

BETWEEN:

EMMANUEL AZZOPARDI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeals heard on March 27, 2023, at Windsor, Ontario

Before: The Honourable Justice David E. Spiro

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lindsay Tohn and Marissa Figlarz

JUDGMENT

The appeals of the reassessments for the 2001, 2003, and 2005 taxation years and the appeal of the assessment for the 2011 taxation year, all under the *Income Tax Act*, are dismissed, with costs in accordance with Tariff B of Schedule II to the *Tax Court of Canada Rules (General Procedure)*.

Signed at Ottawa, Canada, this 10th day of May 2023.

“David E. Spiro”

Spiro J.

Citation: 2023 TCC 51
Date: 20230510
Docket: 2014-3806(IT)G

BETWEEN:

EMMANUEL AZZOPARDI,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] The Appellant, Mr. Emmanuel Azzopardi, invested in a film tax shelter as a partner in a limited partnership. He argues that he is entitled to have a say in how the Canada Revenue Agency (the “CRA”) redetermined the 2001 loss of that partnership – Grosvenor Services 2001 Limited Partnership (the “Partnership”) – in which he held an interest of .114503%.

Overview

[2] The Appellant has two main complaints. First, that the CRA failed to include him in the objection process culminating in the redetermination of the Partnership’s loss. Second, that the CRA failed to provide him with the documents necessary to dispute that redetermination before this Court.

[3] Unfortunately for the Appellant, when the Minister of National Revenue (the “Minister”) determines a partnership’s income or loss, only one partner of the partnership is entitled to object. That partner is known under the *Income Tax Act* (the “Act”) as the “designated member”. Because the Appellant was not designated, or otherwise authorized, by the Partnership for that purpose, he was not

entitled to object to the Minister's determination or participate in the negotiations that concluded in the redetermination of the Partnership's 2001 loss.

[4] The redetermination of the Partnership's loss was binding on all the partners. The Minister had one year within which to reassess the Appellant to give effect to that redetermination. The Minister reassessed the Appellant within that time. Accordingly, the Appellant's appeals must be dismissed.

The appeals and the trial

[5] The Appellant appealed reassessments for his 2001, 2003, and 2005 taxation years. He also appealed the assessment for his 2011 taxation year. I will deal with the last year first.

[6] The Appellant could not explain why he appealed the assessment of his 2011 taxation year. The Notice of Objection in respect of that assessment stated: "The amount of the Capital gains included in the income on t5013 was overstated."¹ But the Appellant himself had made a T1 adjustment request for that year to include a taxable capital gain of \$99,575.19 on the disposition of his interest in the Partnership and that is exactly how the Minister assessed.² The Appellant effectively withdrew his objection when he conceded that the "correct capital gains amount was included."³ The Appellant's appeal of the assessment for his 2011 taxation year will be dismissed.

[7] The Appellant's appeals of the reassessments for his 2003 and 2005 taxation years relate to carryforwards of alternative minimum tax flowing directly from the reassessment of his 2001 taxation year. The disposition of the Appellant's appeals for those years, therefore, turns entirely on the disposition of his 2001 appeal.

¹ Notice of Objection to the assessment of the Appellant's 2011 taxation year, November 8, 2012 (Exhibit R-2).

² Line 127 of T1 Adjustment Request for the Appellant's 2011 taxation year, July 9, 2012 (Exhibit R-1).

³ See Notice of Confirmation, August 20, 2013 (Exhibit R-3). See also page 71, lines 6-16 of the transcript.

[8] The Appellant represented himself at trial. His only witness was his accountant, Mr. Alexander Menzies. Mr. Menzies was the one who told the Appellant about the Partnership. The Crown called Ms. Tarvinder Kaur, a tax appeals case specialist at the Appeals Branch of the CRA in Ottawa. Ms. Kaur provided evidence regarding the “designated member” of the Partnership.

The role of the “designated member” of a partnership on objection

[9] Subsection 165(1.15) of the Act provides that, if the Minister makes a determination of a partnership’s income or loss, the only person entitled to serve a notice of objection on the Minister is a member of the partnership who is either (a) designated in the partnership information return or (b) otherwise authorized by the partnership to so act.⁴

165(1.15) Notwithstanding subsection 165(1), where the Minister makes a determination under subsection 152(1.4) in respect of a fiscal period of a partnership, an objection in respect of the determination may be made only by one member of the partnership, and that member must be either

(a) designated for that purpose in the information return made under section 229 of the *Income Tax Regulations* for the fiscal period; or

(b) otherwise expressly authorized by the partnership to so act.

