

Docket: 2018-3624(GST)I

BETWEEN:

HOWARD J. NEWHOOK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 22, 2020 at Lindsay, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the Appellant: Sharon Albers

Counsel for the Respondent: Meaghan hadeo

JUDGMENT

The appeal from the assessment numbered 4288950 made under the *Excise Tax Act* is dismissed, without costs, in accordance with the attached Reasons for Judgment.

Signed at Kingston, Ontario, this 29th day of January 2021.

“Rommel G. Masse”

Masse D.J.

Citation: 2021 TCC 1
Date: 20210129
Docket: 2018-3624(GST)I

BETWEEN:

HOWARD J. NEWHOOK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

[1] The Appellant was the sole director and officer of 1121768 Ontario Ltd. (the “original debtor”), that carried on business under the name of SAMM Construction Services (“SAMM”). On March 22nd, 2017, the Appellant was assessed for “Goods and Services Tax/Harmonized Sales Tax” (“GST/HST”) in the total amount of \$29,075.41 pursuant to subsection 323(1) of the *Excise Tax Act*, R.S.C. 1985 c. E-15 (the “ETA”), in relation to the periods set out in **Schedule “A”** appended hereto. The Appellant filed a Notice of Objection dated June 15, 2017. On June 26, 2018, the assessment was confirmed by way of Notice of Confirmation. Hence, the appeal to this Court.

Factual Context

Background

[2] Howard J. Newhook is 64 years of age and is currently in receipt of a disability pension. He completed high school but did not go on to university. He got into the construction business immediately after finishing school and his career in construction has spanned about 47 years. In the past, he caused several companies to be incorporated, all involved in the construction industry. He states that he was the sole director/shareholder of perhaps as many as four or five corporations throughout his career. He has never taken any accounting courses and he has no experience or knowledge of accounting, being content to leave that responsibility to accounting professionals. Throughout his business experiences, he

mostly dedicated himself to the construction trades until he retired in April 2013 due to deteriorating health.

[3] In May 1995, he incorporated SAMM Construction Services. The Appellant was SAMM's sole director and officer. SAMM was a registrant for the purposes of the *ETA* and was obliged to collect GST/HST and calculate and remit its net tax in respect of supplies and services it provided to its clients.

[4] The Appellant was very much involved in the day-to-day operation of SAMM and dedicated long hours to the operation, often working up to 16 hours a day. SAMM is no longer conducting business. It shut down its operations at the end of April 2013 due to the Appellant's health problems.

The Debt

[5] Sometime around 2011 or 2012, the Corporation was informed that it had a GST/HST debt exceeding \$27,000 going back to 1998. The Appellant says he was not aware of this. When he did become aware, he brought everything to his accountant to take care of it. It was not.

[6] Ultimately, Writs of Seizure and Sale were issued by the Federal Court of Canada against SAMM. These writs were returned unsatisfied in whole on Oct. 21st 2016 since SAMM had no assets.

[7] When the Appellant found out about the writs, he questioned how SAMM could owe so much. He believed SAMM was all paid up. Consequently, the Appellant was in communication with several agents of the Canada Revenue Agency (the "CRA"), seeking answers. After much back and forth with representatives of the CRA over a significant period of time, the Appellant was provided with a document entitled "*Statement of Account*" dated January 5th, 2017 regarding SAMM's GST/HST account. This document is set out at Exhibit A-1, Tab I. This *Statement of Account* covers the reporting periods ending December 31, 1995 up to and including the period ending September 30, 2006. The *Statement* shows GST/HST collectible, input tax credits, interest charged, penalty charged, and payment received for each period. It is noteworthy that throughout the periods indicated in this *Statement*, SAMM incurred many interest and penalty charges. This would indicate to me that SAMM had a spotty and inconsistent payment history of GST/HST. This *Statement* contains an anomaly in that each of the periods indicate a zero balance of net tax owing.

[8] The Appellant does not understand how it could be that SAMM now owes in excess of \$29,000 when the *Statement of Account* shows that there was a zero balance as of October 30, 2006. He states that he has all the records for every year that SAMM was in business. He cross-checked this *Statement of Account* against his records and he concludes that SAMM was all paid up. The Respondent does not dispute that the Appellant received this *Statement of Account* from the CRA but is of the view that a zero balance on the *Statement* does not reflect any reassessments raised against SAMM from 2007 to 2016. The *Statement* itself provides:

Please note that the preceding only reflects balances based on captured data up to and including March 31, 2007. Any outstanding balances were transferred to the Standardized Accounting System and are now reflected in your regular statements.

