

Docket: 2011-3228(IT)G
2011-3161(GST)G

BETWEEN:

DAN MASON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on February 5 and 6, 2014 and May 13, 2014,
at Edmonton, Alberta

Reasons for Judgment given in part orally
on the bench on February 6, 2014 at Edmonton, Alberta

By: The Honourable Justice Campbell J. Miller

Appearances:

For the Appellant: The Appellant himself
Counsel for the Respondent: Mark Heseltine

AMENDED JUDGMENT

The Appeals from the reassessments respect to the 2003, 2004, 2005, 2006 and 2007 taxation years are allowed, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment on the basis that:

(a) Income Tax Act

- i. Mr. Mason's **unreported** income for the 2003 to 2007 taxation years was \$91,897, \$117,614, \$116,031, \$114,330 and \$105,940 respectively;

- ii. Mr. Mason's deductible expenses for the 2003 to 2007 taxation years are those shown as conceded in Appendix A;
- iii. No penalties are exigible.

(b) ETA

- i. GST is to be calculated based on the revenues of \$91,897, \$117,614, \$116,031, \$114,330 and \$105,940 respectively for the taxation years 2003 to 2007;
- ii. ITCs of \$1,201, \$1,411, \$1,713, \$1,394 and \$1,220 are allowed for the 2003 to 2007 taxation years respectively;
- iii. No penalties are exigible.

The Respondent shall have one month from the date of this Judgment to provide written representations with respect to costs. The Appellant shall have one month from the filing of such written representations to respond.

This Amended Judgment and Reasons for Judgment is issued in substitution of the Judgment and Reasons for Judgment dated October 3, 2014.

Signed at Ottawa, Canada, this **6th** day of **November** 2014.

“Campbell J. Miller”

C. Miller J.

Citation: 2014 TCC 297
Date: 20141106
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AMENDED REASONS FOR JUDGMENT

C. Miller J.

[1] These Reasons in Mr. Mason's Appeals require a preamble, given the unusual manner in which the trial unfolded. Mr. Mason appealed both the *Income Tax Act* (the "Act") and *Excise Tax Act* (the "ETA") assessments of the five years in issue (2003-2007) on the basis that the Canada Revenue Agency ("CRA") were incorrect in assessing him personally, as he was not the entity earning income, but rather it was some complicated trust arrangement. At the first stage of the trial in February 2014, I was convinced that it was indeed Mr. Mason personally who earned the revenue from his accounting practice. As to this point Mr. Mason had not put expenses or Input Tax Credits ("ITC's") in issue, and as CRA had assessed on the basis there were no business expenses (and, consequently no ITC's), I ruled on the correct entity issue, but adjourned so the Parties could address the numbers, with the hope, unrealistic as it turns out, the matter could be settled. The Parties returned to continue the trial on May 13, 2014 and I heard evidence with respect to the income and expenses of Mr. Mason's business.

[2] The following Reasons were given orally at the first stage of the hearing in February, 2014 (with minor editing).

[3] Mr. Mason is an accountant, practising for over 25 years. In the taxation years 2003 to 2007, Mr. Mason maintains he was operating his accountancy practice through an elaborate structure of corporations and trusts. After an audit,

the CRA determined it was not the complicated structure that operated the business but just Mr. Mason himself. The CRA assessed Mr. Mason by including in his income deposits made into various bank accounts totalling \$91,897, \$213,998, \$122,355, \$114,829 and \$105,967 respectively for the 2003 to 2007 taxation years. The CRA did not allocate any expenses to those years.

[4] Mr. Mason argues these amounts were not attributable to him personally, but were only held in trust. That initially appears to be what the case is about, though after hearing Mr. Mason's evidence, it struck me the assessed income, based on deposits, did not take into account the many withdrawals which Mr. Mason testified were expenses. Mr. Mason, however, did not put expenses in issue. The Minister of Revenue (the "Minister") also assessed gross penalties against Mr. Mason.

[5] The Crown conceded that \$96,384 in 2004, \$6,324 in 2005 and \$499 in 2006 did not represent income.

[6] Mr. Mason testified that 20 years ago Mr. Mark Wright provided him the necessary office furniture to establish his accountancy practice, and for that Mr. Wright was to share in his profits. It appears Mr. Wright had an interest in a company known as Investacap Inc. which in turn owned a holding company, 401422 Alberta Ltd. ("401 Co"). 401 Co registered a trade name, Mason and Associates, as well as Mason and Associates Management, back in 1993. In 2006, 903654 Alberta Ltd. ("903 Co") appears to have taken over the holding company role, also having registered Mason and Associates as a trade name. There were also several subsidiaries of 401 Co and subsequently 903 Co, which Mr. Mason called, at one point, beneficiaries. He never made clear to me exactly of what trust they were beneficiaries. His accounting records, however, suggest that certain other companies (S&K Holdings Ltd., 1089222 Alberta Ltd., 734970 Alberta Ltd. and 988741 Alberta Ltd.) represented four different functions of the business, each never earning, according to Mr. Mason, more than \$30,000 per year. Mr. Mason acknowledged it was set up this way to keep each entity under the \$30,000 limit for Goods and Services Tax ("GST") purposes. He indicated he relied on the old maxim of the Duke of Westminster case that he can arrange his affairs to minimize the tax burden.

