Docket: 2008-3972(IT)G

BETWEEN:

ISABELLE GINGRAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeals heard on October 6, 2010, at Québec, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

Counsel for the Appellant: Louis Sirois

Counsel for the Respondent: Sylvain Ouimet

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* dated October 2, 2008, for the 2001, 2002 and 2003 taxation years are dismissed with costs and the penalties are upheld.

Signed at Ottawa, Canada, this 20th day of September 2011.

"Réal Favreau"

Favreau J.

Translation certified true
on this 29th day of November 2011.

François Brunet, Revisor

Citation: 2011 TCC 439
Date: 20110920
Docket: 2008-3972(IT)G

BETWEEN:

ISABELLE GINGRAS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] These are appeals from reassessments made under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the Act), dated October 2, 2008, in respect of the 2001, 2002 and 2003 taxation years. In making these reassessments, the Minister of National Revenue (the Minister) added to the appellant's income the following amounts:

2001: $32,787.20
2002: $28,062.21
2003: $17,466.00

and imposed penalties under subsection 163(2) of the Act with respect to each of the 2001, 2002 and 2003 taxation years.

[2] In determining the tax payable by the appellant for the 2001, 2002 and 2003 taxation years, the Minister relied on the following facts set out in paragraph 10 of the Reply to the Notice of Appeal:

[TRANSLATION]

> (a) A statement of the appellant's net worth of which a copy is hereby attached in Annex A as forming an integral part;

(b) During the 2001, 2002 and 2003 taxation years, the appellant's family consisted of two adults and two children;

(c) For the 2001, 2002 and 2003 taxation years, the appellant and her spouse reported the following income:

	YEARS		
	2001	**2002**	**2003**
Isabelle Gingras	$7,707	$11,886	$13,083
Donald Audy	($1,734)	$7,825	$24,625
Total income	**$5,973**	**$19,711**	**$37,708**

(d) For the 2001, 2002 and 2003 taxation years, the appellant and her spouse received the following amounts of money:

	YEARS		
	2001	**2002**	**2003**
CCTB & NCBS	$4,551	$5,062	$5,148
Tax reimbursement	$888	$0	$3,020
Total additional funds	**$5,439**	**$5,062**	**$8,168**

(e) During the 2001, 2002 and 2003 taxation years, the appellant and her spouse incurred the following expenses:

	YEARS		
	2001	**2002**	**2003**
Personal expenses	$30,171	$46,853	$52,800
Provincial income tax payments	$0	$287	$0
Joint federal source deductions	$0	$1,378	$2,867
Joint provincial source deductions	$0	$1,480	$3,359
Total expenses	**$30,171**	**$49,998**	**$59,026**

(f) During the 2000, 2001, 2002 and 2003 taxation years, the assets and liabilities reported in the balance sheets of the appellant and her spouse were as follows:

	YEARS			
	2000	**2001**	**2002**	**2003**
Total assets	$67,227	$71,489	$68,306	$71,295
Total liabilities	$129,271	$116,568	$102,359	$96,982
Net worth	**($62,044)**	**($45,079)**	**($34,053)**	**($25,687)**

(g) Following the evolution of the assets and liabilities described in paragraph (f) above, for the 2001, 2002 and 2003 taxation years, the assets of the appellant and her spouse increased by $16,965, $11,026 and $8,366, respectively.

(h) For the 2001, 2002 and 2003 taxation years, the expenses incurred by the appellant and her spouse leading to an increase in their assets required the following amounts:

	YEARS		
	2001	**2002**	**2003**
Total expenses	$30,171	$49,998	$59,026
Increase in assets	$16,965	$11,026	$8,366
Total	**$47,136**	**$61,024**	**$67,392**

(i) During the 2002 taxation year, the appellant and her spouse incurred a loss on personal-use property in the amount of $2,600:

(j) For the 2001, 2002 and 2003 taxation years, the discrepancies between the income and the other amounts of money of which the appellant and her spouse availed themselves and the amounts that should have been paid to cover their expenses and to increase their assets were as follows:

	YEARS		
	2001	**2002**	**2003**
Differential	$35,724	$38,851	$21,516

(k) Following new submissions at the objection stage, for the 2001, 2002 and 2003 taxation years, the discrepancies described in paragraph (j) above were decreased $2,936.80, $10,788.79 and $4,050.00, respectively.

