

Docket: 2018-4329(IT)I

BETWEEN:

PIERRE JUNEAU RÉNOVATIONS INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 8, 2019, at Montreal, Quebec

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Agent for the appellant:

Sylvain Huet

Counsel for the respondent:

Julien Dubé-Sénécal

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* for the 2012 and 2013 taxation years is dismissed.

Signed at Kingston, Ontario, this 23rd day of July 2020.

"Rommel G. Masse"

Deputy Judge Masse

Citation: 2020 TCC 54
Date: 20200723
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REASONS FOR JUDGMENT

Deputy Judge Masse

[1] The appellant (or the corporation) was incorporated on June 7, 2010. The corporation's fiscal year ends on December 31. Pierre Juneau is the corporation's sole shareholder. The corporation's business activities consist of providing renovation services. This dispute concerns the 2012 and 2013 taxation years.

[2] When filing its income tax returns for the 2012 and 2013 taxation years, the appellant reported the following amounts:

Table No. 1

INCOME/EXPENSES	2012	2013
Business income	\$489,341	\$131,919
Business expenses	\$489,341	\$179,876
Net business income (net losses)	\$0	(\$47,957)

[3] The Minister of National Revenue (the Minister) made an initial assessment of the appellant on April 25, 2013, for the 2012 taxation year. On March 6, 2014, the Minister made an initial assessment of the appellant for the 2013 taxation year.

[4] In 2016, the Canada Revenue Agency (the Agency) audited the appellant. Following that audit, the Minister issued notices of reassessment on January 17, 2017, against the appellant for the taxation years to make certain adjustments to the income tax returns. On or around February 7, 2017, the appellant served its objection to the reassessments made on January 17, 2017. On October 4, 2018, in response to the objection, the Minister confirmed the assessment dated January 17, 2017, for the 2013 taxation year. On October 3, 2018, the Minister issued a notice of reassessment for the 2012 taxation year. The following table presents the adjustments made in the reassessments.

Table No. 2

INCOME/EXPENSES	2012	2013
Unreported income added	\$17,123	\$20,320
Expenses disallowed (allowed)		
Cost of sales	\$121,312	\$101,813
Legal and accounting fees	\$400	\$5,312
Advertising	\$3,006	(\$21)
Insurance	\$2,106	\$2,804
Meal and entertainment expenses	\$2,313	\$0
Office expenses	\$898	\$0
Rent	\$0	\$898
Office supplies and stationery	\$1,101	(\$75)
Small tools	\$3,788	\$2,580
Telephone and telecommunications	\$1,623	\$1,487
Vehicle expenses	\$20,341	\$7,952
Total expenses disallowed (allowed)	\$156,887	\$122,750
Amounts subject to penalty under 163(2)	\$17,123	\$20,320

Penalty under 163(2)	\$942	\$1,118
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[5] The appellant is appealing those reassessments.

I. Background

[6] I will begin with the respondent's evidence to explain how the Minister arrived at his findings. Given the abysmal state of the appellant's accounting, the Agency had to perform an indirect verification of its income and expenses. This consists of a factual and banking audit to reconcile the appellant's business income and expenses.

[7] Alina Ionela Patrascu is a business intelligence officer who is currently employed by the Agency. She is an experienced accountant by trade. She has 20 years of experience in accounting and taxation. She has worked for the Agency since 2015. She performed the tax audit of the appellant. She prepared a very detailed report, which is before the Court as exhibit I-2. Exhibit I-1 is a book of exhibits that includes all of the working papers she used to prepare her report. Ms. Patrascu described her methodology and the calculations she made during her audit. What follows is a summary of that testimony.

[8] Ms. Patrascu testified that, initially, she had obtained from the appellant only the quarterly reports that Pierre Juneau had prepared by hand in paper format for the GST/QST tax credits, with details regarding income and expenses. The quarterly reports served as the appellant's only books and records. It had no other formal books and records, in either paper or electronic format. Clearly, the appellant's accounting leaves much to be desired. The appellant's books and records were incomplete and inadequate. These quarterly reports are found at tab 27 of exhibit I-1.

[9] Subsequently, Ms. Patrascu obtained and examined the appellant's bank statements, sales invoices and documents provided by the appellant to support its expenses based on the quarterly report for tax purposes.