[7] Mr. Mason testified that these companies were owned by Mason and Associates, again in trust, and he referred to the companies themselves as trusts.

[8] Mr. Mason's summary records suggested these four companies performed the following four functions: financial statement preparation, tax returns, bookkeeping and corporate. These companies never had financial statements and the only reference to them is in Mr. Mason's synoptics or summaries of the business activities.

[9] In effect, what was occurring, as far as the carrying on of the accountancy practice went, was that Mr. Mason hired some bookkeepers, 10 in all over the years in question. They were paid with Mason and Associates cheques. Clients would approach Mason and Associates in offices with Mason and Associates signs and hire Mason and Associates to do the bookkeeping, financial statements, tax or corporate work necessary. Mr. Mason said the rates were clear and there was no need to invoice the clients. The clients would pay their fees and such funds would be deposited into Toronto-Dominion Bank account 301797 between 2003 and 2006 and in a Royal Bank of Canada account 101-683-1 in 2006 and 2007. There was another Toronto-Dominion Bank account used for property management accounts – more on that later. The Toronto-Dominion Bank account 301797 was evidently set up under the name Mason and Associates. The Royal Bank of Canada account was set up under the name of 903 Co. as well as Mason and Associates – General. Cheques were in the name of Mason and Associates. Mr. Mason prepared synoptics, as he called them, of the transactions of deposits and withdrawals from the bank accounts. It was unclear to me from which source documents he created these synoptics. But he would allocate the deposits and withdrawals to the four different functions, though in going over several examples this seemed to be completely discretionary. It was only in the synoptics that there was any mention of the four companies. To the public and to the subcontractors it was Mason and Associates with whom they were dealing. In his synoptics, Mr. Mason showed revenues (based on deposits) as being less than expenses. He also showed the breakdown of the revenues amongst the four companies as always being less than \$30,000.

[10] As mentioned, there was a bank account dealing specifically with property management. Again, Mr. Mason was less than a beacon of clarity in describing this aspect of his business, though it seems he collected rents, presumably for others, yet expenses again exceeded any income. Mr. Mason maintained this was all done in some sort of trust arrangement.

[11] So let us explore this trust. Mr. Mason claims that Mr. Wright let him use some desks and office equipment starting in 1993 to carry on his business on the understanding Mr. Wright would share in profits of the business. Mr. Mason

maintains, as there has never been any profits, there has never been any distribution to Mr. Wright. Mr. Mason also states that all the bank accounts are in trust; he is the sole signing authority with complete control over the accounts. At one point he described the four companies with the separate functions as beneficiaries. He claims he was appointed trustee by Mr. Wright, though was not sure who the settlor might be. Mr. Wright did not testify. There were no trust documents. I find Mr. Mason does not have a complete grasp of the concept of trust.

[12] It was difficult to nail Mr. Mason down as to what was the trust property, other than the 20 year old office furniture and equipment. He acknowledged the monies in the bank were unlikely trust property as the accounts appeared to be overdrawn on an ongoing basis. He then described the deposits and withdrawals in the bank accounts as trust transactions involving several trusts.

[13] Mr. Mason admitted cash would be taken out of the bank accounts for business as well as personal use. He claims to have taken cash out to pay his Mastercard account, which likewise he testified had mixed business and personal use.

[14] Mr. Mason never filed any trust returns. The four companies never filed returns at all. Mr. Mason did not file personal returns for 2005, 2006 and 2007 until 2009. He reported net business income on his personal returns of \$10,556, \$0, \$3,223, \$2,220 and \$3,390 for the years in issue. He also reported dividend income of \$0, \$12,250, \$13,125, \$15,187 and \$17,140 in those years. He claimed he needs very little to live on. He testified he determined the income for the year, and after an allocation, took whatever was left over.

[15] If the facts to this point seem somewhat sketchy that is because they are, being based on a naïve view of trust, an unnecessarily complicated structure, no original source documents and confused testimony. I have intentionally not gone into the issue of expenses at this point or into specific numbers, but feel it is necessary to first answer the question – whose revenues are we talking about? At this point, that is the sole issue.