[10] Based on this provision, the Federal Court of Appeal has held that “the rights of appeal from a determination are restricted to a designated or authorized member of the partnership.”⁵ In *Tedesco v Canada*, 2019 FCA 235, the Federal Court of Appeal reviewed the relevant legislative context:

[17] A partnership does not pay tax under the Act. Rather, a partnership computes its income (or loss) as if it were a person and then allocates to each partner that partner’s proportionate share of such income (or loss). Accordingly, there is no assessment or reassessment of tax payable by a partnership. As a result, if the Minister should disagree with the amount of any income (or loss) claimed by a partnership and allocated to its partners, the Minister will have to reassess each partner. To avoid multiple disputes with several partners with respect to the amount of any income (or loss) of a particular partnership, subsection 152(1.4) of the Act was added to allow the Minister to make one determination of the amount of any income (or loss) of a partnership. ...

⁴ *Canada v Lux Operating Limited Partnership*, 2020 FCA 162 at para 29 [*Lux FCA*].

⁵ *Ibid* at para 38.

[18] Subsection 165(1.15) of the Act provides that a notice of objection to a determination made under subsection 152(1.4) of the Act may be made only by one member of the partnership who is duly designated or authorized to do so. ...

[19] Subsection 152(1.7) of the Act provides that, subject to the rights of objection and appeal, the determination made by the Minister under subsection 152(1.4) of the Act of the income (or loss) of the partnership is binding on the Minister and each member of the partnership. Subsection 152(1.7) of the Act also provides that the Minister may, notwithstanding subsection 152(4) of the Act, reassess each partner “before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination”.

[emphasis added]

[11] In *Lux Operating Limited Partnership v The Queen*, 2018 TCC 141 [*Lux TCC*], Justice Graham observed that the Minister has a choice as to whether to proceed by assessing or reassessing each partner individually (the “traditional process”) or by making a determination or redetermination at the partnership level that binds all partners and allows the Minister to assess or reassess each partner to give effect to the determination or redetermination (the “streamlined process”):⁶

[7] Partnerships are, with rare exceptions, not persons and not liable to tax under the Act. However, partnerships are required to file information returns in a prescribed form reporting their income or loss as if they were a person (*Income Tax Regulations*, section 229). The partners of the partnership then report their share of the partnership income or loss in their own tax returns (subsection 96(1)).

⁶ In *Lux FCA*, the Federal Court of Appeal set aside this Court’s Order answering a question put to it by the parties under section 58 of the *Tax Court of Canada Rules (General Procedure)* on the basis that the question was premature. The Federal Court of Appeal, however, expressly endorsed this Court’s interpretation of the purpose of the provisions:

[41] I agree with the Tax Court Judge that the purpose of subsection 152(1.4) of the Act, and the related subsections, is to allow for one determination in respect of a partnership.

...

[8] The Minister has three years from the day that is the later of the day that the partnership return is due to be filed and the day that it is actually filed to dispute the income or loss reported in the information return (subsection 152(1.4)). If the Minister disagrees with the income or loss reported in the information return, the Minister has two options.

[9] The traditional, less efficient option is for the Minister to reassess each partner individually to adjust the partner's share of the partnership's income or loss. I will refer to this option as the "Traditional Process". Under the Traditional Process, if the partners disagree with the Minister's view of the partnership's income, they may individually object to and appeal from their reassessments. The Traditional Process was the only option available to the Minister prior to the introduction of subsection 152(1.4) and related provisions in 1998.

[10] The second, more streamlined option is for the Minister to determine the correct income or loss of the partnership (subsection 152(1.4)). I will refer to this option as the "Streamlined Process". The Streamlined Process has the advantage of resolving any dispute about the partnership's income or loss at the partnership level. If the Minister makes a determination under subsection 152(1.4), she then sends a Notice of Determination to the partnership and to each partner who was a member of the partnership during the relevant fiscal period (subsection 152(1.5)). The determination is binding on the Minister and each partner unless it is objected to or the Minister issues a subsequent redetermination (paragraph 152(1.7)(a)). The next steps in the Streamlined Process depend on whether the partnership wishes to dispute the determination or not. If the partnership decides not to dispute the determination, the Minister may then reassess the individual partners to give effect to the determination. Reassessment is an important step in the process because it is the partners, not the partnership, that pay tax. If the partnership decides to dispute the determination, the dispute proceeds through the usual process. The objection and appeal provisions normally applicable to assessments apply to determinations (subsection 152(1.2)). However, one partner, known as the designated partner, disputes the determination on behalf of all of the partners (subsection 165(1.15)). That partner is generally the partner who was designated for that purpose in the information return filed by the partnership. If the dispute is resolved in a way that results in a change in the partnership's income or loss, the Minister may reassess the individual partners to give effect to the outcome. Again, reassessment is an important step in the process because it is the partners, not the partnership, that pay tax.