II. Unreported income

[10] Ms. Patrascu analyzed the bank deposits¹ and accounting records to reconcile the income earned and income reported. The analysis of the bank

¹ The bank statements are found in exhibit I-1, at tab 28 for 2012 and at tab 29 for 2013.

deposits consisted of comparing the total deposits made into the appellant's bank accounts and the income reported. Ms. Patrascu considered the corrections made by the bank, corrections attributable to GST/QST and other adjustments. For example, Mr. Juneau made a loan to the corporation. Ms. Patrascu noted that the total deposits were higher than the total reported sales. She thus identified significant discrepancies during the taxation years.

[11] Ms. Patrascu's methodology and calculations are detailed in a working paper² she prepared. She explains and summarizes her work as follows. She noted unexplained bank deposits that were not identified in the sales, totalling \$65,954 in 2012 and \$68,225 in 2013. Among those unexplained deposits, she found that amounts of \$48,831 and \$48,605 for 2012 and 2013, respectively, corresponded to sales reported by the appellant, but she was unable to identify them in the bank account, possibly because those sales were made in cash. In short, she identified the total bank deposits. Next, she removed the bank deposits associated with the sales. Subsequently, she excluded the other non-taxable deposits. In so doing, she arrived at an amount of bank deposits that was not identified in the sales.

[12] Ms. Patrascu was unable to verify any supporting documentation that she could associate with those unexplained deposits. She concluded that those amounts did not constitute unreported income. Consequently, the discrepancies between these amounts, that is, \$17,123 for 2012 (\$65,954 - \$48,831) and \$20,320 for 2013 (\$68,925 - \$48,605) constituted unreported income.

III. Cost of sales disallowed

[13] The Minister disallowed the amount of \$121,312 for 2012 and the amount of \$101,813 for 2013 that the appellant claimed as business expenses under "cost of sales".

[14] Ms. Patrascu explains that the "cost of sales" consists of two components: 1) the [TRANSLATION] "purchases/cost of construction materials" and 2) expenses for [TRANSLATION] "subcontractors". At the start of the audit, Ms. Patrascu identified significant discrepancies in the reconciliation of these two items, namely that the purchases in the financial statements were greater than the amounts indicated in the supporting documents provided to her. With regard to the subcontractor expenses, the amounts according to the financial statements were

² The working paper is found at tab 21 of exhibit I-1.

less than the amounts in the supporting documents. She explains this as follows in her testimony and in her report.

Purchases/cost of materials³

[15] Ms. Patrascu identified discrepancies of \$212,836 for the 2012 taxation year and of \$100,691 for the 2013 taxation year between the amounts claimed by the appellant and the expenses listed in the quarterly reports provided by the appellant.⁴ She noted that invoices totalling \$14,189 claimed in 2012 were attributable to expenses incurred during the 2010 taxation year. Consequently, those invoices were eliminated. She also identified purchase invoices for which no sales invoice was associated with the addresses where the work was performed. She noted calculation errors, expenses for which the supporting documents are missing and invoices for which the buyer is someone other than the appellant. However, with regard to the latter invoices, she considered the project indicated on the purchase invoice and allowed the associated expense if the project was related to the sale. She disallowed only expenses for which the buyer was not the appellant and no project (work address) was indicated on the invoices. She found that it was impossible to determine whether those expenses had been incurred for the purpose of earning business income.

[16] In summary, she found that those expenses had not been incurred by the corporation for two reasons: 1) those expenses were not in the records, and 2) the appellant provided no supporting documents for those expenses.

[17] The auditor also disallowed amounts of \$20,460 and \$6,009 for 2012 and 2013, respectively, because the appellant provided no supporting documents for those expenses. In summary, Ms. Patrascu concluded that the amounts of \$233,296 (\$212,836 + \$20,460) and \$106,700 (\$100,691 + \$6,009) claimed by the appellant for the 2012 and 2013 taxation years, respectively, as business expenses for [TRANSLATION] "purchases/cost of materials" had not been incurred by the appellant as part of its business activities. Consequently, those expenses were disallowed.

³ The methodology and calculations for the item [TRANSLATION] "purchases/cost of materials" are detailed in Ms. Patrascu's working paper at tab 2 of exhibit I-1.

⁴ See exhibit I-1, tab 27.

