Docket: 2013-1257(IT)G

BETWEEN:

DINO AGOSTINI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 17, 2015, at Montréal, Quebec.

Before: The Honourable Justice Patrick Boyle

Appearances:

Counsel for the Appellant: Virginie Falardeau
Counsel for the Respondent: Emmanuel Jilwan

JUDGMENT

The appeal from the assessments made under the *Income Tax Act* with respect to the Appellant's 2007 and 2008 taxation years is dismissed, with costs, in accordance with the attached Reasons for Judgment. If the parties cannot agree on the amount of costs within 30 days, written submissions are to be filed with the Court within a further 30 days.

Signed at Toronto, Ontario, this 31st day of August 2015.

"Patrick Boyle"

Boyle J.

Citation: 2015 TCC 215
Date: 20150831
Docket: 2013-1257(IT)G

BETWEEN:

DINO AGOSTINI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Boyle J.

[1] The Appellant, Dino Agostini, has appealed from his 2007 and 2008 reassessments in respect of :

(i) the inclusion of unreported income in the amounts of approximately $105,000 for 2007 and $160,000 for 2008 resulting from a bank deposit analysis by Canada Revenue Agency ("CRA");

(ii) the denial of business expenses in the amounts of approximately $15,000 in 2007 and $17,500 in 2008; and

(iii) subsection 163(2) gross negligence penalties assessed in respect of the unreported income in the amounts of approximately $15,000 in 2007 and $20,000 in 2008.

[2] The Appellant testified on his own behalf, along with his mother, Maria Agostini, and his wife, Sonia Hamel. Marc Morin a CRA auditor, testified for the Respondent.

[3] As detailed below, I do not accept very much of Dino Agostini's evidence on the sources of the unreported income, the amount of his income and the related expenses claimed as believable, reasonable, credible, reliable or deserving of any material weight. His attempts to corroborate his versions with supporting testimony

from his mother and his wife backfired spectacularly when neither of their evidence supported his testimony about living with his mother to amass large savings, his parents paying all of his personal expenses as an adult right down to choosing his clothes, receiving up to $35,000 in cash gifts at his wedding, or keeping a safe with up to $140,000 in it in cash in his mother's garage and then later in the home he shared with his wife and their daughter. While I say more below about the reliability of the evidence of his mother and wife at trial, it is clear that I must conclude that either (a) Mr. Agostini had his mother who cannot read sign a document prior to the hearing and wrongly held out to be a Solemn Declaration that contained material and substantial untruths, or (b) his mother lied under oath about her inability to read and/or never meeting an attorney or a notary.

[4] There was little to nothing Mr. Agostini's lawyer could do to help him save his case or to save him from himself. She definitely presented the evidence in the best possible light and she raised all the correct legal arguments on the extent of the burden of proof on the Appellant, the absence of any requirement for corroborating documentation, on the fact that the burden with respect to penalties is on the Crown et cetera. However, when asked, in argument, how she could help me reconcile the conflicting evidence or work through the obvious credibility concerns raised, she was left in the position of being able to say little more than that the evidence is what it is and she would have to leave credibility issues to me. I did not need long.

I. <u>The Evidence</u>

A. The bank deposit analysis unreported income

[5] Mr. Agostini maintained that he has operated a landscaping and snow removal business in Mount Royal since 1988 after finishing high school, that he continued to live with his parents until 2004 when he married, that his parents during this time paid for everything, including his mother choosing and paying for his clothes, and consequently had saved up a very large amount of cash, certainly as high as between $130,000 and $140,000 at one time before 2004. This had not been mentioned at his initial August 2010 audit meeting interview with CRA when specifically asked more than one question about other possible sources of money or income. It was not mentioned in his February 2011 Notice of Objection. It was raised first in the Spiegel Sohmer 2012 submissions in support of the Objection filed by his then lawyers on his behalf.

[6] Mr. Agostini also maintains that he received a $20,000 cash gift from his mother in 2007. This was not mentioned at the initial August 2010 CRA interview even though specific questions had been asked. This was not mentioned either in the February 2011 Objection. It was also raised for the first time in the February 2012 submissions from his prior counsel.

