

Docket: 2018-4743(GST)I

BETWEEN:

1238167 ONTARIO LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 13 and 14, 2021, at Toronto, Ontario

Before: The Honourable Justice Susan Wong

Appearances:

Agent for the Appellant: Verminder Singh

Counsel for the Respondent: Acinkoj Magok

JUDGMENT

The appeal from the reassessment made under Part IX of the *Excise Tax Act* and dated September 18, 2018, for the reporting periods from January 1, 2014 to June 30, 2016, is allowed without costs.

The matter is returned to the Minister of National Revenue for reconsideration and reassessment on the basis that GST/HST collectible for the reporting periods shall be reduced by \$8,902.49, to \$30,096.25.

Signed at Ottawa, Canada, this 17th day of June 2022.

“Susan Wong”

Wong J.

Citation: 2022 TCC 64
Date: June 17, 2022
Docket: 2018-4743(GST)I

BETWEEN:

1238167 ONTARIO LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Wong J.

Introduction/Overview

[1] The Minister of National Revenue assessed the appellant for GST/HST collectible based on identifying unreported sales for the reporting periods from January 1, 2014 to June 30, 2016 (the “Reporting Periods”). She also disallowed certain input tax credits which are not under appeal.

[2] The appellant says that the amount of tax assessed is inflated because the Minister included service estimates and non-business-related deposits (following a deposit analysis of the two shareholders’ personal bank accounts) as unreported sales revenue. On objection, the Minister agreed that certain bank deposits were not unreported sales revenue and reduced the GST/HST collectible. The appellant says that the remaining outstanding amount of GST/HST assessed should be deleted for the same two reasons given at the objections stage.

[3] At the heart of this appeal is the importance of keeping adequate books and records for tax purposes.

Issue

[4] The issue is whether the Minister properly assessed GST/HST collectible of \$30,096.25 for the Reporting Periods.

Amounts conceded during the appeal

[5] During closing submissions, the respondent conceded that GST/HST collectible should be reduced by \$8,902.49, comprised of the following:

- a. \$8,134.98 – based on $\$70,711.74 \times 13/113 = \$8,134.98$. The appellant provided additional/new information to the respondent on the original hearing date for this appeal, which was adjourned *sine die* for insufficient court time. The Canada Revenue Agency auditor reviewed the information prior to this hearing and testified that this additional amount of assessed GST/HST should be deleted, based on a further reduction of \$70,711.74 to the alleged unreported sales revenue arising from the bank deposit analysis. Spreadsheets prepared by her detailing this concession were entered into evidence by the respondent;¹ and
- b. \$767.51 – based on $\$6,671.46 \times 13/113 = \767.51 . Following the testimony of the appellant's witnesses, the respondent conceded that \$6,671.46 deposited to the two shareholders' personal bank accounts was also not unreported sales revenue from the appellants' business.²

[6] The respondent advised that as a result, the amount of GST/HST collectible under appeal was reduced to \$30,096.26, i.e. $\$38,998.74^3$ minus \$8,902.49. I must admit that I cannot reconcile my calculation in order to arrive at \$30,096.26 and I arrive at \$30,096.25.

Factual background

[7] The appellant is a numbered company operating under the name "Quality Oil Change and Tire Service." It is in the business of repairing vehicles, selling vehicle parts and supplies in the course of those repairs, and selling a small number of vehicles. Mr. Harbans Sohal is a mechanic and the appellant's sole owner; there are also two employees. Mr. Sohal previously had a business partner named Mr. Deep Manbodh, who was a 30% shareholder⁴ and retired from the company in approximately 2017.

(a) Service estimates

[8] During the Reporting Periods, the appellant used a point-of-sale (POS) automotive shop management software system called Invomax to keep track of its sales. Mr. Sohal testified that the appellant used Invomax to: (1) generate invoices where garage services were provided and paid for, and (2) generate invoices which served as estimates of how much a service would cost.

[9] In comparing the paid invoices with the estimate invoices:

- a. paid invoices showed a balance due of zero⁵ while estimate invoices showed the full amount owing as the balance due;⁶
- b. paid invoices had fixed creation dates and due dates while estimate invoices seemed to have fixed creation dates but movable due dates. For example, when the estimate invoices were printed for the purposes of the Minister's audit, Invomax would update the due date to the date of printing.⁷ On the other hand, the due date did not change on the paid invoices which were printed for the audit;⁸
- c. the appellant manually distinguished estimate invoices from paid ones by typing the word "Estimate" in the comments section of the estimate invoices;⁹
- d. the mode of payment (e.g. cash,¹⁰ cheque,¹¹ credit card,¹² Visa,¹³ etc.) could be manually entered in the top left-hand corner of the invoice. Mr. Sohal testified that they did not do so regularly and would sometimes leave it blank on paid invoices, i.e. one would see that the invoice was paid but not how it was paid.¹⁴ Mr. Sohal stated that the appellant did a manual reconciliation at the end of each day as to how much was received and the modes of payment. He added that it was not a big job to do so because they only had five or six invoices to reconcile per day; and
- e. the invoice number is generated sequentially by Invomax and since the appellant used the software for both paid invoices and estimates, they were part of a single numbering system. When asked in cross-examination why an estimate dated 01/08/14 and created at 4:51 p.m. could be numbered 33608¹⁵ while another estimate also dated 01/08/14 and created at 9:39 p.m. was numbered 33665¹⁶ (i.e. a 57-number jump), Mr. Sohal testified that he did not know because they had about five to ten customers a day.