[16] There are several possibilities: first, as the Government contends, it could be Mr. Mason's, or, at the other end of the spectrum, it could be Mr. Wright's, or perhaps a trust for Mr. Wright: there is also the possibility it was 401 Co from 2003 to 2006 and 903 Co in 2006 and 2007 being the companies that held the

Mason and Associates trade name, or finally it could be the four companies to whom Mr. Mason allocated income expenses as some sort of beneficiaries.

[17] Let me deal with the latter three options. I do not accept there are any proven trust arrangements. The fact Mr. Wright may have allowed the use of some office equipment 20 years ago on some vague basis of sharing the profits of some business on some best efforts basis in no fashion meets the criteria for establishing a trust. As counsel for the Respondent, Mr. Heseltine, points out, three certainties are required to constitute a trust. There is no certainty of intention. Mr. Wright did not testify although it was he who, according to Mr. Mason, allegedly established a trust. There is no certainty of subject matter: perhaps the office furniture may be certain, but that does not account for bank trust accounts – are they trust property? Are profits trust property? There is simply no clarity on how or when they were determined other than totally at Mr. Mason's discretion. With respect to certainty of object or beneficiary, Mr. Mason would have me believe Mr. Wright alone was the beneficiary, yet Mr. Mason himself seemed to think the companies were also beneficiaries. No, the explanation of the arrangement with no corroborating evidence, documentary or otherwise, falls well short of proving a trust.

[18] So the revenue, if any, is not Mr. Wright's, nor a trust for Mr. Wright. Trusts simply did not exist.

[19] What about the four companies to which Mr. Mason allocated income and expenses? These, I suggest, were fictitious – they had no life, no accounts, no characteristic of an operating corporation: they were shells used conveniently by Mr. Mason to fictitiously divvy up income. The only place they reared their head was in Mr. Mason's synoptics. They never contracted with anyone, paid anyone or indeed did anything at all. No, they received no income: they were not effectively implemented to achieve Mr. Mason's purpose of keeping income under \$30,000 for GST purposes.

[20] So then what about the two companies that registered the trade name, Mason and Associates: 401 Co and later 903 Co. Here, I believe, I need to balance the probability of these companies carrying on the business versus Mr. Mason himself carrying on the business. The main factor that evidences the companies carrying on the business is the fact that the companies registered the trade name – Mason and Associates. 903 Co has the added factor of having the operating bank account in its name, along with Mason and Associates. Further there was a lease in 401 Co's name. Finally, the synoptics prepared by Mr. Mason, recreated from non-produced original journals, are titled Synoptic journal – 401 or Synoptic journal – 903. No other original journals or books were produced, nor were any financial statements, nor were any tax returns of the two companies. These company names appeared on no cheques, invoices or signs, only on Mr. Mason's self-prepared summaries.

[21] Mason and Associates was just a name: there were no associates as such, as the bookkeepers who worked for Mr. Mason were hired as subcontractors. I was certainly left with the impression that Mr. Mason was the moving force in the business. He and he alone made all business decisions.

[22] As the evidence came out it became clear that all Mr. Mason's expenses were paid from the business revenues. He had no personal bank accounts. He funded his Mastercard payments from withdrawals from the business. It is clear he treated himself and the business as one and the same. He produced no documents to evidence any apportionment between business expenses and personal expenses. Given that, the question of who (Mr. Mason or the two companies, 401 Co and 903 Co) becomes somewhat moot for purposes of determining Mr. Mason's income for the years in question. For, if the companies carried on the business, it is clear from the evidence that Mr. Mason was receiving some personal benefit in addition to what he claimed as income, the personal benefit being all the personal expenses covered by the companies. If Mr. Mason was carrying on the business personally, then again it is a matter of distinguishing the legitimate business expenses from personal expenses. Either way, the issue becomes one of a determination of the true net income of the business, whoever was carrying it on.

[23] One thing is clear, and that is, for GST purposes, there was only one business, not four businesses, as Mr. Mason argues. So for GST purposes it is indeed necessary to determine whether Mr. Mason, on the one hand, or 401 Co and 903 Co, on the other hand, were the suppliers of the services. I conclude Mason and Associates was Mr. Mason, not 401 Co or 903 Co. Apart from the trade name registration there is simply not sufficient business trappings to suggest the companies were carrying on the business – nothing. Mr. Mason was personally

active in the daily operations, made all decisions and held himself out as Mason and Associates. I conclude Mason and Associates was Mr. Mason's proprietorship. All the corporations and purported trusts were smoke screens for how the business was truly carried on. They were not effectively established or implemented to find they were carrying on the business.