Subcontracts⁵

[18] Ms. Patrascu identified certain issues when analyzing the [TRANSLATION] "subcontracts" item. The appellant's largest subcontractor was Robert Rousseau rénovation enr. The total of the invoices for that subcontractor was \$263,410 in 2012 and \$33,300 in 2013. However, not all of those payments were identified. The invoices are not accompanied by specifications or any other details, and some of them do not specify the work address. In addition, Westin Hotels, the largest client in 2012, reported that it was overcharged in connection with the subcontractor invoices. Some subcontractors issued invoices in the name of the shareholder, Mr. Juneau. Moreover, the address of the work was missing on certain invoices. As a result, it was impossible to determine whether the expense had been incurred for business purposes. Invoices for which the buyer was not the corporation, but rather the largest subcontractor, Robert Rousseau rénovation enr., were also found. The payments for those invoices could not be identified. It was impossible to determine whether the respective expenses had actually been incurred by the corporation. In the absence of details on the invoices from Robert Rousseau rénovation enr., she was unable to ascertain that the expenses in question had not been claimed twice. There were also other invoices for which the work address was not identified in the sales. She therefore considered the associated expense to be non-deductible because it was not incurred for the purpose of earning income.

[19] In examining the only record provided by the appellant, the quarterly reports, Ms. Patrascu noted that the amounts of the expenses for subcontractors listed by the appellant in its record were greater than those claimed in its income tax returns. She identified negative discrepancies of \$184,435 for 2012 and of \$87,687 for 2013 between the amounts claimed and the expenses listed in the quarterly reports provided by the appellant. However, among the amounts that appear only in the appellant's record, amounts of \$73,350 and \$82,800 were disallowed for the 2012 and 2013 taxation years, respectively, because the appellant provided no supporting documents.

[20] In making the necessary calculations, the auditor allowed additional amounts of \$111,085 (\$184,435 - \$73,350) and \$4,887 (\$87,687 - \$82,800) to the appellant for the 2012 and 2013 taxation years, respectively, as business expenses for [TRANSLATION] "subcontracts".

⁵ The methodology and calculations for the item [TRANSLATION] "subcontracts" are detailed in Ms. Patrascu's working paper at tab 19 of exhibit I-1.

[21] Consequently, the following adjustments were made:

Cost of sales = purchases/cost of materials + subcontracts

i. For 2012: $\$233,296 + (-\$111,085) = \$122,211^6$

ii. For 2013: $\$106,700 + (-\$4,887) = \$101,813$

Other expenses disallowed

[22] Ms. Patrascu disallowed a number of small amounts the appellant claimed as business expenses under various items. I made a list of those expenses in Table No. 3, indicating the working papers in exhibit I-1 that Ms. Patrascu prepared for each of the disallowed expenses.

Table No. 3

	2012	2013	Working papers, exhibit I-1
Legal and accounting fees	\$400	\$5,312	Tab 13
Advertising	\$3,006	(\$21)	Tab 17
Insurance	\$2,106	\$2,804	Tab 6
Meal and entertainment expenses	\$2,313	---	Tab 11
Office expenses	\$898	---	Tab 10
Rent	---	\$898	Tab 14
Office supplies and stationery	\$1,101	(\$75)	Tab 15
Small tools	\$3,788	\$2,580	Tab 16
Telephone and	\$1,623	\$1,487	Tab 20

⁶ My calculation differs from that of Ms. Patrascu by only \$1. Note that following the appellant's objection for the 2012 taxation year, an additional amount of \$900 was allowed to the appellant as business expenses for "cost of sales". This explains the discrepancy between the amount of \$122,212 calculated by Ms. Patrascu and the amount of \$121,312 that the Minister disallowed.

telecommunications			
Vehicle expenses	\$20,341	\$5,925	Tab 12, page 5

[23] It is the taxpayer's responsibility to keep adequate books and records and to retain all supporting documentation for the expenses claimed. The appellant filed no supporting documentation to confirm the validity of the expenses claimed. Those expenses were disallowed because the appellant provided no supporting documentation for them. Some of those expenses were disallowed because they could not be found in the record where the appellant supposedly tracked its expenses. In the absence of supporting documentation to prove that the appellant did incur those expenses for the purpose of earning business income, those expenses are disallowed. Nevertheless, Ms. Patrascu allowed the appellant a reasonable sum for vehicle expenses despite the fact that it filed no kilometrage record or invoices for gas, oil, registrations, insurance, repairs, etc.

[24] Pierre Juneau, the appellant's sole shareholder, testified. What I note from his testimony can be summarized as follows.

[25] Mr. Juneau testified that he and Robert Rousseau were the best of friends for many years. He considered Mr. Rousseau to be like a member of his family. He even let Mr. Rousseau stay at his home when he was having relationship problems. He had worked with Mr. Rousseau in construction for about 15 years.

