tax matters. If the person does not have those skills or qualifications, it is essential that he or she do what is necessary to get them from outside sources.

[53] Naivety, wilful indifference and failure to take steps to participate in the management of a partnership are not relevant factors on which a finding that no partnership existed can be based.

[54] A partnership that fails to comply with the ordinary rules of operation, or that runs roughshod over the rights of one of the partners, can easily be dissolved at the request of a partner who has been the victim of abusive behaviour.

[55] In this case, the Appellant, out of ignorance, naivety or indifference, tacitly agreed to the cavalier methods of his partner. He therefore cannot benefit from his own negligence and his own carelessness by saying that he should not have to suffer the consequences of his partner's mismanagement.

[56] The Appellant did or undertook absolutely nothing to compel Mr. Chouari to give him reports, or to obtain an accounting, other than once he was reassessed.

[57] On the basis of the evidence submitted, I assess the Appellant's unreported income as follows. Arbitrarily, I admit—but unfortunately there is no reliable formula for determining the appropriate amount—I reduce the income attributed to the Appellant for each of the 2001 and 2002 taxation years by \$7,000; for the 2000 taxation year, I confirm the amounts added to the Appellant's income to be correct.

### Penalty

[58] There is no doubt that the Appellant was negligent and careless. A large part of his woes is undoubtedly the result of his great naivety, although this was likely exaggerated to serve his purposes in the appeal.

[59] I am persuaded that the Appellant understands a lot more than he would like to let on, even though he stated, and reiterated, that his spouse handled everything relating to management of the receipts.

[60] With respect to the unreported tips, the Appellant said he reported them until the accountant for the business, who also became his accountant, told him that he did not have to report them. That explanation is highly suspect. Furthermore, in light of the dispute, he should have taken his enquires a little farther to obtain correct answers regarding how tips are to be treated.

[61] Taxi drivers talk and communicate among themselves, and clearly they must talk about this very important matter, as tips represent a significant part of their disposable income.

[62] The Appellant explained that the usual way of paying a taxi driver is to give him 40 percent of gross receipts. If tips represent 10 percent of revenue, that amounts to 25 percent of taxi drivers' income.

[63] Tips are thus a significant component of a taxi driver's income. It is entirely unreasonable to think that an intelligent person like the Appellant could really have believed that he did not have to report that part of his income. The explanations or excuses offered by the Appellant are not valid and in no way excuse the fact that he failed to report large amounts of income.

[64] The Appellant demonstrated wilful blindness amounting to gross negligence, to the point that the penalties for this aspect of the matter were entirely justified. This is also true in respect of the surpluses in the amounts of \$800, \$500 and \$500 that his partner paid him in cash. There again, the Appellant should have known that this was income that he had to report.

[65] The final point is that the most important component of the amounts added to income using the net worth method is the payments made on the loans taken out to purchase the three taxis and licences.

[66] In that regard, there was obviously an enrichment resulting from the principal payments. The same is true for other disbursements, including the fees paid to the professionals who were retained to prepare the contracts and licence transfer papers. Some of those expenses might have been deductible from the partnership's income. The lack of any accounting records made it impossible to verify and analyze anything.

[67] It was said that the efforts made by the Appellant to have his partner testify produced no results. In that case it would perhaps have been necessary to proceed

by *subpoena duces tecum* or even by order for a warrant for a witness to be arrested.

[68] With regard to penalties, the difference between the amounts reported and the income determined for the purpose of the assessment is a very important, if not decisive, factor in justifying the penalties as appropriate or in refuting the explanations aimed at proving that there was no negligence or gross negligence.

[69] In this case, the differences are very substantial; it is entirely unreasonable to believe that the Appellant did not realize that he was enriched as a result of the payments whose effect was to reduce the principal amount of the debt.

[70] The penalties for the 2000, 2001 and 2002 taxation years are warranted. However, because I have found that the income added will have to be reduced by \$7,000 for each of the 2001 and 2002 taxation years, the penalties will have to be revised to take that change into account.

[71] For all these reasons, the appeal is allowed, with costs to the Respondent, and the matter is referred back to the Minister for reconsideration and reassessment on the basis that the unreported income for the years in issue is as follows:

2000 – unreported income added is confirmed  
2001 – unreported income added is reduced by \$7,000  
2002 – unreported income added is reduced by \$7,000

[72] The penalties are warranted, but will have to be changed to reflect the corrected unreported income amounts. Costs are awarded to the Respondent.

Signed at Ottawa, Canada, this 7th day of May 2008.

"Alain Tardif"

---

Tardif J.

Translation certified true  
on this 24th day of December 2008.

Erich Klein, Revisor



CITATION: 2007TCC215  
COURT FILE NO.: 2005-329(IT)G  
STYLE OF CAUSE: Mohsen Boualleg v. Her Majesty the Queen  
PLACE OF HEARING: Quebec City, Quebec  
DATE OF HEARING: October 5, 2007  
REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif  
DATE OF JUDGMENT: May 7, 2008  
APPEARANCES:

Counsel for the Appellant: Stéphane Harvey

Counsel for the Respondent: Jean Lavigne

COUNSEL OF RECORD:

For the Appellant:

Name: Stéphane Harvey  
Firm: Barakatt Harvey  
City: Quebec City, Quebec

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Ontario