[11] It is important to emphasize that the Traditional Process and the Streamlined Process both lead to the same result. The only difference is that, under the Streamlined Process, the objection or appeal is carried out collectively through the designated partner whereas under the Traditional Process it is carried out individually by each partner. Thus, while the Streamlined Process is generally more efficient for all parties, both processes allow the Minister to assess the correct tax and both processes ensure that partners have objection and appeal rights.

[emphasis added]

[12] If the Minister uses the streamlined process, only the designated member is entitled to dispute the determination by serving a notice of objection on the Minister. Once the objection process has concluded, all partners are bound by the Minister's redetermination and are subject to assessment or reassessment on that basis within one year.⁷

The events leading to the redetermination at issue

[13] In computing taxable income for his 2001 taxation year, the Appellant claimed his proportionate share of the Partnership's loss for its 2001 fiscal period. The Partnership computed its loss for that period as \$255,788,405. The Appellant's proportionate share of that loss was \$292,859.⁸ In May of 2002, the Minister assessed the Appellant's 2001 taxation year as filed.⁹

[14] By notice dated March 30, 2005, the Minister determined the Partnership's loss for its 2001 fiscal period as \$134,913,329 (the "Initial Determination").¹⁰

[15] Under subsection 152(1.4) of the Act, the Initial Determination was binding on all members of the Partnership. In addition, subsection 152(1.6) of the Act provides that a determination made under subsection 154(1.4) binds all partners regardless of whether any particular partner received notice of the determination:

152(1.4) The Minister may, within 3 years after the day that is the later of

(a) the day on or before which a member of a partnership is, or but for subsection 220(2.1) would be, required under section 229 of the *Income Tax Regulations* to make an information return for a fiscal period of the partnership, and

(b) the day the return is filed,

⁷ The Minister is also bound by determinations and redeterminations thereby ensuring that all partners in the same partnership are assessed (a) consistently with one another and (b) in accordance with the determination or redetermination made by the Minister in respect of the particular fiscal period of the partnership.

⁸ See paragraph 23(d) of the Reply.

⁹ See paragraph 12 of the Reply.

¹⁰ Notice of Determination for the Grosvenor Services 2001 Limited Partnership for its fiscal period ended December 31, 2001, dated March 30, 2005 (Exhibit R-4).

determine any income or loss of the partnership for the fiscal period and any deduction or other amount, or any other matter, in respect of the partnership for the fiscal period that is relevant in determining the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, any member of the partnership for any taxation year under this Part.

152(1.5) Where a determination is made under subsection 152(1.4) in respect of a partnership for a fiscal period, the Minister shall send a notice of the determination to the partnership and to each person who was a member of the partnership during the fiscal period.

152(1.6) No determination made under subsection 152(1.4) in respect of a partnership for a fiscal period is invalid solely because one or more persons who were members of the partnership during the period did not receive a notice of the determination.

[16] By Notice of Objection served on June 24, 2005, 1444932 Ontario Limited, as the designated member of the Partnership, objected to the Initial Determination on behalf of the Partnership.¹¹ On November 15, 2011, the CRA and the Partnership settled the Partnership's objection for its 2001 fiscal period by entering into minutes of settlement.¹²

[17] By notice dated April 2, 2012, the Minister redetermined the Partnership's loss for the 2001 fiscal period as \$194,876,572 (the "Redetermination").¹³ The Redetermination reflected the amount of the Partnership's loss agreed upon by the Partnership and the CRA in their minutes of settlement.

¹¹ Notice of Objection to the determination of loss for the fiscal period ending December 31, 2001 of Grosvenor Services 2001 Limited Partnership, received by CRA on June 24, 2005 (Exhibit R-5).

¹² Minutes of Settlement between Grosvenor Services 2001 Limited Partnership (and 15 other production limited partnerships) and the CRA dated November 15, 2011 (Exhibit R-6).

¹³ Notice of Redetermination for the Grosvenor Services 2001 Limited Partnership for its fiscal period ended December 31, 2001, dated April 2, 2012 (Exhibit R-7).