[26] Mr. Juneau testified that Mr. Rousseau had influential people in his network of contacts. In 2012, the Westin Hotel in downtown Montreal was severely damaged by flooding. As a result, the hotel needed to undertake major repair and renovation projects at a cost of hundreds of thousands of dollars. Mr. Rousseau, through all his contacts, managed to negotiate a large contract for the hotel's renovations and repairs. However, Mr. Rousseau did not have a contractor's permit, so he could not accept or be awarded a contract in his name. Mr. Juneau did not explain in his testimony why Mr. Rousseau did not have the necessary permits. Mr. Rousseau therefore enlisted Mr. Juneau, because the appellant had the necessary permits to carry out the Westin project. Thus, Mr. Rousseau and Mr. Juneau agreed that the appellant would accept the contract and would act as the primary contractor for the project. Mr. Rousseau would be its subcontractor. The appellant did in fact work on various phases of the contract, but, according to Mr. Juneau, the appellant acted primarily as an intermediary between the Westin Hotel and Mr. Rousseau.

[27] The appellant issued invoices to the Westin Hotel for the work performed at the hotel. Subsequently, Mr. Rousseau would submit invoices to the appellant for the work he had done as a subcontractor. Mr. Juneau explains that Mr. Rousseau did not have a bank account and therefore could not cash cheques. Therefore, Mr. Juneau paid Mr. Rousseau in cash. To do this, Mr. Juneau would write cheques from the appellant's bank account payable as "cash". Next, he would cash those cheques and pay the cash directly to Mr. Rousseau. Mr. Juneau testified that he would pay Mr. Rousseau small amounts as advances on the contracts, and once the contracts were completed, he would pay the balance of what he owed him. Sometimes those amounts were large. In his testimony, Mr. Juneau does not explain why Mr. Rousseau, an experienced businessman and contractor, did not have a bank account. Furthermore, Mr. Rousseau did not testify to explain the unusual situation of a contractor who does not have a bank account. As for me, I cannot conceive of how an entrepreneur can conduct business activities representing hundreds of thousands of dollars completely in cash and without having a bank account.

[28] Mr. Juneau refers to the statement for the corporation's bank account for 2012 and 2013. Exhibit A-3⁷ consists of copies of certain cheques drawn from the appellant's bank account for 2012.

[29] According to Mr. Juneau, the following table presents the cheques that represent either advances or final contract payments made to Mr. Rousseau in consideration for the work he performed for the appellant as a subcontractor:

Table No. 4

Cheque	Date	Payable to	Amount	Memo
172	February 2, 2012	Cash	\$1,500	Paid to Rousseau
173	March 8, 2012	Cash	\$5,000	Paid to Rousseau
176	April 3, 2012	Cash	\$1,500	Paid to Rousseau
181	May 3, 2012	Cash	\$5,238.47	Paid to Rousseau
182	May 4, 2012	Cash	\$1,500	Paid to Rousseau

⁷ See also tab 28 of exhibit I-1.

184	May 14, 2012	Marcel Desroches	\$1,060	Payment of Rousseau's rent
190	June 4, 2012	Cash	\$1,500	Paid to Rousseau
197	June 29, 2012	Robert Ayotte	\$24,000	Payment for land purchase by Rousseau
203	July 6, 2012	Cash	\$1,000	Paid to Rousseau
201	July 5, 2012	Robert Rousseau	\$300	Deposited into the account of Entreprises Michaud
200	July 4, 2012	Robert Rousseau	\$200	Deposited into the account of Entreprises Michaud
202	July 6, 2012	Richard Rousseau	\$13,530.84	Balance of contracts paid to Robert Rousseau's brother
198	June 29, 2012	Saint-Donat Marine	\$3,980	Payment for the purchase of a watercraft for Rousseau
224	August 7, 2012	Marcel Desroches	\$1,100	Payment of Rousseau's rent
223	August 7, 2012	Plomberie Westmount	\$1,850	Plumbing repair at the premises leased by Rousseau
236	September 15, 2012	Cash	\$2,450	Paid to Rousseau as an advance
235	September 14, 2012	Richard Rousseau	\$22,995	Payment of contract balance
250	September 5, 2012	Cash	\$3,000	Paid to Rousseau as an advance
252	October 7, 2012	Pierre Juneau	\$20,000	Payment of a loan
254	October 19, 2012	Cash	\$3,000	Paid to Rousseau as an advance
260	November 2, 2012	9261-8479 Québec inc.	\$6,668.55	Payment to Robert Rousseau's corporation

[30] In summary, these cheques total approximately \$124,000. The cheque payable to Mr. Juneau in the amount of \$20,000 represents the repayment of a sum

of money that Mr. Juneau had loaned to the corporation. Mr. Juneau states that the rest of the cheques were all issued to Mr. Rousseau or on Mr. Rousseau's behalf for services Mr. Rousseau provided to the appellant as a subcontractor. The total of the cheques payable as "cash" is approximately \$25,700. I note that all of the cheques payable as "cash" indicate no reason why they were given to Mr. Rousseau. There is no documentary evidence associating those cheques with invoices or subcontracts. There are no memos written on the cheques, nor are there any receipts, contracts, invoices, letters, memoranda or corroboration from Mr. Rousseau or other witnesses.