[3] The appellant submitted in her Notice of Appeal that she had reported all of her income during the years in question and that the Minister was not justified in using the net worth method during his audit in view of the clear, simple and sincere explanations she provided with respect to the sources of her income.

[4] Moreover, the appellant relied on the following facts in her Notice of Appeal:

(a) The appellant and her spouse, Donald Audy, benefitted from the financial assistance of their respective parents. The appellant claims that she received approximately $9,000 from her father, Gaston Gingras, over the course of each year in question, and the following amounts from her in-laws, Mr. and Mrs. Audy: $6,500, in 2000, $5,000 in 2001 and $4,500 in 2002;

(b) An amount of $5,800 was added to her income which was a cheque issued to her spouse for work he performed and for which he paid subcontractors, that is, an amount of $3,400 to Dany Awashich and an amount of $1,800 to Daniel Audy;

(c) the appellant's spouse sold personal movable property and tools for about $10,230;

(d) the acquisition cost of a four-wheel vehicle registered to the appellant's spouse's name was added to her income when said vehicle belonged to her spouse and his three brothers who each collectively paid the amount of $2,500;

(e) the auditor did not take into account the assistance provided by her spouse to one of his friends, Richard Morisette, by lending him about $5,500 on his credit card which was subsequently reimbursed to him;

(f) the auditor did not take into account the fact that the appellant and her spouse lived off of money derived from credit cards and the home-equity line of credit.

[5] Following the appellant's submissions at the objection stage, the objections officer requested that the auditor assigned to the file, Chantal Pichette, conduct a supplementary audit. The auditor took into consideration all the submissions provided by the appellant. Her analysis resulted into a decrease of $17,775 in the net worth differential for the three years in question. The points raised in the Notice of Appeal were dealt with as follows:

(a) **gifts from the parents and in-laws**

No amount was considered to be a gift from the family for the year 2001 because no such amount is included in the analysis of receipts by the appellant dated January 25, 2007. The analysis of receipts includes all amounts of money received by the appellant, whether or not they were deposited into the bank accounts.

For 2002, the analysis of receipts shows an amount of $8,000 derived from her parents as a gift. Seeing as an amount of $5,117.71 was considered as being received from the parents (that is, an amount of $6,317.71 considered as being received and not deposited into the bank accounts, decreased by an unreported amount of $1,200 derived from the sale of blueberries), the difference between $8,000 and $5, 117.71, that is, $2,882.29, was considered as an amount received and deposited. Seeing as that amount is already included in the personal expenses, it was subtracted from the adjustments as a gift.

For 2003, an amount of $10,300.43 was treated as a gift from the parents. Nevertheless, seeing as such amount was not deposited into the bank accounts, it is not included in the personal expenses. As a result, such an amount was added to the adjustments as personal expenses.

In order to facilitate understanding, it should be noted that the personal expenses were established by the disbursements from the bank accounts. Therefore, any receipts not deposited into the bank accounts are not included in the personal expenses as they did not go through the bank accounts. As a result, receipts of money not deposited must be included in the personal expenses paid in cash. According to the analysis of receipts by the appellant of January 25, 2007, and according to the analysis of deposits by the auditor, as corroborated by the analysis by the appellant of March 20, 2007, the amounts of money received and not deposited total $8,670.05 for 2001, $6,317.71 for 2002 and $11,750.43 for 2003.

(b) sale of personal movable property and tools for an amount of approximately $10,230

The proceeds from the sale of movable property and tools in 2001 in the amount of $10,230 was considered money not deposited that was used to pay personal expenses. The appellant, according to the auditor, confirmed that such an amount was not deposited and was not included in the analysis of amounts cashed by the appellant of January 25, 2007. Seeing as such an amount was not deposited, it was not included in the disbursements and must therefore be considered as having been used to pay personal expenses in cash.