On closer look, it can be seen that estimate #33608 was created at 4:51 p.m. on 01/04/14 (i.e. four days earlier) so the 57-number difference is plausible.

[10] Invomax generated a monthly summary called a sales journal.¹⁷ The sales journal shows, among other things, the following information:

- a. a virtual cash drawer breaking down how much was received by each mode of payment (e.g. cash, credit card, cheque, etc.). Mr. Sohal acknowledged in cross-examination that the breakdown in the cash drawer was not accurate since the mode of payment was not consistently entered;
- b. the number of invoices generated each day of the month;
- c. daily gross revenue totals;
- d. daily taxable sales;
- e. daily GST/HST calculations; and
- f. monthly totals for every column.

[11] The CRA auditor Ms. Sahra Zaidi explained that for each reporting period, she compared the sales revenue reported by the appellant in its quarterly return with the quarterly revenue total arrived at by adding together: (1) the POS summaries/sales journals, and (2) revenue from vehicle sales (as taken from a vehicle sales ledger). The difference between the two quarterly revenue totals would be the sales variance. She then repeated this process with the GST/HST by comparing the GST/HST reported in the appellant's quarterly return with the amount calculated using the POS summaries/sales journals and vehicle sales ledger. The difference would be the GST/HST variance, i.e. the amount of GST/HST collectible (if any) to be assessed. She testified that the variance was positive in some months and negative in others but overall, it resulted in \$14,175.13 of additional GST/HST based on the appellant's business records.¹⁸

[12] The appellant's accountant Prithipal Dhillon testified that his office prepared the quarterly returns using information obtained over the telephone. He stated that they would assume the information was correct because it was being provided by the appellant's directors. He provided a working paper showing that if the total of all estimates was subtracted from the Minister's sales revenue figure for the

Reporting Periods, the difference between his adjusted sales revenue and the total deposits to the shareholders' personal accounts was \$14,736.23, i.e. closer to reconciling than with the auditor's methodology.¹⁹ He stated that he believed the discrepancy in sales revenue totals was due to the estimates being included.

[13] In cross-examination, Mr. Sohal was shown that two estimates from 02/20/15 totalled \$2,494.15²⁰ while the POS summary/sales journal for the same date showed that the total gross sales were \$1,952.07.²¹ When asked how the gross sales for that day could be less than the estimates if Invomax included estimates in revenue (as asserted by the appellant), he stated that he did not know and that they did not use Invomax for accounting purposes.

[14] On objection, the Minister reviewed a sample consisting of two months' worth of invoices (January 2014 and February 2015) provided by the appellant in support of their assertion that estimates had been included in sales revenue. However, the invoice totals did not match the estimate figures provided by the appellant so the Minister made no adjustments, i.e. the GST/HST assessed based on business records remained \$14,175.13.²²

(b) Deposits to the shareholders' personal bank accounts

[15] The auditor testified that reviewing deposits made to the two shareholders' bank accounts was done as part of her audit. She stated that the appellant did not provide her with any supporting documents with respect to the bank accounts so she treated all deposits as unreported sales revenue and then calculated GST/HST collectible. This approach resulted in another \$38,719.94 of GST/HST collectible assessed.

[16] On objection, the Minister reviewed information submitted by the appellant and agreed that certain bank deposits were not unreported sales revenue. The Minister reduced this portion of the GST/HST collectible by \$13,896.32 (i.e. to \$24,823.62).²³

[17] Additional concessions totalling \$8,902.49 were made by the Minister at the hearing, as detailed in paragraphs 5 and 6 of these reasons. Spreadsheets prepared by the appellant's accountant Mr. Dhillon detailing non-business-related deposits to both shareholders' personal bank accounts were provided to the respondent on the original hearing date for this appeal.²⁴ For example, Mr. Sohal is a licensed realtor and received mortgage broker fees as well as commission income.²⁵ As another

example, Mr. Manbodh's personal account showed some deposits of shareholder loans and pay received by his wife from a third-party employer.²⁶

Legislative framework

[18] Subsection 286(1) of the *Excise Tax Act* says that every person who carries on a business or is engaged in a commercial activity shall keep all necessary records to enable the Minister in determining any amounts owed by that person.

[19] The Minister is also not bound by any return or information provided to her in making her assessment.²⁷

Discussion

[20] I reserved my decision in this appeal to give me an opportunity to review the parties' books of documents which were rather extensive. On reviewing the documents and considering the witnesses' testimony, I cannot see a basis to allow more than what has already been conceded by the Minister. The appellant's recordkeeping did not meet the standard set out by subsection 286(1).