[31] According to Mr. Juneau, the cheques payable to Marcel Desroches were for Mr. Rousseau's rent. The cheque payable to Robert Ayotte corresponds to the purchase of land for Mr. Rousseau. The cheque payable to Saint-Donat Marine corresponds to the purchase of a watercraft for Mr. Rousseau. Mr. Juneau submits that these amounts were paid on Mr. Rousseau's behalf in consideration for services Mr. Rousseau rendered as a subcontractor. Yet again, the appellant produced no supporting documents for that submission, and Mr. Rousseau did not testify to explain why the appellant might have paid for his rent, purchase of land and purchase of a watercraft. There is no documentary evidence associating those cheques with any invoices or subcontracts. The documentary evidence needed to make the connection is non-existent. The cheques bearing numbers 202 and 235 payable to Richard Rousseau, Robert's brother, are supposedly to pay the balance owing on a subcontract. Ms. Patrascu allowed the appellant those amounts as business expenses.

[32] The same exercise was performed for 2013. The table below provides a summary.

Table No. 5

Cheque	Date	Payable to	Amount	Memo
288	January 17, 2013	9261-8429 Québec inc.	\$75,324.18	Paid to Rousseau's corporation
289	January 17, 2013	9261-8429 Québec inc.	\$53,358.25	Paid to Rousseau's corporation
312	June 20, 2013	9261-8429 Québec inc.	\$25,989.79	Paid to Rousseau's corporation

330	October 18, 2013	Sylvie Ménard	\$24,761.86	Work performed by Rousseau at the home of friends and paid by insurance. R. could not take the contract.
337	November 6, 2013	Benoît Beauséjour	\$6,750	Work performed by Rousseau on behalf of the corporation

[33] According to Mr. Juneau, the cheques bearing numbers 288, 289 and 312 were paid to Mr. Rousseau's corporation. These are large amounts that, according to Mr. Juneau, represent payments for subcontracts for the work performed at the Westin Hotel.

[34] Mr. Juneau explains that in order to provide services to Mr. Rousseau's friends, Mr. Juneau cashed cheques for certain insurance files so that Mr. Rousseau's friends could obtain more money from their insurer. Mr. Juneau's business did not perform work; therefore, cheques were issued to Mr. Rousseau's friends to pay them the amounts received from the insurance companies. That is the situation for cheque number 330 in the amount of \$24,761.86 payable to Sylvie Ménard and cheque number 337 in the amount of \$6,750 payable to Benoît Beauséjour. However, Mr. Juneau filed no documentation, such as letters from the insurance companies, cheque stubs, insurance claims or invoices or contracts to confirm that he had received those amounts from the insurance companies. Furthermore, neither Robert Rousseau, nor Sylvie Ménard, nor Benoît Beauséjour testified to confirm those statements. In all honesty, I have great difficulty understanding Mr. Juneau's explanation.

[35] With regard to the cheques bearing numbers 202, 224, 235, 260, 288, 289 and 312, Ms. Patrascu already examined this issue, and nearly all of those amounts were already allowed to the appellant.⁸

[36] Mr. Juneau produced exhibits A-6 and A-7 for the years 2012 and 2013, respectively. Those two exhibits consist of bundles of invoices. Mr. Juneau tells us that all those invoices were paid. However, those invoices are not associated with any payments, either in cash or by cheque. Ms. Patrascu, in her report and working

⁸ See exhibit I-1, tab 19, pages 3 to 13.

papers, already considered those invoices and disallowed them for the reasons she already explained.⁹

[37] On cross-examination, Mr. Juneau told us that he and Mr. Rousseau would keep rough accounting between them, but would discard it once the work was completed. Therefore, he retained no documents depicting the accounting he and Mr. Rousseau kept.

