

Docket: 2021-1076(IT)I

BETWEEN:

BERNARD PARÉ,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on October 27, 2022, at Québec, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Anna Kirk

JUDGMENT

The appeal from the reassessment made by the Minister of National Revenue under the *Income Tax Act*, dated June 20, 2019, with respect to the appellant's 2013 taxation year is dismissed without costs in accordance with the attached reasons for judgment.

Signed at Montreal, Quebec, this 19th day of December 2022.

"Réal Favreau"

Favreau J.

Citation: 2022 TCC 160

Date: 20221219

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BETWEEN:

BERNARD PARÉ,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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REASONS FOR JUDGMENT

Favreau J.

(1) This is an appeal filed by the appellant from a reassessment, dated June 20, 2019, made by the Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended (the Act), for the appellant's 2013 taxation year.

(2) When filing his income tax returns for the 2013 taxation year, the appellant reported the following amounts:

| | |
|---|----------|
| • Gross professional income | \$76,765 |
| • Professional expenses (principal residence) | \$5,336 |
| • Other employment expenses | \$45,081 |
| • Refundable medical expense supplement | \$847 |

(3) Under the June 20, 2019, reassessment, the Minister disallowed the following expenses:

| | |
|---|----------|
| • Other employment expenses | \$45,081 |
| • Professional expenses (principal residence) | \$1,244 |
| • Refundable medical expense supplement | \$847 |

(4) In addition, the Minister allowed an \$11,415 deduction for the cost of a motor vehicle which was included in other employment expenses.

(5) The \$33,666 balance of the other employment expenses were legal fees incurred by the appellant in connection with the dissolution of the Collin Paré partnership, a firm of bailiffs, of which the appellant was one of the two partners.

(6) On September 14, 2017, the Honourable Mr. Justice Tardif of this Court rendered an oral decision regarding \$12,553 of legal fees incurred by the appellant in 2012 in the context of the same case. The deduction of these expenses was disallowed because they were not incurred in the course of the appellant's professional activities.

(7) The appellant did not dispute that the expenses claimed in his income tax return for the 2013 taxation year were not deductible, but he complained that the June 20, 2019, reassessment was issued more than two years after the normal reassessment period. The initial assessment for the appellant's 2013 taxation year was issued on May 8, 2014, with a \$3,501 refund. As a result, the normal reassessment period ended on May 8, 2017.

(8) According to the appellant, several Canada Revenue Agency (the CRA) officers had access to his file in connection with the challenge to the Notice of Assessment for the appellant's 2012 taxation year, and they had all the time needed to reassess the income tax return for the 2013 taxation year, which included the same expense claims as those for 2012, including the legal fees.

(9) The appellant also relied on the fact that, in his ruling, Tardif J. indicated that the CRA was not accusing him of having committed any fault and did not find that he had made any misrepresentation attributable to neglect in its record.

(10) The appellant pointed to the fact that he had reported all his income for the 2013 taxation year and that his accountant at the time had made a simple clerical error in claiming his expenses under the "other employment expenses" line item.

(11) The appellant maintained that when he filed his income tax return, he did not have any bad intentions, make any misrepresentation due to carelessness or wilful default, or act in a fraudulent or negligent manner.

(12) On the other hand, the respondent alleged that the appellant made a misrepresentation attributable to neglect, carelessness or wilful default when filing

his income tax return or providing information for the 2013 taxation year. The appellant claimed employment expenses when he reported no employment income for the 2012 and 2013 taxation years.

(13) This litigation focuses only on the application of subparagraph 152(4)(a)(i) of the Act, which reads as follows:

Assessment and reassessment

(4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if

(a) the taxpayer or person filing the return

(i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act.

(14) In order for the Minister to be able to reassess beyond the normal reassessment period, the appellant or person who filed the return must have made a misrepresentation that is attributable to neglect, carelessness or wilful default or must have committed fraud in filing the return.

(15) In this case, the burden is on the Minister to prove, on a balance of probabilities, that the appellant or person filing the return made a misrepresentation that is attributable to neglect or carelessness. There are no facts in the record showing a wilful default or fraud on the part of the appellant and the penalty set out in subsection 163(2) of the Act was not assessed.

(16) According to the evidence in the record, it has been clearly established that the appellant made a misrepresentation when filing his income tax return for the 2013 taxation year. He could not claim an employment expense when he was not employed. His income came entirely from his professional practice.

(17) According to the evidence in the record, the appellant gave his accountant the invoices for the expenses without discussing whether these expenses could be deducted in computing his income. During his testimony, the appellant confirmed

that he did not check his tax return before signing it and that he relied on his accountant who prepared it.

(18) The verification of tax returns is an essential factor used by the courts to determine whether the taxpayer was negligent. In many cases, the courts have concluded that the taxpayers had been negligent in circumstances where (a) they had not actively reviewed the tax return before signing it and had simply relied on the accountant; (b) had not reviewed the return with the necessary care, as a wise and prudent person would have; or (c) had simply not read the return (see *Gestions Cholette Inc. v. The Queen* 2020 TCC 75).

(19) In my view, the fact that the appellant did not verify his tax return and his failure to ask his accountant questions to ensure the information on the return was correct show a lack of due diligence and neglect on the part of the appellant.

(20) The error in the appellant's tax return was obvious. I believe that the appellant would have been able to easily find the error had he taken the trouble to verify his return as a prudent and diligent person, given his business skills, knowledge and experience.

(21) The comment that Tardif J. made in his judgment concerning the appellant's 2012 taxation year indicating that the appellant was not at fault and did not act negligently cannot have any bearing on this appeal because it was made out of context. The assessment referred to this judgment was made within the normal reassessment period, and no penalty was assessed under subsection 163(3) of the Act.

(22) For all of these reasons, the appeal is dismissed.

Signed at Montreal, Quebec, this 19th day of December 2022.

"Réal Favreau"

Favreau J.

CITATION: 2022 TCC 160
DOCKET: 2021-1076(IT)I
STYLE OF CAUSE: BERNARD PARÉ
HIS MAJESTY THE KING
PLACE OF HEARING: Québec, Quebec
DATE OF HEARING: October 27, 2022
REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau
DATE OF JUDGMENT: December 19, 2022

APPEARANCES:

For the appellant: The Appellant himself
Counsel for the respondent: Anna Kirk

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the respondent: François Daigle
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Ottawa, Canada