[9] I find that the Appellant knew that SAMM was behind in payments. In order to catch up, he made lump sum payments of \$7,775 in 2008, \$15,000 in 2009 and \$10,000 in 2013. He believed that these lump sum payments were sufficient to bring SAMM's account into good standing. He subsequently learned that these amounts were attributed to arrears owing for earlier years.

[10] He asked the CRA for copies of his returns but never got them. One is left to wonder why the Corporation did not conserve copies of its own returns. That is what a prudent business person would do. Apparently, copies of the returns were kept by his accountant but are no longer available since his accountant has passed away. It would appear the accountant did not provide copies to SAMM and if he did, SAMM did not conserve them. A reasonably prudent director would make sure that his accountant provided copies of all important documents to be conserved in the corporation's files.

[11] The assessment amounts to \$29,075.41 in total. The Appellant disputes this amount. However, the Appellant has not produced any documentation that would establish that the amount of the assessment is incorrect. Nothing has been produced other than the *Statement of Account* set out in Tab I of Exhibit A-1 that would challenge the assumption of fact relied upon by the Minister.

The Accountant

[12] The Appellant testified that he took care of SAMM's day-to-day operations. He was responsible for the company's finances. He did 90% of the bookkeeping.

He did payroll, job estimates, invoicing, and paperwork related to WSIB matters. He was responsible for purchasing and paying for supplies. The invoices he prepared included GST/HST. He maintained SAMM's records and kept them in his possession. He kept a GST/HST log and segregated GST/HST amounts in a separate account. He was the only person who had signing authority for the corporation.

[13] The Appellant testified that around 1998 or 1999, SAMM hired a professional accounting firm, Johnstone Enterprises Ltd. ("Johnstone"), headed up by Donald Johnstone, to do the company's accounting work. Johnstone was given the responsibility of preparing and filing GST/HST returns for SAMM.

[14] The Appellant trusted Johnstone and relied upon his professional services. However, the Appellant began to lose confidence in Johnstone around 2008 or 2009. In spite of this loss of confidence, SAMM still kept Johnstone as its accountant.

[15] The Appellant provided details of Johnstone's failings. Johnstone did not keep regular communication with him and did not keep the Appellant informed of the status of SAMM's GST/HST account. Johnstone did not regularly remind the Appellant when it was time to provide the information necessary to prepare the returns at the end of the various reporting periods. Johnstone failed to follow up on any tax objections or appeals taken on behalf of SAMM. By way of example, Johnstone on one occasion filed a Notice of Objection some 27 days late and took no steps to get an extension of time.

[16] The Appellant testified that he was not aware that in 1998 SAMM's filings were changed from annual to quarterly periods. It was more advantageous to have annual remittances. When he found out, he told Johnstone who said that it would be taken care of. The Appellant believed that Johnstone had the reporting periods changed back to annual but this had in fact not been done.

[17] I find that SAMM was often late in filing its returns. The Appellant blames Johnstone for this. Paragraph 9(d) of the Respondent's Reply asserts that SAMM late filed GST/HST returns for all quarterly periods in 2008, 2009, 2010 and 2011 and quarterly periods ending March 31, 1998, June 30, 1998, September 30, 1998, March 31, 1999, June 30, 1999, September 30, 1999, March 31, 2000, June 30, 2000, December 31, 2006, September 30 2007, December 31, 2007, March 31, 2012, June 30, 2012, September 30, 2012, March 31, 2013, and April 30, 2013. Ex. R-1, Tabs 1, 2 and 3 contain copies of SAMM's GST/HST returns for many of

the periods listed above. Several of these returns are dated May 5, 2011 and therefore were filed late. Either the Appellant neglected to provide the necessary documents and information to permit Johnstone to prepare and file the returns or Johnstone was negligent in performing its professional duties.

[18] The Appellant testified that he would provide Johnstone with the information necessary to prepare and file the GST/HST returns and he would subsequently get a copy of the return from Johnstone but not all the time. He testified that he would review the returns whenever he had the time to do so. Normally, net tax was payable. Sometimes the net tax got paid but not all the time. He testified that he never contacted his accountant before the returns came due in order to ensure that they would be filed on time and he did not confirm that the returns were in fact filed on time – that was the responsibility of his accountant.