[18] Paragraph 152(1.7)(a) of the Act made the Redetermination binding on every member of the Partnership. Paragraph 152(1.7)(b) of the Act then allowed the Minister one year from the date on which the Redetermination became final and binding to assess or reassess each partner to give effect to the Redetermination:

152(1.7) Where the Minister makes a determination under subsection 152(1.4) or a redetermination in respect of a partnership,

- (a) subject to the rights of objection and appeal of the member of the partnership referred to in subsection 165(1.15) in respect of the determination or redetermination, the determination or redetermination is binding on the Minister and each member of the partnership for the purposes of calculating the income, taxable income or taxable income earned in Canada of, tax or other amount payable by, or any amount refundable to or deemed to have been paid or to have been an overpayment by, the members for any taxation year under this Part; and
- (b) notwithstanding subsections 152(4), 152(4.01), 152(4.1) and 152(5), the Minister may, before the end of the day that is one year after the day on which all rights of objection and appeal expire or are determined in respect of the determination or redetermination, assess the tax, interest, penalties or other amounts payable and determine an amount deemed to have been paid or to have been an overpayment under this Part in respect of any member of the partnership and any other taxpayer for any taxation year as may be necessary to give effect to the determination or redetermination or a decision of the Tax Court of Canada, the Federal Court of Appeal or the Supreme Court of Canada.

The reassessment of the Appellant's 2001 taxation year

[19] By notice dated November 19, 2012, the Minister reassessed the Appellant's 2001 taxation year to reflect his proportionate share of the Partnership's loss as adjusted by the Redetermination.¹⁴

[20] The net effect of the reassessment was to disallow \$69,746 of the \$292,859 loss the Appellant had claimed from his investment in the Partnership. This resulted in an upward adjustment of the Appellant's taxable income for his 2001 taxation year to \$388,409.¹⁵

¹⁴ Notice of Reassessment dated November 19, 2012, for the Appellant's 2001 taxation year (Exhibit A-2).

¹⁵ See Schedule A of a letter to Mr. Menzies from the CRA dated March 11, 2014, for the computation underlying the reduction of the Appellant's loss from the Partnership for its 2001

[21] The Appellant neither pleaded nor argued that the 2001 reassessment reflected anything other than his proportionate share of the Partnership's loss as redetermined by the Minister.

The Appellant's arguments

[22] At trial, the Appellant made five principal arguments:¹⁶

1. The Minister should not have accepted 1444932 Ontario Limited as the Appellant's representative

[23] The Appellant contended that evidence of his authorization of 1444932 Ontario Limited as his representative was necessary for the Crown to succeed.

[24] The Appellant correctly noted that the evidence does not include a power of attorney or any other authorization under which the Appellant appointed 1444932 Ontario Limited as his representative to object to the Initial Determination. Nor does it include an offering memorandum or other document by which the partners of the Partnership, including the Appellant, constituted 1444932 Ontario Limited as their agent for that purpose. Finally, the evidence does not include Form RC59 that would have authorized the CRA to deal with 1444932 Ontario Limited on behalf of the Appellant.¹⁷

[25] But in light of the scheme of the Act, as reviewed by this Court and the Federal Court of Appeal in *Lux TCC*, *Tedesco*, and *Lux FCA*, such evidence is unnecessary. When the Minister uses the streamlined process, a partnership that wishes to object to a determination designates or otherwise authorizes one of its

fiscal period (Exhibit R-8). See the Notice of Reassessment for the Appellant's 2001 taxation year for his revised taxable income for that year (Exhibit A-2).

¹⁶ In addition, the Appellant pleaded at paragraph 3 of his Notice of Appeal under "Issues to be Decided" and argued at trial that an advance income tax ruling should prevail. He failed to produce any such ruling. In the absence of such a ruling, I am unable to consider his argument. He also referred me to other judicial decisions having no relevance to the issues before me including *Leroux v Canada Revenue Agency*, 2014 BCSC 720, *Agence du revenu du Quebec c Groupe Enico*, 2016 QCCA 76, and *Choptiany v The King*, 2022 TCC 112. Finally, at paragraph 5 of his Notice of Appeal under "Issues to be Raised" he pleaded an issue with respect to the existence, sending, and receipt of notice of the Initial Determination. The Appellant led no evidence on the point and did not pursue it in argument (see page 160 of the transcript at lines 10-25).