[7] At the hearing of his appeal, Mr. Agostini maintained that a third source of his available cash was the $30,000-$35,000 of cash he and his wife received as wedding gifts at their 2004 wedding. This had not even been mentioned in his Notice of Appeal. The Respondent and the trial judge were not the only ones who learned of the cash wedding gifts for the first time; this was clearly also news to his wife.

[8] For the reasons that follow, I can only conclude that, with respect to these three other sources of cash available to Mr. Agostini in the years in question, most of the taxpayer's evidence appears contrived, while much of the supporting evidence of his mother and his wife appears connived.

[9] Mr. Agostini did not file a 2007 tax return when due. He was assessed "arbitrarily" under subsection 152(7) for 2007. He then filed an amended return. The evidence available to the Court from the CRA shows that his 2007 amended return information was referred for an audit because he filed an amended return after a subsection 152(7) assessment was issued. That was the reason given in writing by the CRA official who referred the matter for audit. There is no mention of a tip or lead from an informant.

[10] It is Mr. Agostini's positon, supported by the testimony of his wife, that he was audited because his wife contacted the CRA during a difficult period of separation in their marriage, during which she was in significant mental distress, to inform them he was not reporting all of his income. He maintains that he was told about this by the CRA auditor. While I accept that Sonia Hamel appears to have been deeply troubled during this period of separation and aggressively hostile towards Mr. Agostini and their daughter (she stole their dog and killed it with poison) the preponderance of the evidence leads me to conclude that a report by Ms. Hamel to CRA was not the reason why he was audited. This is not, of itself, a material issue to the substantive issue of Mr. Agostini's liability for the assessment, but it is another discrepancy relevant to the overall credibility of the testimony of Mr. Agostini and his wife.

[11] At the August 2010 first interview with CRA Mr. Agostini said that he only accepted cheques in his business and would not accept cash. He said he did not have accumulated savings or cash on hand, nor receive any large sums in the prior years. He said that he only had the one Caisse Populaire account, only deposited his business income, rental income and child benefits into it, and had made no substantial non-business deposits. He said he did not have any other bank account, not even a closed account.

[12] Mr. Agostini's position at the hearing is that he had saved more than $130,000 in cash from his landscaping and snow removal business while living frugally with his parents from 1989 until 2004 when he married his wife. This is mathematically possible but would be quite an accomplishment given the very modest reported income over those years.

[13] Mr. Agostini and Sonia Hamel had a daughter in 1998. Yet, he maintains that they did not live together and that he continued to live with his parents until he married in 2004. He maintains that his parents continued to pay virtually all of his personal expenses as well as provide him with full room and board. His wife testified that he continued to live with his parents and not with her and their daughter, until 2004. According to them, she lived alone with her son and their daughter surviving on government social assistance. They both maintained that he did not pay any child support or provide any other financial assistance to her.

[14] Unfortunately for Mr. Agostini, his mother could not have been clearer nor have appeared more honest and candid in her testimony that her son did not live at her home after the birth of his daughter in 1998. She testified that he moved out and lived with Ms. Hamel and their daughter as a family in the apartment on the second floor of her (Mrs. Agostini) parents' house. She was equally clear and credible in saying that she did not regularly choose or pay for her son's clothes when he was a working adult living at home. She simply let him live with the family and eat the meals she prepared for the family. In the questionable Solemn Declaration she signed in 2012, she only stated that he paid no rent.