[19] The Appellant testified that he only found out that SAMM was neglecting its obligations under the *ETA* in 2012. However, he agrees that SAMM was audited prior to that time in 2007. The audit report showed that there was a significant outstanding debt for net tax at that time. So, he knew that there was a problem in 2007. He provided the entire audit and related information to Mr. Johnstone. Johnstone told him that it was all absolutely incorrect and that he would take care of it. He did not. The Appellant signed off on this audit even though he did not agree with it.

Evidence of the Respondent

[20] Nanda Kaur Singh Netram is a Senior Collections Officer with the CRA. She has been working at that position for 19 years.

[21] Ms. Netram was assigned SAMM's file in 2016. She learned that SAMM's bank account had been frozen and garnisheed around 2006 as a result of an arbitrary assessment. She stated that the Appellant was aware of this because he had made contact with the CRA to advise that the wrong bank branch had been garnisheed and he identified the correct branch for SAMM's account.

[22] Ms. Netram issued a warning letter to SAMM informing of the outstanding debt and she also sent the Appellant a director's liability pre-assessment letter which was followed up about a month later by an official director's liability pre-assessment letter. By this time, SAMM's debt had been certified and Writs of Execution and Sale had been delivered to the sheriff. The writs were returned unsatisfied as SAMM had no assets.

[23] Ms. Netram had discussions with the Appellant about the outstanding debt. The Appellant was somewhat surprised at the balance of the account. Over the conversations, she tried to provide him with a breakdown of the account and where the GST/HST debt came from. As a courtesy, she prepared and provided to the Appellant an unofficial spreadsheet (see Ex. R-1, Tab 29, pp. 158-166) which set out this breakdown.

[24] This spreadsheet references the reporting periods for SAMM from 1995 through to 2013, and sets out the outstanding balances, reassessments, dates payment received, net tax calculated and payments made. The information that was used to prepare this spreadsheet was retrieved from returns filed by SAMM (Ex. R-1, Tab 1, 2 and 3) as well as various CRA data bases. Interest has been calculated on the outstanding amounts. Tab 33, pp. 182 to 184 of Ex. R-1, is a document entitled “*Standardized Accounting - Account Balance Overview*”. This document gives a breakdown of the respective periods together with outstanding balances. Ms. Netram made use of this document to confirm what periods have outstanding balances. Pages 185 to 250 of Tab 33 is a document entitled “*Account Activity Over Time*”. This document shows the interest that has been calculated over the course of the history of the account. It shows payments received and figures pertaining to returns that have been filed and processed. The Appellant asserts that he has paid several lump sum payments towards satisfaction of SAMM’s debt; for example, the sum of \$10,000 as testified to by the Appellant. This payment is reflected at page 219 of Tab 33 which shows that such payment came in on February 15th, 2013. Of the \$10,000 some \$417.91 was applied to the period ending Dec. 31st 2006, \$3,402.68 was applied to the period ending September 30, 2006 and the balance was applied to the outstanding debts of other periods. Ms. Netram testified that any payments made are attributed to the oldest period and related interest. The general rule is that the debt relating to the oldest period gets paid off first to avoid further interest accruing. The Appellant also alleges other lump sum amounts have been paid as well. If one examines Tab 33, all of these amounts can be verified and it can be determined to what periods these payments were attributed.

[25] Page 251 to 288 of Tab 33 is a document titled “*Retrieved Transaction Details by Period*” from April 2007 to March 2018. This document shows input tax credits, penalties and interest and payments that have come in and have been applied to specific periods. Ms. Netram also used this information to determine tax amounts and input tax credits and to confirm the payments that came in as well as penalties and interest for the respective periods. Ms. Netram also referred to Exhibit R-1, Tab 37, pp. 298 to 309. This document provides a history of SAMM’s

GST/HST account starting from October 2006 up to April 2013. This document identifies when the account was registered, when closed and when the reporting periods were changed from annual to quarterly. It gives a period-by-period breakdown of the amount of taxable services rendered, GST/HST related to the services, the amount of ITCs and the net tax payable.