¹⁷ Form RC59 was the form authorizing the CRA to deal with an individual or a firm as a representative of the taxpayer with respect to the taxpayer's account information.

members to object on behalf of the partnership. That is the import of subsection 165(1.15) of the Act.

[26] I find that 1444932 Ontario Limited was (a) designated in the information return made under section 229 of the *Income Tax Regulations* for the Partnership's 2001 fiscal period or (b) otherwise authorized by the Partnership to so act. I make that finding on a balance of probabilities in light of the following evidence (the Partnership is also called the "Offering Partnership" in certain documents):

- Paragraph 13 of the Partnership's Notice of Objection (Exhibit R-5):

13. 1444932 Ontario Limited is the member of the Offering Partnership designated to object to the Minister's determination for purposes of subsection 165(1.15) of the *Income Tax Act* (Canada).

- Paragraphs 5-6 and 14-15 of the Minutes of Settlement between the Partnership and the CRA (Exhibit R-6):

5. 1444932 Ontario Limited and Hazelton Films GP MMI Inc. are the general partners and designated members [of] the Offering Partnership and the PSLPs, respectively;

6. On behalf of their respective partnerships, 1444932 Ontario Limited and Hazelton Films GP MMI Inc. objected to the above noted determinations;

14. 1444932 Ontario Limited and Hazelton Films GP MMI Inc. acknowledge their understanding that, once the Minister has issued the redeterminations reflecting the adjustments described above in paragraph 10, subsection 152(1.7) of the ITA will preclude members of the redetermined partnership from filing a Notice of Objection or otherwise challenging the reassessments of the members that give effect to the redeterminations; and

15. By way of their counsel's signature, 1444932 Ontario Limited and Hazelton Films GP MMI Inc. hereby confirm that they are authorized to execute minutes of settlement implementing the settlement agreement contained in these Minutes and that they are executing the Minutes on behalf of their respective partnerships.

- CRA addressed the Notice of Determination to "Grosvenor Services 2001 Limited Partnership c/o 1444932 Ontario Limited" (Exhibit R-4);

- The Notice of Objection to the Determination was served on the Minister by “Grosvenor Services 2001 Limited Partnership c/o 1444932 Ontario Limited” (Exhibit R-6);
- CRA addressed the Notice of Redetermination to “Grosvenor Services 2001 Limited Partnership c/o 1444932 Ontario Limited” (Exhibit R-7);
- Ms. Kaur testified that the CRA considered 1444932 Ontario Limited to be the designated member of the Partnership;¹⁸ and
- Mr. Menzies testified that he had no information that 1444932 Ontario Limited was not the designated member of the Partnership.¹⁹

[27] Based on all of that evidence, I have concluded that 1444932 Ontario Limited was the “designated member” of the Partnership within the meaning of subsection 165(1.15) of the Act.²⁰

2. The Minister should not have taken ten years to reassess the Appellant²¹

[28] The Appellant correctly noted that his 2001 taxation year was assessed in the spring of 2002, yet the Minister did not reassess that year until the fall of 2012. He contended that it was unfair and unreasonable for the Minister to take ten years to reassess.

[29] A complete answer to this argument is found in paragraph 152(1.7)(b) of the Act. That provision allows the Minister one year to reassess from the time that a redetermination becomes final and binding. As the Partnership’s right to object to the April 2, 2012 Redetermination expired on July 2, 2012 and as the Minister reassessed on November 19, 2012 to give effect to the Redetermination, the Minister was well within the one year period provided by paragraph 152(1.7)(b) of the Act.

¹⁸ Transcript, page 92, lines 4-7.

¹⁹ Transcript, page 66, lines 16-22.

²⁰ Evidence was necessary because the Minister made no assumption of fact that 1444932 Ontario Limited was (a) designated in the information return made under section 229 of the *Income Tax Regulations* for the Partnership’s 2001 fiscal period or (b) otherwise authorized by the Partnership to so act.

²¹ The Appellant raised this issue in his Notice of Appeal at paragraph 6 under the heading “Issues to be Decided”.

3. The Minister had a duty under the *Taxpayer Bill of Rights* to warn the Appellant that the Partnership was a questionable tax scheme²²

[30] The Appellant argued that the Minister had a duty to warn him about the Partnership because it was a “questionable tax scheme”. In support of his argument, he cited paragraph 14 of the *Taxpayer Bill of Rights* published by the CRA:

14. You have the right to expect us to warn you about questionable tax schemes in a timely manner

You can expect us to provide you with timely information about questionable tax schemes that are under scrutiny by the CRA. We can only warn you about tax schemes after we become aware of them and have determined that they may be questionable.