[24] It is also clear, however, that assessing Mr. Mason with taxable income based solely on deposits without taking account of business expenses is unrealistic and incorrect. The accountancy business had legitimate business expenses. Regrettably, Mr. Mason has not been forthcoming with the CRA to this point to determine what those business expenses are. Mr. Mason, the time has come to do so. Mr. Mason and Mr. Heseltine suggested that if I determined a review of expenses was necessary they were prepared to adjourn the hearing for the purpose of sitting down this morning to settle the expense issue. Mr. Heseltine suggested that I assist in this settlement conference. My concern was that if I do so, and the Parties are unable to reach a resolution, and the trial has to continue to address expenses, I would no longer be able to serve as trial judge and another judge may have to start all over.

[25] I therefore suggested the Parties meet together without me to try and hammer out their differences. A room has been set aside for that purpose. If you believe you are close and need some final assistance to seal the deal, as it were, only then would I consider helping out on the understanding that the Parties are intent on settling and not proceeding to trial.

[26] I thought I would provide some reflections as you tackle the expense issue. First, you will be here for a month of Sundays if you attempt to justify every expense over a five year period: do some selective sampling. To CRA, recognize obviously there are business expenses – rent, contractors, suppliers, insurance etc. Mr. Mason, recognize that even from your own testimony, I have been satisfied some considerable personal expenses have been swept into the business deductions, and the business had income which came out to you for your own personal benefit. To both sides, be reasonable.

[27] I recognize Mr. Mason has not addressed expenses in his pleadings, limiting his Appeal to the question of which entity earned revenue, and consequently likewise has not addressed ITC's in his GST Appeal. I would ask that in your settlement discussions this should all be addressed, as I would be prepared, even at this late stage, to allow amended pleadings to ensure a realistic and correct result is

reached. Likewise, I make no ruling at this time with respect to penalties as I need to first know how much will be taxable in Mr. Mason's hands.

[28] Finally, if it appears the Parties are unable to settle the matter, I am setting May 13, 2015 for the continuation of the trial to address expenses and ITC's. That should give sufficient time for amended pleadings, further documents exchange, if any, and further discoveries. I will set specific time limits in that regard should it become necessary.

[29] That concludes the oral reasons given in February. I now turn to my Reasons with respect to the income and expenses of Mr. Mason's business following the completion of the trial in May, 2014.

[30] The Parties were unable to resolve their differences and the trial resumed on May 14, 2014. The case has regrettably evolved into an audit of income and expenses. I say regrettably as Mr. Mason showed up with boxes of records in support of his position. The Respondent advised that after three days of examinations, they were only able to go through the documents for 2003, but were prepared to concede 100% of certain expenses for all years based on that review, as well as lower percentages for other expenses for all years based on that 2003 review. Oddly, 2003 was the only year Mr. Mason indicated he did not have all the source documents. It is curious the Parties would not have chosen one of the other years to get a better reflection of proper expenses.

[31] Respondent's counsel did mention he had time on discovery to partially address the 2007 year and denied in full certain expenses in that year. I asked the Parties to provide me with a synopsis of their respective positions after Mr. Mason had concluded his examination in chief as, frankly, I was not at all clear on exactly what was conceded for the years in issue and what was left in issue. I will address revenue first.

Revenue

[32] From a review of the charts provided, I conclude the difference in revenue is as follows:

Year	2003	2004	2005	2006	2007
Total Deposits	\$91,897	\$117,614	\$116,031	\$114,330	\$105,940
Revenue	<u>\$75,872</u>	<u>\$ 93,606</u>	<u>\$102,622</u>	<u>\$106,511</u>	<u>\$ 90,597</u>

per income stmt					
Difference	\$16,025	\$24,008	\$13,409	\$7,819	\$15,343

Mr. Mason explains away this difference in income by suggesting part of the deposits were loans and transfers as follows:

Loans per list (Mgmt)	\$ 3,697	\$18,125	\$ 1,310	\$----	\$4,300
Loans per list (General)	<u>\$10,780</u>	<u>\$ 3,169</u>	<u>\$ 3,478</u>	<u>\$ 9,550</u>	<u>\$3,200</u>
	\$14,477	\$21,294	\$ 4,788	\$ 9,550	\$ 7,500
Difference	\$ 1,548	\$ 2,714	\$ 8,621	\$-1,731	\$ 7,843
Bank Transfers etc	\$-1,548	\$-2,714	\$-8,621	-----	\$-7,843
Difference	Nil	Nil	Nil	\$-1,731	Nil

[33] The Crown based its revenue figures on bank deposit information. Mr. Mason accepts these figures but only as a starting point claiming, as indicated above, that they improperly include loan deposits and bank transfers, neither of which would be revenue. The CRA auditor, Ms. Loraas, testified that in her review of bank documents she excluded all identifiable transfers.