[26] Having examined and summarized all of these documents retrieved from CRA data bases, Ms. Netram noted that SAMM had a history of late filing and late remittances. This would have gone on since pretty early in the registration of the business.

[27] In cross-examination, she states that returns will be required to be filed quarterly if taxable services go over a certain threshold amount, which is what happened starting at the beginning of 1998, or thereabouts. SAMM would have been notified of the requirement to file quarterly. The Appellant denies that he received such notification. The failure to file quarterly returns exposed SAMM to late filing penalties and related interest charges.

[28] Ms. Netram testified that the “*Statement of Account*” that the Appellant obtained from the CRA is not an official CRA document. Even though it shows a zero balance as of the end of 2006, it does not reflect any reassessments that had been made after March 31st, 2007. In the instant case, the reassessment was raised after that date.

[29] The upshot of Ms. Netram’s evidence is that SAMM has failed to remit to the Receiver General GST/HST and related interest for periods from October 1, 2006 to April 30, 2013 in the total amount of \$29,075.41.

The Applicable Legislation

[30] Paragraph 228(1) and (2) of the *ETA* require a registrant to calculate the net tax owing, file returns and remit the net tax owed in relation to taxable goods and services rendered by the registrant. Subsection 323(1) provides that the directors of a corporation which has failed to so remit are jointly and severally, or solidarily, liable together with the corporation to pay the concerned amounts and any related interest or penalties. Subsections 323(2) and (3) provide for certain limitations on the liability of directors.

[31] Subsections 323(1), (2) and (3) of the *ETA* are as follows:

323 (1) If a corporation fails to remit an amount of net tax as required under subsection 228(2) or (2.3) or to pay an amount as required under section 230.1 that was paid to, or was applied to the liability of, the corporation as a net tax refund, the directors of the corporation at the time the corporation was required to remit or pay, as the case may be, the amount are jointly and severally, or solidarily, liable, together with the corporation, to pay the amount and any interest on, or penalties relating to, the amount.

(2) A director of a corporation is not liable under subsection (1) unless

(a) a certificate for the amount of the corporation's liability referred to in that subsection has been registered in the Federal Court under section 316 and execution for that amount has been returned unsatisfied in whole or in part;

(3) A director of a corporation is not liable for a failure under subsection (1) where the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Issues

[32] The issues are:

- A. Is the underlying assessment in the amount of \$29,075.41 correct?
- B. Did the Appellant exercise the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the failure by the Corporation to remit the amounts in issue?

Analysis

Is the Assessment Correct?

[33] A taxpayer who has been assessed under s. 323 of the *ETA* is entitled to challenge an underlying assessment made against the corporation of which he was a director on any basis that the corporation could have challenged that assessment. The Appellant disputes the amount of the assessment.

[34] The general rule is that, in a tax appeal, the Minister's factual assumptions are taken as true unless they are rebutted. This principle was clearly stated by the Supreme Court of Canada in *Hickman Motors Ltd. v. Canada* [1997] 2 S.C.R. 336 (S.C.C.), where Justice L'Heureux-Dubé stated:

[92] ... The Minister, in making assessments, proceeds on assumptions (*Bayridge Estates Ltd. v. M.N.R.*, 59 D.T.C. 1098 (Ex. Ct.), at p. 1101) and the initial onus is on the taxpayer to "demolish" the Minister's assumptions in the assessment (*Johnston v. Minister of National Revenue*, [1948] S.C.R. 486; *Kennedy v. M.N.R.*, 73 D.T.C. 5359 (F.C.A.), at p. 5361). The initial burden is only to "demolish" the exact assumptions made by the Minister but no more: *First Fund Genesis Corp. v. The Queen*, 90 D.T.C. 6337 (F.C.T.D.), at p. 6340.

[35] However, there may be exceptions to this general rule. There may be instances where the pleaded assumptions of facts are exclusively or peculiarly within the Minister's knowledge. In such a case, the rule as to the onus of proof may work so unfairly as to require a shifting of the burden of proof onto the Minister. As has been stated by Justice Paris of this Court in *Mignardi v. The Queen*, 2013 TCC 67:

[41] ... It is only where the facts concerning the underlying tax debt are exclusively or peculiarly within the knowledge of the Minister that the burden will be shifted. Each case will turn on its own facts. Although there may be situations where the tax liability of the original tax debtor is something that is solely within the knowledge of the Crown, more often a taxpayer will have access to that information from the original tax debtor. It should be recalled that one of the bases on which a person is assessed under those provisions is his or her relationship with the tax debtor, either as in this case as a director of the debtor corporation or as a party not dealing at arm's length with the tax debtor. As a result of this relationship, a taxpayer may very well already have or be able to obtain the information required to verify the existence or amount of the underlying liability.