[38] With regard to the other disallowed expenses, such as vehicle expenses, the appellant kept no invoices or other supporting documents for those expenses. Mr. Juneau does not know what happened to the expense invoices. The appellant has the burden of proving the validity of the claimed expenses. Without supporting documentation, it is impossible to justify those expenses. The claimed sums, such as for vehicle expenses, are large: \$20,341 in 2012 and \$7,952 in 2013. However, no vehicle was registered in the appellant's name in 2012, only in 2013. Mr. Juneau submits that all of the expenses claimed are attributable to vehicle expenses and were incurred for the purpose of earning income. The appellant provided no documents or records to support those expenses. Nevertheless, Ms. Patrascu allowed an estimated amount of vehicle expenses. Her assumptions and calculations are detailed in her report and working papers.¹⁰ In my opinion, Ms. Patrascu's calculations are reasonable.

IV. Analysis

[39] I was very impressed with Ms. Patrascu. I consider her testimony to be truthful and reliable. She did an extraordinary and comprehensive job, considering that she received very little documentation from the appellant and was required to obtain its bank account statements herself. She was required to perform an indirect verification of the income and expenses because the appellant neglected to keep records and books of account in order to calculate the amount of taxes payable. The appellant's recordkeeping was abysmal. Its accounting is practically non-existent. Nevertheless, Ms. Patrascu's work is efficient, complete, detailed and methodical. Ms. Patrascu acted fairly and equitably toward the appellant. She allowed expenses to the appellant when she was satisfied that those expenses were valid, and disallowed expenses when she considered the supporting documentation

⁹ See exhibit A-5, which is the working paper prepared prior to the appellant's submissions and exhibit I-1, tab 12, which is the working paper revised following the appellant's submissions.

¹⁰ See exhibits I-1 and I-2.

to be inadequate. I place a great deal of credibility on Ms. Patrascu's testimony and report.

[40] Conversely, Mr. Juneau's testimony is problematic. His testimony is incomplete and lacks corroborative evidence. My analysis of his testimony has four components:

- a. The burden of proof;
- b. The obligation to retain all relevant documents;
- c. The absence of significant corroborative witnesses;
- d. The business transactions in cash.

The burden of proof

[41] *Hickman Motors Ltd. v. Canada*, [1997] 2 S.C.R. 336 teaches that the Minister relies on assumptions to make assessments and that the taxpayer has the initial burden of demolishing the Minister's assumptions. The taxpayer discharges this burden upon presenting at least a *prima facie* case refuting the accuracy of those assumptions. A *prima facie* case constitutes evidence sufficient to establish a fact until the contrary is proved. In *Stewart v. M.N.R.*, [2000] T.C.J. No. 53, Judge Cain explains that "[a] *prima facie* case is one supported by evidence which raises such a degree of probability in its favour that it must be accepted if believed by the Court unless it is rebutted or the contrary is proved." Furthermore, in this regard, the Federal Court of Appeal clarified at paragraph 20 of *Orly Automobiles Inc. v. Canada*, 2005 FCA 425, that "the burden of proof put on the taxpayer is not to be lightly, capriciously or casually shifted" considering that "[i]t is the taxpayer's business". The Court also stated that it is the taxpayer who "knows how and why it is run in a particular fashion rather than in some other ways . . . [and] has information within his reach and under his control." Therefore, it is for the taxpayer to give testimony under oath or affirmation as well as evidence in support of his statements.

[42] The respondent argues that the appellant did not discharge its burden of proof. I agree. The appellant has the onus of demonstrating through reliable evidence that the Minister's assumptions of fact and presumptions are erroneous and that the appellant did indeed incur all of the claimed expenses. The appellant did not succeed in doing that. It provided no evidence whatsoever aside from

Mr. Juneau's oral testimony. Oral evidence of the accounting without reference to all the relevant documents that the appellant was required to retain has little probative value.

The obligation to retain all relevant documents

[43] In a self-assessment system like the one we have in Canada, it is absolutely essential that taxpayers keep books and records and supporting documentation to verify the nature of the expenses claimed.

[44] Keeping proper books and records is very important. Subsection 230(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), (the Act) stipulates the following:

230 (1) Every person carrying on business and every person who is required, by or pursuant to this Act, to pay or collect taxes or other amounts shall keep records and books of account (including an annual inventory kept in prescribed manner) at the person's place of business or residence in Canada or at such other place as may be designated by the Minister, in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been deducted, withheld or collected to be determined.