[34] Mr. Mason provided photocopies of poor quality of what appeared to be bank deposit slips, only a handful of which have a bank stamp on them. On closer scrutiny, I have concerns whether the copies have been tinkered with. Specifically, I find a slip for a \$6,000 deposit on December 5, 2003, while having the word "loan" on it, appears to have been altered. The word "loan" is in more of a white delineated background than the rest of the fuzzy grey photocopy. It raises suspicion. Combined with concerns I have regarding Mr. Mason's credibility, which I will address shortly, I am unable to accept his assertion that there were loans in the amounts he indicated. I also reject his bank transfer calculation, preferring the evidence of the auditor. The Minister's figures for revenue stand.

Credibility

[35] Before turning to a review of expenses I wish to say a few words with respect to Mr. Mason's credibility. His explanation at stage one of the trial reflected a complete lack of understanding of trust and a weak and shoddy attempt at tax planning. He provided no cogent records. The second stage of the trial was not much better. His record-keeping was vague and difficult to follow. Even at the second stage, he indicated he had more records which he had not brought with him. I find this hard to accept.

[36] I found his explanation that he operated at a loss, funding losses from loans and credit unsupportable. There was little explanation regarding any of the loans. And, indeed, I am highly suspicious of photocopied bank deposit slips, as mentioned earlier.

[37] Mr. Mason testified that he did not invoice clients. He would simply explain to them what he did. This is an extremely naïve practice for a non-commercially minded individual starting a small business: it is not a credible practice for an accountant with 20 years experience.

[38] Another example of either poor understanding of legitimate business expenses or self-deception is Mr. Mason's meal expenses – mainly small amounts at fast food outlets, claimed on the basis of some business meeting. I simply do not believe it.

[39] Additional factors that have caused me to place little weight on Mr. Mason's testimony are:

- No corroborating evidence of other witnesses;
- Confusion between testimony at trial and examination for discovery regarding where he was living during the relevant period;
- Failure to recall the name of a friend with whom he purportedly lived
- A claim for all his car expenses despite his testimony he did mainly volunteer work and accountancy was more a sideline business;
- Arbitrary allocation of expenses and his acknowledgment that many had been misallocated;

- In addressing expenses, the very first expense (of 100s) that I took him to he acknowledged was probably personal;
- Heavy reliance on synoptic documents rather than original source documents;
- Restaurant receipts presented at trial with “meeting” marked on them: most had not been so marked at discovery.

[40] I found Mr. Mason’s testimony confused, bordering on evasive. He has wound himself up in a complex structure without properly documenting it. He has run his business in as loose a manner as possible and has made it difficult, if not impossible, to figure out the business’ true income and expenses. Overall, I did not find his testimony reliable and I accept little of it as proof of his position.

Expenses

[41] With that, I now turn to a review of the expenses. Attached as Appendix A to these Reasons is a chart setting out the expenses claimed by Mr. Mason and what has in fact been conceded by the Government based on a review of the 2003 information.

[42] I find I cannot rely on Mr. Mason’s documents. His argument as to why I should accept something more than the auditor’s conclusions based on receipts provided to the CRA, is that additional expenses are borne out of a review of what Mr. Mason called “banking items”. He has not, however, connected the dots between “banking items” and specific expenses sought. Everything he has provided in Court appears to be summaries, without providing any of the original source documents.

[43] Mr. Mason also claims that the 2003 year lacked “banking receipts” which, with respect to insurance, were available in other years. Again, these were not clearly identified at trial sufficient for me to conclude such insurance expenses were ever incurred.

[44] Mr. Mason argued, in connection with all his expenses, that they were incurred in due course of business, maintaining personal receipts were kept separate. This was not at all evident from his testimony nor from documents that he did produce. His summaries would show a 100% allocation of expenses to business with the exception of some vehicle expenses. All meals appeared to have been covered, shown at 50%, notwithstanding most of them were simply fast food meals.

[45] I find it unnecessary to go through each and every expense heading. It is for Mr. Mason to prove on a balance of probabilities that the expenses were not just incurred, but were incurred for business purposes. He has been unable to do so beyond those conceded by the Government.

[46] Given the Respondent has denied all expenses in connection with purported rental revenue, I wish to address such mortgage, taxes and utility expenses which Mr. Mason claims are in connection with what he referred to as “the rental property claimed under the property management account”. It took some considerable time at trial to clarify exactly what property he was talking about. It was the property at 17320 86th Avenue near West Edmonton Mall. The Respondent suggests that this house was Mr. Mason’s personal residence. Mr. Mason did not produce any leases or proof of payment of rent or the names of the renters, other than his brother.