[15] Mr. Agostini maintains that he kept this very large amount of accumulated cash savings from his very modest landscaping business in a large safe he purchased in 1991 when he started accumulating excess cash. He submitted a photocopy of a handwritten receipt on a locksmith's business form. It hardly provides any information; there is no description, model or other information beyond "Coffre Fort Cadena". He did not provide an original to the Court nor did he ever show an original to his counsel. He showed, with his hands, that the safe

was about 18 to 24 inches in size in each direction. He said it remained at his parent's house for a while after he moved out in 2004 until he moved it to his home. Nonetheless, his mother claims to have never seen such a safe nor was she ever aware her son even owned one. Similarly, his wife was never aware that he claimed to own a safe even though he says he took $95,000 from it to make a down payment on their triplex, along with another $9,000 to replace its roof, and had deposited $30,000-$35,000 of their wedding gift money in it. The safe was not mentioned in the initial CRA interview nor in the Notice of Objection. No reason was offered for keeping a free-standing safe with that amount of money in it in a garage at the house instead of in the presumably more secure and occupied house. Mr. Agostini had his mother sign a Solemn Declaration in February 2012 which was submitted with the Spiegel Sohmer submissions. It refers twice to the existence of a safe owned by him at her house, once in connection with an attempted break-in to the safe in 2010 long after he moved out. When she was asked about this, she insisted she could not read and had never been in a lawyer or notary office, nor had anyone from a lawyer or notary office attended on her. Her testimony was quite clear: there was no such safe.[1]

[16] Mr. Agostini maintains that he received a $20,000 cash gift from his mother in 2007. It is mentioned for the first time in his lawyer's submissions in support of his Objection. He stated that it came from an inheritance she received upon the death of her father; her handwritten note is to the same effect. However, in her testimony, she said it came from several different sources including from the sale of her country house, from her accumulated savings having worked since she arrived in 1957, from the sale of her mother's house, and from the sale of her father-in-law's house after he passed away. While it is possible Mrs. Agostini may have been confused or unclear, none of these several sources described at the hearing appear to be even indirectly from an inheritance upon her own father's death who, she said, died in 2004.

[17] Further, a page from her bank book was offered in evidence, it showed a $23,000 cheque reduced her balance in June 2007. The bank book tendered did not show any significant deposits preceding this withdrawal by cheque of most of the money in this account. No copy of the cheque was offered in evidence. Mrs. Agostini said she had made the cheque out to her son Dino Agostini who refused to take her gift as a cheque but wanted cash instead. She then described

---

[1] Oddly, earlier in 2010 she appears to have written by hand a five line note regarding a $20,000 cash gift she gave her son in 2007, which was also an attachment to the Spiegel Sohmer letter. This would mean she can write but cannot read, which is possible.

taking that same cheque to the bank teller and asking that it be given to her in $100 bills. She said she used the extra $3,000 for her own needs and gave $20,000 to her son Dino. She did not try to explain why she would have made the cheque out to her son for $23,000 if she only intended to give him $20,000. She was clear that this was the same cheque she made out to her son that was used by the bank for her $23,000 cash withdrawal. She did not write a cheque to herself or to cash. I saw no evidence whatsoever of this $20,000 cash being deposited into Mr. Agostini's bank account.

[18] In his testimony at trial, Mr. Agostini testified he and his wife had also received $30,000-$35,000 of cash as wedding gifts in 2004 which he added to his accumulated cash savings. Neither he nor his prior lawyers had even mentioned this before; this simply came out when he was on the witness stand. He described having had a "big Italian wedding" with 200 to 250 guests. He said that he paid for the wedding, which cost, in total, about $9,000. He did not offer any supporting evidence from any of the guests. As mentioned above, his bride said they did not really receive any cash as wedding gifts but only gifts in kind, and she referred to having a wedding gift registry or two for the approximately 80 guests at their wedding. She also said that only she and the taxpayer's mother planned and organized the wedding and not her husband-to-be. She was also clear that his mother was involved because his parents paid the wedding expenses.

[19] Mr. Agostini's version of events literally does not add up. While he claims to have had up to $140,000 in cash saved in his safe, he claims to have used it to spend significantly more, including in 2002 a $95,000 down payment on their triplex, a $9,000 replacement roof for it, and his $52,000 F350 pickup truck which he claims to have purchased for cash in 2005 (though no written record relating to his truck was offered into evidence). He also used to withdraw cash from this safe whenever he had bills to pay which he would first deposit in his bank account and then pay his bills with it. No attempt was made by the taxpayer to reconcile any deposits with any bill payments from the bank account, nor to provide another explanation for first depositing this cash into the bank account. These amounts would have left the safe empty well before 2007.