[21] With respect to the appellant's assertion that Invomax included estimates in sales revenue (thus inflating the sales revenue figure relied on by the Minister), it is not borne out by the documents. For example, the estimates dated 02/20/15 on their own exceeded the gross sales in the POS summary/sales journal for that day.²⁸ If Invomax had included the estimates in sales revenue, then one would expect the gross sales in the POS summary to be greater than the estimates alone.

[22] It is difficult to follow the calculation offered by the appellant's accountant Mr. Dhillon -- in which he adjusted the sales revenues by subtracting the estimates, thereby reducing the difference between the sales revenue total and the total deposits made to the shareholders' personal bank accounts²⁹ -- through to his proposed conclusion that the discrepancy in sales revenue totals was due to the estimates being included. His calculation appears to compare the sales revenue figure based on business records (i.e. POS summaries/sales journals and vehicle sales ledgers) with the sales revenue figure based on the bank deposit analysis. The Minister assessed GST/HST collectible by adding the two figures together so Mr. Dhillon's offsetting calculation is of limited assistance.

[23] Although Invomax is likely an imperfect system, the appellant's practice of inconsistently entering/omitting the mode of payment and only doing a manual

reconciliation (without regard to its electronic records) at the end of each day likely exacerbated any shortcomings the software might have had.

[24] The GST/HST assessed as a result of the deposit analysis of the shareholders' personal bank accounts was initially based on all deposits being treated as unreported sales revenue. As information was provided to the Minister by the appellant to show that certain deposits were not business-related, the sales revenue figure and corresponding GST/HST decreased. The appellant led sufficient evidence at the hearing to support the additional concession made by the respondent in closing submissions, and I cannot see a basis to allow more than what has already been conceded.

[25] The appellant stated in its notice of appeal that about 10-20% of its sales were paid in cash and that some cash was deposited into the appellant's account while some was deposited into the shareholders' personal accounts. The appellant asserted that as a result, the Minister double-counted some of the sales revenue by relying on the POS summaries/sales journals and doing a deposit analysis of the personal accounts.³⁰ While that may be the case, no evidence was led to prove which amounts had been double-counted and given the state of the business records, I suspect that it would have been difficult to do so.

Conclusion

[26] The appeal is allowed only with respect to the amounts conceded by the respondent and without costs, on the basis that GST/HST collectible shall be reduced by \$8,902.49 (i.e. to \$30,096.25) for the Reporting Periods.

Signed at Ottawa, Canada, this 17th day of June 2022.

“Susan Wong”

Wong J.

CITATION: 2022 TCC 64

COURT FILE NO.: 2018-4743(GST)I

STYLE OF CAUSE: 1238167 ONTARIO LTD. AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 13 and 14, 2021

REASONS FOR JUDGMENT BY: The Honourable Justice Susan Wong

DATE OF JUDGMENT: June 17, 2022

APPEARANCES:

Agent for the Appellant: Verminder Singh

Counsel for the Respondent: Acinkoj Magok

COUNSEL OF RECORD:

For the Appellant:

Name: Verminder Singh

For the Respondent:

François Daigle
Deputy Attorney General of Canada
Ottawa, Canada

¹ Respondent's book of documents (Exhibit R-1) at Tabs 9A and 9B

² Respondent's book of documents (Exhibit R-1) at Tab 8A at lines 53, 57, 111, 115 and Tab 8B at lines 1, 29, 60

³ Reply to the notice of appeal, paragraph 8(g)

⁴ Reply to the notice of appeal, paragraph 8(h); Respondent's book of documents (Exhibit R-1) at Tab 6, page 278

⁵ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 85

⁶ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 84

⁷ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 84

⁸ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 85

⁹ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 84

¹⁰ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 87

¹¹ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 86

¹² Respondent's book of documents (Exhibit R-1) at Tab 2A, page 92

¹³ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 88

¹⁴ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 85

¹⁵ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 6

¹⁶ Respondent's book of documents (Exhibit R-1) at Tab 2A, page 7

¹⁷ Respondent's book of documents (Exhibit R-1) at Tab 2C, page 199

¹⁸ Respondent's book of documents (Exhibit R-1) at Tab 3, page 246

¹⁹ Respondent's book of documents (Exhibit R-1) at Tab 2D, page 238

²⁰ Respondent's book of documents (Exhibit R-1) at Tab 2B, pages 148 and 149

²¹ Respondent's book of documents (Exhibit R-1) at Tab 2C, page 204

²² Respondent's book of documents (Exhibit R-1) at Tab 7

²³ Respondent's book of documents (Exhibit R-1) at Tab 7

²⁴ Respondent's book of documents (Exhibit R-1) at Tabs 8A and 8B

²⁵ Respondent's book of documents (Exhibit R-1) at Tab 8B, lines 1, 29, and 60

²⁶ Respondent's book of documents (Exhibit R-1) at Tab 8A at lines 53, 57, 111, and 115

²⁷ *Excise Tax Act*, subsection 299(1)

²⁸ Respondent's book of documents (Exhibit R-1) at Tab 2B at pages 148, 149 and Tab 2C at page 204

²⁹ Respondent's book of documents (Exhibit R-1) at Tab 2D, page 238

³⁰ Notice of appeal, page 2