[47] The Respondent produced a copy of a Land Title Certificate, presumably for this property, showing another company, 957422 Alberta Inc., as owner during the relevant period. Mr. Mason was the sole director and shareholder of 957422 Alberta Inc. He referred to this as his property management account, though his testimony again was confused as to exactly what properties were being managed. Indeed, there was no evidence connecting to 957422 Alberta Inc. to any rental property until the second stage of the trial. At this stage, Mr. Mason produced a new separate synoptic for 957422 Alberta Inc. though the heading for this new synoptic was as follows:

Banking Journal TD 86300301835

Co name: 401422 Alberta – Management

Year end: December 31, 2005

957422 AB Ltd. Property Management

[48] Giving Mr. Mason the benefit of the doubt, perhaps this was not produced earlier as he did not consider it part of his accounting practice. The document shows deposits and payments for the years 2004 to 2007, presumably in connection with rental revenues. Again, however, there is no source documentation.

[49] The Respondent suggests there was only one property and that was the property Mr. Mason actually resided in. The Land Titles Certificate does show a couple of mortgages (CIBC and Commercial Lease and Capital Corp.) against the property as well as an Assignment of Rents and Leases to Commercial Lease and Capital Corp., though this predates 957422 Alberta Inc. becoming owner of the property.

[50] The income statements Mr. Mason produced, through his synoptics, for the rental revenues from 2004 to 2007 show the following:

	2004	2005	2006	2007
Revenue	\$4,342	\$5,930	\$8,235	\$8,089
Expenses (mortgage, repairs, utilities etc.)	\$15,625	\$21,013	\$16,916	\$12,348

[51] The Respondent's position is that Mr. Mason has not proven he actually received rent, and is therefore denied all expenses in connection with the alleged rental property.

[52] There are a couple of ways of approaching the rent issue: first, as part of Mr. Mason's proprietorship through which, as I have already found, he conducted his accountancy practice; second, as a separate income producing source held by 957422 Alberta Inc. My concern with the latter approach is that the fact that 957422 Alberta Inc. held title to the property did not come out in evidence until the second stage of this trial, and then Mr. Mason still appears to lump this element of his business in with 401 Co., and what he refers to as property management. Any purported rent receipts do not appear to have been accounted for by the property owner, 957422 Alberta Inc., who Mr. Mason continued to call a trust. It all comes

back to Mr. Mason’s inability to demonstrate with concrete evidence who was being paid what for what service.

[53] I conclude that if there was any rental income, it is more appropriately captured as part of Mr. Mason’s income. Mr. Mason has not provided sufficient evidence of rental revenue against which any expenses can be claimed. His testimony generally regarding the “investment property”, as he called it, was, at best, confused. He claimed to have lived there only for six to eight months during the years in question, while primarily renting a room in a two-bedroom downtown condo from Ken English and his wife, who also lived there. He also indicated during the relevant years another six to eight months were spent living in another west Edmonton home with a friend, Jim (whose last name he could not remember). He testified he used his office address for his personal address. He claimed his mortgage was really \$27,000 a year, but he only claimed \$3,200 in 2007 for example, and not the balance, as the balance “did not go through the bank account”. I have no idea what he meant by that.

[54] Even if I was satisfied Mr. Mason was receiving some rental revenue, I am left with no evidence as to how much of the property was used for producing rent for making any accurate assessment of a breakdown between personal and rent-related expenses. Mr. Mason stated there was initially one tenant, then two or three, and that one was his brother, and that he himself lived on the property, albeit briefly. Mr. Mason also alluded at one point to this property being one of his investment properties. I never heard any evidence of any others. Again, like much of his testimony, Mr. Mason has left me confused and unconvinced. He has provided insufficient evidence for me to deviate from the Respondent’s assessment that no property related expenses are deductible.

[55] With respect to GST, it should be based on the revenue figures set out in Appendix A. Initially the Respondent assessed on revenue figures somewhat higher than ultimately conceded and allowed no ITCs, resulting in assessments of \$6,432, \$14,979, \$8,564, \$7,044 and \$6,356 for the 2003 to 2007 taxation years respectively. Those numbers will be adjusted downward to reflect the revenue figures set out in Appendix A. The issue remains to what extent is Mr. Mason entitled to ITCs. The following chart indicates what the Respondent concedes in this regard and what the Appellant continues to seek.