[20] The seemingly magical qualities of this safe, beyond only being visible to the taxpayer, became truly apparent when CRA discovered that, contrary to what he said at his first interview, he also banked at CIBC. This was obvious from a review of his Caisse Populaire deposits as he made a $75,000 transfer from a CIBC account to his Caisse Populaire account in early 2007. He maintains that he had taken another $75,000 of his accumulated savings and deposited them into a CIBC

account which he later transferred to his Caisse Populaire account. He explained that he did not mention it to CRA because he had closed the account. In fact, the CIBC account had remained active and in use until December 2007. He said he used $70,000 or more of this $75,000 transfer to pay personal expenses which he did not describe: this certainly appears somewhat inconsistent with his claims of frugality.

[21] The evidence falls short of satisfying me on a balance of probabilities:

(i) that the taxpayer accumulated any material amount from the after-tax profits of a 20 customer lawn maintenance and snow plow business or his net after-tax rental income from the other two units in his triplex;

(ii) that there was a safe maintained by him at his parent's house which was later moved to his house;

(iii) that his parents made a $20,000 gift to him in cash; or

(iv) that any material amount of cash was received as wedding gifts.

[22] Further, even if any of these alleged sources of cash existed, no attempt was made by Mr. Agostini to specify, detail or reconcile how, when or if they were ever deposited into the Caisse Populaire account and would be relevant to the deposit analysis.

[23] Mr. Agostini has not satisfied the Court on a balance of probabilities with reasonable, credible and consistent evidence that the unexplained bank deposits in question were from a source that was not taxable. While supporting, corroborating evidence in writing or from another witness is not required of a taxpayer to discharge his burden of proof, it can prove very helpful.

B. The business expenses

[24] CRA's reason for disallowing the claimed expenses is that they were entirely undocumented and unvouchered as to having been incurred, been paid, or been related to his lawn maintenance and snow plow business. In addition, he had claimed capital cost allowance (CCA) on the full cost of his $52,000 truck as Class 10 instead of placing it in Class 10.1 which limits the depreciable amount of such a

vehicle to $30,000. He had also deducted $1,600 of lawn mowing and trimming equipment in full in 2007 instead of capitalizing it and claiming CCA.

[25] Mr. Agostini maintains that he cannot produce any supporting documents for his business expenses (or its revenues) because his wife broke into his home and took all his business and tax records for several years when she was separated from him and distressed, and after she reported to CRA that he was not reporting all his income. This was not mentioned by him at his first interview with CRA nor in his Notice of Objection, though he claims the CRA auditor told him of his wife's contact. He said he first became aware of this after CRA contacted him to begin an audit. Apparently, his house had been broken into earlier and he had not noticed these were missing until he went to his desk and opened the drawer to retrieve them for CRA. He went to the police station a few days after being contacted by CRA and filed a police report that his tax returns and bills for the prior 4 or 5 years had also been taken in a previous break-in.

[26] A very sketchy supplemental police report was offered in evidence dated January 2010. It makes no reference as to when the break-in occurred or was first reported, nor was the initial police report offered in evidence despite the Respondent having asked for it more than once in the history of this case.

[27] Mr. Agostini first said that the break-in occurred in 2010, which is very unlikely given that the supplemental police report was filed in the first half of January 2010. It can be observed that the date of the supplemental police report was cut-off in the copy submitted to CRA by his prior counsel. In cross-examination, he said the break-in occurred in 2007, which seems a most unlikely time to steal tax returns or many business records for 2007 or 2008.

[28] Mr. Agostini said he became aware of the break-in when he was at his girlfriend's (during his time of separation from his wife) when police called him to say there had been a break-in at his house. He went home to find his screen broken and could see that someone had gone through his house. He then called the police to make a report that his house had been broken into.

[29] Mr. Agostini also maintained to CRA and the Court that someone had broken into, or tried to break into, his safe at his parent's house in 2010. He did not wish to name his suspect. His wife, who admitted to trying to kill him, to kidnapping their dog and killing it (for which she served jail time), and to multiple attempts to take her own life, did not admit to ever trying to break into the safe she was not aware of. His mother, who was not aware of any such safe, was similarly

unaware of any break-in at her house (notwithstanding her signed Solemn Declaration which refers to it).