[45] With regard to vehicle expenses, Justice Sarchuk stated the following in *Watts v. The Queen*, 2005 TCC 651:

[8] I do not believe that it is a particularly onerous task for a person claiming motor vehicle expenses or employment expenses to keep a record of his business trips, the mileage travelled, separate receipts and/or a logbook. The relevant sections of the *Income Tax Act* (the Act) are precise and set out a formula to be followed in order to claim such expense. And, quite frankly, when this is not done, it is obviously difficult for a taxpayer to recall how many miles he drove on business, how many times the car was used for other matters, and to provide a ratio to the Court that has at least some foundation. This was not done and the evidence before me, even if I were to take a relaxed or liberal view, does not permit me to find in the Appellant's favour. The Appellant's statement that the only way he could respond with respect to the use of the vehicle was "to give you my word that is what it was spent on. I don't have any documentation to prove that". That is not enough.

[9] With respect to the absence of documentary support for an Appellant's case, this Court has referred, on a number of occasions, to subsection 230(1) of the Act, which states:

230(1) Every person carrying on business and every person who is required, by or pursuant to this *Act*, to pay or collect taxes or other amounts shall keep records and books of account . . . in such form and containing such information as will enable the taxes payable under this *Act* . . . to be determined.

Failure to comply with the foregoing does not of itself result in the dismissal of an appeal, but it could interfere with an Appellant's ability to discharge the burden of proof on him, i.e. showing that on a balance of probability, the reassessment is in error. This is particularly so when it comes to motor vehicle expenses, since the *Act* has a number of provisions which deal with different kinds of uses, what is necessary, what is not necessary The sections are there and the obligation of the taxpayer is made clear therein. If the taxpayer chooses not to comply with subsection 230(1) of the *Act* and subsequently, relying solely on his recollection as to how much the car was used for business purposes, that simply will not wash. It never has washed and that is not going to change. If a taxpayer does not pay attention to the requirements set out in the *Act*, he will find himself in the position that Mr. Watts is in today. The only conclusion that can be reached is that the evidence with respect to both of the two issues is far from adequate and does not establish the Appellant's right to deductions as claimed.

[Emphasis added.]

[46] Documentation plays a very important role when it comes to challenging an assessment made through an indirect verification method. It is sometimes sufficient to be in possession of records or other documents that provide a credible and consistent presentation supporting the merit of the appellant's claims. It is therefore difficult, and often impossible, for a taxpayer to discharge the burden of proof in the absence of documents, such as records and supporting evidence. In this case, Mr. Juneau tried to discharge the burden of proof by relying primarily on his testimony. Although he mentioned Robert Rousseau, Mr. Rousseau did not testify with regard to a very important aspect of the evidence. In this case, the appellant made no effort to retain the supporting documentation to prove the business income and expenses it is claiming. Without corroborative supporting documentation, it is difficult, if not impossible, to rely on Mr. Juneau's oral testimony, especially with regard to events that occurred six or seven years ago.

The absence of significant corroborative witnesses

[47] Pierre Juneau and Robert Rousseau were very good friends for around 20 years. Robert Rousseau's testimony is very important and could corroborate Mr. Juneau's testimony to the effect that Mr. Rousseau was paid in cash for the work he had done and that the appellant paid his rent, purchased land on his behalf

and bought him a watercraft in consideration for services provided as a subcontractor. However, Mr. Rousseau did not testify. The appellant's explanation for this is that Mr. Rousseau could not be found. However, there is a lack of evidence of the appellant's efforts to track Mr. Rousseau down. Considering that the appellant's agent, Sylvain Huet, was also Mr. Rousseau's accountant for many years, it is difficult to accept that Mr. Rousseau truly could not be contacted. Moreover, there are other witnesses who could have explained and corroborated Mr. Juneau's testimony with regard to the rent payments, the purchase of land and a watercraft and the insurance contracts for the repairs made at the home of Mr. Rousseau's friends. All of those payments are certainly unusual and, *prima facie*, do not appear to have been incurred for the purpose of earning income. Additional explanations and evidence are needed for the Court to be able to accept this type of payment as having been incurred for the purpose of earning income. The Court may draw a negative inference from the absence of Robert Rousseau and other witnesses at the hearing. Judge McArthur stated the following in this regard at paragraph 27 of *Schafer v. The Queen*, No. 95-1730(GST)G, November 16, 1998:

27. There is a well-recognized rule that the failure of a party or a witness to give evidence, which was in the power of the party or witness to give and by which the facts might have been elucidated, justifies a court in drawing the inference that the evidence of the party or witness would have been unfavourable to the party to whom the failure was attributed. . . .

[48] I therefore infer that Robert Rousseau's testimony would have been unfavourable to the appellant.