	2003		2004		2005		2006		2007	
	A	R	A	R	A	R	A	R	A	R
Automobiles	\$49	\$22	\$90	\$23	\$30	\$15	\$45	\$42	\$138	\$25

Dues	\$212	\$53	\$386	\$53	\$242	\$53	\$95	\$54	\$144	\$51
Corporate Registry	\$306	\$142	\$242	\$146	\$332	\$276	\$252	\$130	\$289	\$189
Meals	\$51	\$18	\$49	\$19	\$54	\$11	\$96	\$9	\$222	\$10
Office	\$517	\$135	\$486	\$106	\$558	\$169	\$310	\$137	\$516	\$158
Rent	\$815	\$0	\$890	\$0	\$840	\$0	\$832	\$0	\$461	\$0
Phone	\$36	\$0	\$94	\$0	\$147	\$0	\$30	\$0	\$210	\$0

[56] Given the Respondent's preparedness to concede some ITCs, I do not intend to analyse the requirements necessary for entitlement to ITCs. I accept that the Respondent is not making an issue in that regard. I will therefore simply address the numbers.

[57] The Respondent conceded ITCs with respect to the office expenses, according to written argument, based on "the ratio of the value of receipts (cash or credit card) found as against the value of all expenses conceded from whatever source (receipts, cancelled cheques, credit card statements, bank statements). This ratio as a percentage, 61%, was applied to each of the conceded amounts to arrive at a net amount on which GST was then calculated so as to arrive at an ITC amount." With respect, I do not see why the concession was limited to the 61%. I am prepared to grant 100%.

[58] The Respondent concedes ITCs under the first five headings in the chart above, but offered no explanation as to why that concession would not extend to the rent and phone expenses conceded as being deductible business expenses. I am prepared to allow ITCs on these conceded amounts as well. The following then is a summary of my conclusions:

	2003	2004	2005	2006	2007
Automobile	\$22	\$23	\$15	\$42	\$25
Dues	\$53	\$53	\$53	\$54	\$51
Corporate Registry	\$142	\$146	\$276	\$130	\$189
Meals	\$18	\$19	\$11	\$9	\$10
Office	\$235	\$186	\$296	\$239	\$274
Rent	\$700	\$890	\$915	\$823	\$461
Phone	\$31	\$94	\$147	\$88	\$210
ITCs	\$1,201	\$1,411	\$1,713	\$1,394	\$1,220

Penalties

[59] Penalties have been assessed pursuant to section 285 of the *ETA* and subsection 163(2) of *Act*. These provisions are similar in that they both impose penalties where the taxpayer knowingly or under circumstances amounting to gross negligence makes, participates in, assents to or acquiesces in the making of a false statement or omission in their return.

[60] Mr. Mason's position is that he believed the trusts were a proper and correct way to do business and he was allowed to arrange his affairs to pay the least amount of tax. It is up to the Crown to prove otherwise.

[61] The question of whether or not Mr. Mason knowingly or with gross negligence made false statements does not hinge on the numbers – his calculation of revenue and expenses, but on whether he honestly believed his attempt at organizing his affairs to pay the least amount of tax was *bona fides*. As I have already concluded, the elaborate structure of what Mr. Mason called trusts created a smokescreen more than resulting in effective tax planning. But the Respondent has not proven on balance that a smokescreen was the intent. I find that Mr. Mason intended to implement effective tax planning. With respect, he simply did not do it particularly well. It is not sufficient to say he should have known better (for example, see the cases of *Leroux v Canada Revenue Agency*¹ and *Fourney v Her Majesty the Queen*²). So, while I have expressed concern regarding the reliability of his testimony, it does not extend to a view that he was intentionally deceitful, or grossly negligent. His actions, I suggest, are misguided, even to the point of being considered negligent. But to find gross negligence requires elevating his behaviour beyond that threshold. The Respondent has not proven this higher level of negligence.

¹ 2014 BCSC 720.

² 2011 TCC 520.

[62] In conclusion, I allow both Appeals and refer the matter back to the Minister for reconsideration and reassessment on the following basis:

(c) Income Tax Act

- iv. Mr. Mason's **unreported** income for the 2003 to 2007 taxation years was \$91,897, \$117,614, \$116,031, \$114,330 and \$105,940 respectively;
- v. Mr. Mason's deductible expenses for the 2003 to 2007 taxation years are those shown as conceded in Appendix A;
- vi. No penalties are exigible.

(d) ETA

- iv. GST is to be calculated based on the revenues of \$91,897, \$117,614, \$116,031, \$114,330 and \$105,940 respectively for the taxation years 2003 to 2007;
- v. ITCs of \$1,201, \$1,411, \$1,713, \$1,394 and \$1,220 are allowed for the 2003 to 2007 taxation years respectively;
- vi. No penalties are exigible.

[63] The Respondent shall have one month from the date of this Judgment to provide written representations with respect to costs. Mr. Mason shall have one month from the filing of such written representations to respond.

Signed at Ottawa, Canada, this **6th** day of **November** 2014.