[30] Sonia Hamel testified that she broke into her husband's house in 2009. According to her, she went to his wardrobe closet, and went to the box in which he kept his tax returns and related documents for 2007 and 2008 and destroyed them with his shredder at his home. She did not say she took or destroyed any of his business, banking or financial records. She testified that she broke into his house only that once and did not break into his parent's house.

[31] While it is certainly arguable that the nature and amount of expenses claimed appear reasonable for a one-person lawn maintenance and snow plow business, and CRA did not deny them on the basis that they were unreasonable, there is an extreme dearth of credible evidence that such a business was even carried on by Mr. Agostini and was the source of any material portion of the income in dispute. The Court heard his testimony that he carried on a business with 20 customers in Mount Royal. He described it in a schedule to his 2008 tax return as a landscaping business he carried on under his own name. It is first referred to in the evidence as Dino's Landscaping in the February 2012 Spiegel Sohmer submissions, which also attaches a copy of a cheque dated January 2012 to Dino's Landscaping for $1,330 for one year services for a client from June 2010 to June 2011. It is referred to in the Notice of Appeal as Dino's Landscaping/Paysagement. Mr. Agostini's wife and mother described him as being active in that business. That is really all of the evidence the Court has of such a business. There is no letterhead or bill head, bill pad, fee schedule, advertising materials, business cards or flyers, credit card or bank statements, receipts or warranties for equipment purchases, his truck or his plow, not even a photograph of his truck with a plow attached and maybe a name and phone number on it, or anything similar. No sensible explanation was offered for not even trying to locate any supporting evidence from his banks, credit card issuers, customers, suppliers et cetera.

[32] Given the particular dearth of evidence, its significant inconsistencies, and the obvious credibility concerns, I am far from being satisfied on a balance of probabilities that:

1) Mr. Agostini's business records were taken by his wife and/or shredded during a break-in; or

2) there was a break-in or an attempted break-in at his parents' house in 2010.

[33] In these circumstances, I am left quite uncertain that there was a landscaping and snow removal business at all, notwithstanding the Minister of National Revenue's (the "Minister") assumption. If there was, I am not satisfied on a balance of probabilities with reasonable, credible and consistent evidence that the claimed expenses were incurred and paid, or if they were, whether they related to that business.[2]

C. Penalties

[34] Mr. Agostini was assessed so-called gross negligence penalties under subsection 163(2) in respect of the unreported income. No penalties were assessed in respect of the disallowed expenses.

[35] Mr. Agostini's positon is simply that he did not have any unreported income. He does not argue this was a reasonable oversight, misclassification, mischaracterization or mistake, or that he otherwise had exercised any form of due diligence.

[36] The Respondent assessed penalties on the basis that Mr. Agostini's omission of including the unreported income assessed was done knowingly, or that it resulted from gross negligence, given that the amount was multiples of his reported income, he had not filed his 2007 return until after a so-called arbitrary assessment was issued, he appeared very aware of his business but was quite vague on specifics when asked, and his failure to fully report his income occurred in more than one year – he was a repeat offender.

D. Credibility of evidence

[37] Overall, Mr. Agostini's testimony is almost completely unsupported and it is riddled with obvious and inexplicable inconsistencies; in addition, the evidence of his mother and his wife is vague, evasive, inconsistent, non-specific and unhelpful. Hence, I cannot accept any material portion of his evidence that is not corroborated with clear, reasonable, consistent and credible evidence from another source. The testimony of his wife and his mother fell far short of doing that with respect to the unreported income, the existence of the safe, and the gifts of cash from his mother and his wedding guests. Mr. Agostini offered no supporting evidence for his

---

[2] The evidence I have describing this business certainly leads me to conclude without doubt that it could not have been the source of the amount of unreported income amount in question.

expenses and the testimony of his wife is insufficient to support his explanation of why he was unable to produce any.