[31] But neither the Appellant nor the Crown suggested that the Partnership was a “questionable tax scheme”. In any event, this Court has no power to enforce the *Taxpayer Bill of Rights*. As Justice Graham noted in *Johnson v The Queen*, 2022 TCC 31:

[25] The *Taxpayer Bill of Rights* is an administrative document issued by the CRA. It is, in essence, a pledge to deliver a certain quality of service to Canadian taxpayers. It has no force of law. It neither overrides nor supplements the *Income Tax Act*.

[27] A taxpayer cannot sue or otherwise bring an action against the CRA in Tax Court for an alleged breach of the *Taxpayer Bill of Rights*. ...

[28] The mere fact that the Minister may have breached the *Taxpayer Bill of Rights* is not, in itself, relevant to determining the validity or correctness of the Appellant’s reassessments.

4. The Minister was required to inform the Appellant why she decided to waive or cancel interest and must produce all documents relating to that decision

²² The Appellant raised this issue in his Notice of Appeal at paragraph 1 under the heading “Issues to be Decided”.

[32] The Appellant argued that the Minister was required to produce all documents in respect of her decision to waive or cancel 37 months of interest for the period from April 1, 2005 to May 1, 2008 for all members of the Partnership.²³

[33] This is a fishing expedition for documents having no relevance to the issues raised in the pleadings. But even if the Appellant had pleaded this as an issue, this Court has no power to review discretionary decisions made by the Minister with respect to waivers or cancellation of interest.²⁴

[34] The Appellant also maintained, on a more general basis, that the Crown deprived him of the right to full documentary discovery prior to trial.²⁵ If the Appellant had an issue with the extent of the Crown's documentary disclosure, he could have made a motion to the Court when the issue arose. Without commenting on the merits of his position, it is too late to raise the issue at trial.

5. The Crown should bear the burden of proof

[35] The Appellant contended that because all relevant facts are exclusively or peculiarly within the Minister's knowledge, the Crown should bear the burden of proof. He argued that:

In this case, the Appellant has established that all the documents and correspondence ... related to all the issues, save and except the correspondences from it or the tax returns of the Appellant, are the documents of the CRA. So in this case, the burden of proof rests [with] the government, CRA, and not with the taxpayer.²⁶

[36] Contrary to the Appellant's submissions, this is not a case in which all relevant facts are exclusively or peculiarly within the Minister's knowledge. The Appellant was a partner in the Partnership. In that capacity, he would have had access to facts and documents relating to the Partnership's business affairs. If he

²³ See the letter from Mr. Mark Okonski of the CRA to the Appellant dated April 3, 2012 (Exhibit A-1). The Appellant stated (at lines 2-6 of page 48 of the transcript): "A decision was made [by the Minister of National Revenue] to waive [interest]. I want to know how they came to that, where are the documents to support that."

²⁴ See, for example, *Moledina v The Queen*, 2007 TCC 354 at para 6.

²⁵ The Appellant raised this issue in his Notice of Appeal at paragraph 8 under the heading "Issues to be Decided".

²⁶ Transcript, page 141, lines 11-19.

had difficulty obtaining such facts or documents from the Partnership, that was a matter between him and the Partnership – not between him and the CRA.

[37] In any event, there were no facts in issue on the pleadings. The Appellant simply contended that the law precluded the Minister from doing certain things (arguments 1 and 2 above) or that the law required the Minister to do other things (arguments 3 and 4 above). The Appellant’s arguments relate to law, not facts. The Appellant’s position on burden of proof has no merit.

Conclusion

[38] The Appellant’s appeal of his 2001 reassessment fails. As his 2003 and 2005 reassessments flow directly from his 2001 reassessment, and as he conceded the correctness of his 2011 assessment, the appeals will be dismissed, with costs in accordance with Tariff B of Schedule II to the *Tax Court of Canada Rules (General Procedure)*.

Signed at Ottawa, Canada, this 10th day of May 2023.

“David E. Spiro”

Spiro J.

CITATION: 2023 TCC 51

COURT FILE NO.: 2014-3806(IT)G

STYLE OF CAUSE: EMMANUEL AZZOPARDI AND
HIS MAJESTY THE KING

PLACE OF HEARING: Windsor, Ontario

DATE OF HEARING: March 27, 2023

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: May 10, 2023

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Lindsay Tohn and Marissa Figlarz

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm:

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