(c) cheque of $5,800 issued to Donald Audy dated August 17, 2001

The cheque was added to the appellant’s income and the two cheques made payable to the subcontractors totalling $5,200 were subtracted from the personal expenses as disbursements.

(d) the acquisition of a four-wheel vehicle in the name of Donald Audy which he owned with his four brothers

The investment by the three brothers in the amount of $7,500 was considered. The acquisition cost of $8,971,95 initially indicated was subtracted from the appellant's assets and an amount of $2,500 (that is the ¼ of the total purchase price plus associated costs) was added to the assets. The loan contracted from Corporation Financière Household Inc. in the amount of $8,971.95 to finance the purchase price continued to be included in the appellant's liabilities as there was a receipt of $7,500 as consideration. Therefore, no adjustment was made for the loan. However, seeing as a reimbursement of $3,000 was traced, the source of which is unknown, the auditor decreased by $3,000 the receipt of $7,500 which was to be used to reimburse the loan. The balance of the receipt in that respect was brought to $4,500 in 2001 and to zero for 2002 because the loan was reimbursed in full.

(e) loan of $5,500 from Donald Audy to Richard Morisette

The advance to Mr Morisette was considered in the final net worth. It was added to the appellant's assets in 2001 with the balance of a previous advance of $250 totalling $5,750. The amount added to the assets was brought to $3,150.00 in 2002 and to $550 for 2003 to take into account reimbursements of $2,600 made by Mr. Morisette over the course of each of the years 2002 and 2003.

(f) validation of the cost of living

The cost of living was established based on the disbursements and was compared with the analysis of disbursements provided by the appellant. The results of that analysis demonstrated that the cost of living was an accurate reflection of reality.

[6] During her testimony, the auditor explained why it was decided to audit the appellant. Those reasons were the low level of income reported by the appellant and her ability to reimburse her debt. Seeing as the net worth estimate yielded positive results, she therefore decided to proceed with the audit using the net worth method. Faced with the refusal of the appellant and her spouse to collaborate in the establishment of the cost of living for a family of four, that is, two adults and two

children, the auditor had to establish the personal expenses using the cumulative disbursements from the personal bank accounts.

[7] Although the gifts from the appellant's parents and in-laws were taken into account by the auditor, the manner in which they were dealt with was not very favourable to the appellant. Whether or not they went through the bank accounts, the amounts of the gifts were added to the personal expenses and it is because they did not go through the bank accounts that they were included in the adjustments as gifts, i.e. as a non-taxable source of income. If the appellant had collaborated in establishing the cost of living, the gifts could have been dealt with differently and more favourably. The appellant failed to provide evidence making it possible to establish her true cost of living over the course of the period in question. She cannot therefore complain that the Minister used an arbitrary method to determine her cost of living.

[8] The initial audit and the supplementary audit showed that the appellant did not report all of her income. The justification for the discrepancies between the income and the amounts of money of which the appellant and her spouse availed themselves and the amounts paid to cover their expenses and increase their assets was the exclusive responsibility of the appellant. Considering the absence of supporting documents, the appellant was unable to identify the source of the unreported income and establish the non-taxable nature of her income.

[9] In view of these circumstances, one must come to the inevitable conclusion that the false tax return was filed knowingly, or under circumstances amounting to gross negligence. This justifies the imposition of penalties under subsection 163(2) of the Act.

[10] For these reasons, the appeals from the reassessments made under the Act for the 2001, 2002 and 2003 taxation years are dismissed with costs.

Signed at Ottawa, Canada, this 20th day of September 2011.

"Réal Favreau"

Favreau J.

Translation certified true
on this 29th day of November 2011.

François Brunet, Revisor

CITATION:	2011 TCC 439
COURT FILE NO.:	2008-3972(IT)G
STYLE OF CAUSE:	Isabelle Gingras v. Her Majesty The Queen
PLACE OF HEARING:	Quebec, Québec
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REASONS FOR JUDGMENT BY:	The Honourable Justice Réal Favreau
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APPEARANCES:

Counsel for the appellant:	Louis Sirois
Counsel for the Respondent:	Sylvain Ouimet

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