Justice Paris reiterated this same principle in *Andrew v. The Queen*, 2015 TCC 1.

[36] The Appellant testified that he kept possession of all SAMM's records. Therefore, he is in the best position to challenge the correctness of the assessments. I hold therefore that the Appellant has the onus to demonstrate that the underlying assessments are incorrect. This he has failed to do.

[37] In the instant case, the underlying assessments were based on SAMM's own filings. If the underlying assessments are incorrect, then SAMM, through the

Appellant, is in the best position to counter the Minister's assertions. The Appellant has not produced any documentary evidence whatsoever to show that SAMM has remitted the net tax as required by s. 228 of the *ETA*. He testified that he has all of SAMM's books and records but he did not produce any of them. He only produced the "*Statement of Account*" upon which he relies (Exhibit A-1, Tab I) which shows a zero balance from March 1997 to December 2006. I agree with counsel for the Respondent that this *Statement of Account* does not assist the Appellant because it only shows periods predating the reporting periods relating to the underlying assessments. The first period that is subject to the underlying assessment is the reporting period Oct. 1st, 2006 to Dec. 31st, 2006. The *Statement of Account* only covers the periods up to September 31st, 2006 and so the *Statement of Account* has no bearing on the outstanding debt. In addition, the caveat on the last page of the *Statement of Account* gives a clear warning that the *Statement of Account* only reflects balances based on captured data up to and including March 31, 2007. Therefore, it does not reflect the balance as of the date of the assessment.

[38] I am also very impressed with the evidence of Ms. Netram. Even had the Appellant succeeded in refuting the assumptions of fact made by the Minister, thus shifting the burden of proof onto the Minister, then on considering the entirety of the evidence presented by Ms. Netram, including the documents that she relied on that are contained in Exhibit R-1, I would be satisfied on a balance of probabilities that the assessment that was raised for GST/HST in the amount of \$19,584.02 and related interest in the amount of \$9,851.39 for a total of \$29,075.41 is correct.

Due Diligence

[39] Did the Appellant, as a director of SAMM, exercise the degree of care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the failure to remit the GST/HST so as to absolve him from liability to pay SAMM's debt pursuant to subsection 323(3) of the *ETA*?

[40] The leading case dealing with the issue of due diligence under subsection 323(3) of the *ETA* is *Buckingham v. The Queen*, 2011 FCA 142. In *Buckingham*, the Federal Court of Appeal held that in order to make out the defence of due diligence, a director must prove that he/she was specifically concerned with the tax remittances, and that he/she exercised care, diligence and skill to "*prevent a failure to remit*". The Court held that the standard of care required is an objective one rather than a subjective one.

[41] The Court observed:

[38] ... [A] person who is appointed as a director must carry out the duties of that function on an active basis and will not be allowed to defend a claim for malfeasance in the discharge of his or her duties by relying on his or her own inaction: ...

[39] An objective standard does not however entail that the particular circumstances of a director are to be ignored. These circumstances must be taken into account, but must be considered against an objective “reasonably prudent person” standard. ...

[40] ... In order to rely on these defences [of due diligence], a director must thus establish that he turned his attention to the required remittances and that he exercised his duty of care, diligence and skill with a view to preventing a failure by the corporation to remit the concerned amounts.

[Citations and quotations omitted]

[42] The focus of the defence of due diligence is to prevent the failure to remit, not to cure failures to do so. Directors must establish that they were specifically concerned with the tax remittances and that they exercised their duty of care, diligence and skill with a view to preventing a failure by the corporation to remit the concerned amounts. The assessment of the director’s conduct begins when it becomes apparent to the director that the corporation is entering a period of financial difficulties.