The business transactions in cash

[49] The Court ruled as follows in *Garage Gilles Gingras v. The Queen*, 2010 TCC 343:

[74] Using cash is legal and legitimate, but it does frankly raise scepticism, being a common practice in work under the table, tax avoidance, etc. Cash leaves no or so few traces that a plausible explanation can always be given depending on the context.

[75] Cash-basis accounting is not illegal and does not necessarily indicate tax avoidance. There may be several reasons for engaging in this practice, including practicality, efficiency and advantages such as discounts, given that cash transactions do not entail transaction fees, unlike credit card or cheque transactions, which often call for delays or fees.

[76] Nevertheless, it may be a means of avoiding tax obligations, be it income or sales tax.

[77] During a tax audit, this practice may raise certain questions requiring the taxpayer concerned to provide explanations that are clear, precise, consistent and credible, failing which these explanations may be rejected or omitted from the analysis. Moreover, answers that are unsupported by documentary evidence may be deemed to be less reliable, if not questionable.

[78] In other words, it would require a prodigious memory and explanations that are not only clear and consistent but also reasonable and credible. The passage of time and its effects on one's memory cannot be relied on as a valid excuse. . . .

[79] In light of this reality, any taxpayer who routinely makes cash transactions should be cautious and careful.

[Emphasis added.]

[50] It is not disputed that the use of cash generally leaves fewer traces. When operating a business, it is the taxpayer's responsibility to keep appropriate books and records. This is an obligation imposed by the Act: *Succession Ronald McCullough v. The Queen*, 2003 TCC 268 at paragraph 3. In this case, there are no books, no records and no supporting documentation.

[51] The appellant has not satisfied me through evidence and explanations that are clear, consistent, reasonable and credible that the cheques payable as "cash" were associated with the subcontracts.

Penalties for gross negligence

[52] The Minister assessed penalties for gross negligence against the appellant in the amounts of \$942 and \$1,118 for the 2012 and 2013 taxation years, respectively, for unreported income, pursuant to subsections 163(2) and (3) of the Act, which read 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 . . . filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty . . .

163(3) Where, in an appeal under this Act, a penalty assessed by the Minister under this section or section 163.2 is in issue, the burden of establishing the facts justifying the assessment of the penalty is on the Minister.

[53] In *Venne v. The Queen*, [1984] F.C.J. No. 314 (QL) (F.C.T.D.), Judge Strayer explains the notion of "gross negligence" at page 10:

. . . "Gross negligence" must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not

[54] In my view, the appellant demonstrated indifference as to whether the Act was complied with or not and neglected to perform its duties and responsibilities under the Act. It demonstrated greater neglect than simply a failure to use reasonable care, to a degree that is tantamount to gross negligence. I note the following factors as evidence of gross negligence:

- a. The corporation's books and records were completely inadequate. The only record that the appellant provided to the auditor is vague and clearly incomplete with regard to income. The accounting system was rudimentary and practically non-existent.
- b. Mr. Juneau admitted, during his testimony, that he did not retain records or supporting documentation. In fact, he does not know what happened to those documents. In this case, the appellant did not have any appropriate accounting system in place and made no effort to ensure that it complied with the requirement pursuant to the Act to report all of its income.
- c. The amounts of unreported income are large, namely \$17,123 for 2012 and \$20,320 for 2013.
- d. The omissions were repeated over two consecutive years.
- e. Pierre Juneau knew or should have known that the appellant's income was underestimated. He could not plead ignorance, because he was the appellant's [TRANSLATION] "jack of all trades." He controlled not only the appellant's day-to-day operations, but also all of the corporation's banking and financial transactions.

[55] By failing to report all of its income and neglecting to keep records that would have enabled it to report its income properly, the appellant demonstrated indifference as to whether the Act was complied with or not that is tantamount to gross negligence. Consequently, I conclude that the respondent has discharged the burden of justifying the assessment of the penalty for gross negligence.

V. Conclusion

[56] For all of these reasons, the appeal is dismissed.

Signed at Kingston, Ontario, this 23rd day of July 2020.

"Rommel G. Masse"

Deputy Judge Masse

CITATION: 2020 TCC 54

COURT FILE NO.: 2018-4329(IT)I

STYLE OF CAUSE: PIERRE JUNEAU RÉNOVATIONS INC.
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 8, 2019

REASONS FOR JUDGMENT BY: The Honourable Rommel G. Masse, Deputy
Judge

DATE OF JUDGMENT: July 23, 2020

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