“Campbell J. Miller”

C. Miller J.

Appendix A

2003

2004

2005

2006

2007

Revenue	2003	2004	2005	2006	2007
Deposits less trust amounts		\$117,614	\$116,031	\$114,330	\$105,940
Revenue per Income Statements	\$75,872	\$ 93,606.00	102,921	106,272	90,597

Expense heads	2003		2004		2005		2006		2007	
	Claimed	% supported	Claimed	conceded using 2003 %	Claimed	conceded using 2003 %	Claimed	conceded using 2003 %	Claimed	conceded using 2003 %
Automotive	\$ 776.00	50%	\$ 651.00	\$ 325.50	\$ 438.00	\$ 219.00	\$ 1,279.00	\$ 639.50	\$ 819.00	\$ 409.50
Bank Charges	\$ 675.00	100%	\$ 1,489.00	\$ 1,489.00	\$ 1,739.00	\$ 1,739.00	\$ 1,635.00	\$ 1,635.00	\$ 768.00	\$ 768.00
Corporate Registry Fees	\$ 3,545.00	55%	\$ 3,605.00	\$ 2,018.80	\$ 7,065.00	\$ 3,885.75	\$ 3,464.00	\$ 1,939.84	\$ 5,507.00	\$ 3,083.92
Dues & Fees	\$ 1,767.00	65%	\$ 1,373.00	\$ 892.45	\$ 3,467.00	\$ 2,233.55	\$ 5,517.00	\$ 3,586.05	\$ 3,540.00	\$ 2,301.00
Insurance	\$ 2,866.00	44%	\$ 2,705.00	\$ 1,190.20	\$ 3,242.00	\$ 1,426.48	\$ 3,942.00	\$ 1,734.48	\$ 1,802.00	\$ 792.88
Meals	\$ 1,253.00	20%	\$ 1,367.00	\$ 273.40	\$ 769.00	\$ 153.80	\$ 700.00	\$ 140.00	\$ 856.00	\$ 171.20
Misc & Seminars			\$ 1,918.00	0.00	\$ 455.00	0.00	\$ 516.00	0.00	\$ 1,779.00	0.00
Mortgages & taxes			\$ 7,280.00	0.00	\$ 9,747.00	0.00	\$ 9,368.00	0.00	\$ 3,265.00	0.00
Office	\$ 6,334.00	53%	\$ 5,002.00	\$ 2,651.06	\$ 7,975.00	\$ 4,226.75	\$ 6,939.00	\$ 3,677.67	\$ 8,626.00	\$ 4,571.78
Rent	\$ 9,993.00	100%	\$ 12,719.00	\$ 12,719.00	\$ 13,082.00	\$ 13,082.00	\$ 11,897.00	\$ 11,897.00	\$ 7,691.00	\$ 7,691.00
Repair & Maintenance			\$ 880.00	0.00	\$ 635.00	0.00	\$ 570.00	0.00	\$ 739.00	0.00
Sub Contract	\$ 44,783.00	100%	\$ 51,221.00	\$ 51,221.00	\$ 50,180.00	\$ 50,180.00	\$ 46,198.00	\$ 46,198.00	\$ 41,791.00	\$ 41,791.00
Telephone	\$ 446.00	100%	\$ 1,342.00	\$ 1,342.00	\$ 2,092.00	\$ 2,092.00	\$ 1,350.00	\$ 1,350.00	\$ 3,512.00	\$ 3,512.00
Utilities			\$ 6,236.00	0.00	\$ 5,670.00	0.00	\$ 5,441.00	0.00	\$ 6,275.00	0.00
Total	\$ 72,438.00	64-70%	\$ 98,088.00	\$ 74,122.41	\$ 106,516.00	\$ 79,258.33	\$ 98,816.00	\$ 72,797.54	\$ 87,407.00	\$ 65,092.38
% of Deposits (less trust amounts)				63%		68%		64%		61%
% of revenue per Mr. Mason*	95%		105%		103%		93%		96%	
Average % conceded by Crown		65%								
Net Income	\$3,434.00		\$5,432.00	\$43,491.59	\$53,395.90	\$36,772.67	\$7,458.60	\$41,592.46	\$31,990.00	\$40,907.72
Net income after additional \$60 in registry fees added			\$43,551.59		\$36,832.67		\$41,592.46		\$40,907.72	

* Mr. Mason's percentages do not take into account the additional expenses he claimed in his written submissions.

CITATION: 2014 TCC 297

COURT FILE NO.: 2011-3228(IT)G, 2011-3161(GST)G

STYLE OF CAUSE: DAN MASON AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: May 13, 2014

REASONS FOR JUDGMENT BY: The Honourable Justice Campbell J. Miller

DATE OF **AMENDED** JUDGMENT: **November 6, 2014**

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Mark Heseltine

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

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