[43] The Appellant argues that, even though he did 90% of SAMM’s bookkeeping, he had no knowledge of or experience in accounting and so he hired a professional accountant to take care of all matters relating to SAMM’s GST/HST responsibilities. He placed himself totally in the hands of Johnstone. He trusted Mr. Johnstone and relied on him to provide competent and professional accounting services and to properly prepare and file SAMM’s GST/HST returns. The Appellant argues that hiring someone whom he believed to be a competent professional accountant is evidence that he exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances.

[44] The Appellant puts the blame for the failure to remit squarely at the feet of his accountant. He asserts that the failure to remit was due entirely to the negligence, incompetence and malfeasance of Johnstone and that the Appellant was in no way responsible for SAMM’s failure to remit.

[45] Unfortunately, a director who manages a corporation's daily affairs cannot clear himself of all responsibility by invoking the failure of his accountant to fulfill his obligation. In *Martin v. The Queen*, 2003 TCC 414, Justice Dussault T.C.J., observed:

[44] ... As I have already said, the Appellant seems to have placed himself totally in the hands of Ms. Coté for keeping the books and of Mr. Lapointe of Raymond, Chabot, Martin, Paré for the preparation of the financial statements. I also believe that I understand the arguments of Counsel for the Appellant ... that the Appellant was in no way responsible for the bookkeeping and accounting deficiencies, which could only be blamed on these individuals. In this regard, it is important to recall that a bookkeeper and an accountant are essentially agents and a corporation's director, the more so if he is a sole director managing the corporation's daily affairs, cannot clear himself of all responsibility by invoking these individuals' failure to fulfill their obligations. On this point, in his decision in *Roberts v. R.*, [1997] G.S.T.C. 58, [1997] T.C.J. NO. 771 (T.C.C.), Bowman J. discussed this question regarding the defence of due diligence concerning the penalty set in paragraph 280(1)(a) of the Act in these terms at paragraph 9:

... The accountants are after all the appellant's agents and the appellant is responsible of what they did or failed to do. In the same way as the exercise of due diligence on the part of a taxpayer's accountants or bookkeepers would be attributed to the taxpayer and would justify the removal of a penalty, so too does the absence of due diligence on the part of the taxpayer's accountants or bookkeepers disentitle him or her to the relief envisaged by the Pillar Oilfield case.

[45] I deem that the principal is equally applicable when an appellant, the director of a corporation, wants to avail himself of the exemption under subsection 323(3) of the Act. It is not enough to simply place the responsibility on others. The director of a corporation, especially if he is the sole director, must also be able to discuss in concrete and exact terms what he has done to prevent this failure. I feel that proof has not been given of this.

[46] In the case at bar, the Appellant states that he only became aware that SAMM was in trouble around 2012. However, according to Ms. Netram, SAMM had a history of late filing and late remittances from early on. Ms. Netram testified that in 2006 the CRA had taken steps to freeze SAMM's bank account. In addition, SAMM was audited in 2007 and the audit showed a significant GST/HST debt at that time. The Appellant did 90% of SAMM's bookkeeping. He kept all of the records including a GST/HST log. He segregated GST/HST funds in a separate account and he was the only one who had authority to sign cheques. Therefore, he must have known if and when any cheques were sent to the Receiver General and

when they were not. I find on the entirety of the evidence that the Appellant was aware from early on that SAMM was having trouble meeting its obligations to remit GST/HST.

[47] A reasonably prudent director must actively take positive steps beforehand to ensure that GST/HST filings and remittances are done on time. What did the Appellant do to prevent the failure to remit? He hired a professional accounting firm, Johnstone Enterprises Ltd., to prepare and file the GST/HST returns. However, the Appellant never exercised any oversight to make sure that filings and remittances were done on time. He simply trusted Johnstone to take care of it. On the evidence Johnstone was remiss in the discharge of its duties.

[48] The Appellant blames Johnstone for SAMM's failure to remit. It is simply not enough to deflect blame onto others. He cannot invoke the incompetency and negligence of his accountant when he lost confidence in his accountant but did nothing about it.

[49] The three lump sum payments of \$7,750 made in 2008, \$15,000 made 2009 and \$10,000 made in 2013, all of which are reflected in the *Account Activity Over Time* at Exhibit R-1, Tab 33, pp. 185-250, constitute actions to cure the tax debt and are not steps taken to prevent a failure to remit. This is not sufficient to make out a due diligence defence.

Conclusions

[50] In conclusion, the Appellant has not convinced me on the balance of probabilities that the assessment in the total amount of \$29,075.41 is incorrect.

[51] I also find that the Appellant did not take positive steps before hand to prevent SAMM's failure to remit. Therefore, the Appellant did not exercise the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent SAMM's failure to remit. The Appellant is therefore jointly and severally, or solidarily liable together with SAMM for SAMM's GST/HST debt.

[52] Consequently, the appeal is dismissed.

Signed at Kingston, Ontario, this 29th day of January 2021.

“Rommel G. Masse”

Masse D.J

Howard J. Newhook v. H.M.Q. (2018-3624(GST)I)

Schedule A

Period End date	Filing Due Date	Assessment Date	Tax	Interest	Total	Source of Assessment
2013-04-30	2013-05-31	2015-04-27	\$120.40	\$25.64	\$146.04	Filed return by Corporation
2013-03-31	2013-04-30	2016-04-11	\$217.48	\$47.39	\$264.87	Filed return by Corporation
2012-09-30	2012-10-31	2012-12-11	\$1,006.04	\$249.98	\$1,256.02	Filed return by Corporation
2012-06-30	2012-07-31	2012-11-26	\$707.41	\$186.98	\$894.39	Filed return by Corporation
2012-03-31	2012-04-30	2012-11-26	\$238.27	\$66.76	\$305.03	Filed return by Corporation
2011-12-31	2012-01-31	2012-12-11	\$908.15	\$268.96	\$1,177.11	Filed return by Corporation
2011-09-30	2011-10-31	2013-02-01	\$1,006.04	\$314.46	\$1,320.50	Filed return by Corporation
2011-06-30	2011-07-31	2012-12-11	\$1,172.97	\$386.11	\$1,559.08	Filed return by Corporation
2011-03-31	2011-04-30	2011-06-10	\$339.37	\$117.43	\$456.80	Filed return by Corporation
2010-12-31	2011-01-31	2011-06-10	\$457.07	\$165.72	\$622.79	Filed return by Corporation
2010-09-30	2010-10-31	2011-06-10	\$457.07	\$174.38	\$631.45	Filed return by Corporation
2010-06-30	2010-07-31	2011-06-10	\$262.13	\$104.19	\$366.32	Filed return by Corporation
2010-03-31	2010-04-30	2011-06-10	\$262.13	\$108.79	\$370.92	Filed return by Corporation
2009-12-31	2010-01-31	2011-06-10	\$363.45	\$157.11	\$520.56	Filed return by Corporation
2009-09-30	2009-10-31	2011-06-10	\$363.45	\$163.76	\$527.21	Filed return by Corporation
2009-06-30	2009-07-31	2011-06-10	\$363.45	\$170.39	\$533.84	Filed return by Corporation
2009-03-31	2009-04-30	2011-06-10	\$363.45	\$177.16	\$540.61	Filed return by Corporation
2008-12-31	2009-01-31	2011-06-10	\$1,075.62	\$546.71	\$1,622.33	Filed return by Corporation
2008-09-30	2008-10-31	2011-06-10	\$1,075.62	\$574.17	\$1,649.79	Filed return by Corporation
2008-06-30	2008-07-31	2011-06-10	\$1,075.62	\$603.38	\$1,679.00	Filed return by Corporation
2008-03-31	2008-04-30	2011-06-10	\$1,075.62	\$636.03	\$1,711.65	Filed return by Corporation
2007-12-31	2008-01-31	2011-06-10	\$2,275.63	\$1,417.62	\$3,693.25	Filed return by Corporation
2007-09-30	2007-10-31	2011-06-10	\$1,519.03	\$763.53	\$1,922.56	Filed return by Corporation
2006-12-31	2007-01-31	2007-12.27	\$2,878.55	\$2,424.74	\$5,303.29	Audit December 2007
TOTAL			\$19,584.02	\$9,851.39	\$29,075.41	

CITATION: 2020 TCC 1

COURT FILE NO.: 2018-3624(GST)I

STYLE OF CAUSE: HOWARD J. NEWHOOK V.
HER MAJESTY THE QUEEN

PLACE OF HEARING: Lindsay, Ontario.

DATE OF HEARING: October 22, 2020

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

DATE OF JUDGMENT: January 29, 2021

APPEARANCES:

For the Appellant: Sharon Albers

Counsel for the Respondent Meaghan Mahadeo

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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