II. Law and Analysis

[38] The law places the burden of proof on the taxpayer with respect to the income tax assessed. In this case, I do not believe the taxpayer's evidence even rises to the level of the *prima facie* case required to initially "demolish" any of the Minister's assumptions that are material to the assessments in question.[3] The evidence in support of the Appellant's version of events certainly does not rise to a balance of probabilities or more likely than not level.

[39] In order to succeed in a tax appeal, a taxpayer is not required to offer supporting or corroborating evidence, including supporting documentation. A taxpayer can succeed on his own testimony if the judge finds it credible, reasonable and sufficient. See for example the Supreme Court of Canada in *Hickman Motors Ltd. v. The Queen.*, [1997] S.C.R. 336, the Federal Court of Appeal in *House v. Canada*, 2011 FCA 234, and former Chief Justice Bowman of this Court in *Merchant v. The Queen*, 98 DTC 1734. This is not one of those cases; Mr. Agostini is not one of those witnesses. The testimony of his mother and wife is quite insufficient in these particular circumstances, as are a questionable photocopy of a locksmith receipt and a sketchy police report.[4]

[40] Given my findings of fact set out above, Mr. Agostini cannot succeed on the merits of his appeal from the additional tax assessed resulting from his unreported income and the disallowed expenses.

[41] His appeal of the penalties assessed still remains to be decided. The burden is on the Respondent with respect to the requirements of subsection 163(2) that there have been an omission or a false statement in a return or answer, and that it was made knowingly or was attributable to gross negligence. Simply because the taxpayer has not discharged his burden of proof or prevailed with respect to the

---

[3] A *prima facie* case for this purpose has been described by the Federal Court of Appeal as one "supported by evidence which raises such a degree of probability in its favour that it must be accepted if believed by the Court unless it is rebutted or the contrary is proved." See: *Amiante Spec Inc. v. Canada*, 2009 FCA 139.

[4] The observation of Nicolette the secretary character in Chapter 47 of John Grisham's "The Testament" came to mind early in this case: "When witnesses concoct lies, they often miss the obvious. … They become so consumed with their fiction that they overlook a fact or two."

substantive income tax issue, it does not follow that penalties are justified. See, for example, *Syscomax Inc. v. The Queen*, 2014 TCC 202 at paragraph 23.

[42] The Courts have written in detailed fashion on the scope and nature of the burden on the Minister with respect to penalties in cases such as this and on the scope of gross negligence, including wilful blindness. I wrote on it most recently in *Sbrollini v. The Queen*, 2015 TCC 178 at paragraphs 14 to 21. I wrote on it also in *Haniff v. The Queen*, 2011 TCC 112 at paragraphs 25 to 27. In both of those cases, I quote from and rely on the Federal Court of Appeal decision in *Lacroix v. The Queen*, 2008 FCA 241, which in turn quotes from the Federal Court of Appeal decision in *Molenaar v. The Queen*, 2004 FCA 349.

[43] The *Lacroix* case raised similar issues regarding evidence on the substantive issue that was found not to be credible, and set out what was required in such circumstances for the Minister to discharge its burden with respect to penalties. In *Haniff*, I wrote:

> 27 The taxpayer's counsel is correct in pointing out that the onus is on the Crown of proving gross negligence in support of such penalties. However, as stated most aptly by Pelletier J.A. of the Federal Court of Appeal in *Lacroix v. Canada*, 2008 FCA 241, 2009 DTC 5029:
>
> > 29 … In the case at bar, the Minister found undeclared income and asked the taxpayer to justify it. The taxpayer provided an explanation that neither the Minister nor the Tax Court of Canada found to be credible. Accordingly, there is no viable and reasonable hypothesis that could lead the decision-maker to give the taxpayer the benefit of the doubt. The only hypothesis offered was deemed not to be credible.
> >
> > 30 The facts in evidence in this case are such that the taxpayer's tax return made a misrepresentation of facts, and the only explanation offered by the taxpayer was found not to be credible. Clearly, there must be some other explanation for this income. It must therefore be concluded that the taxpayer had an unreported source of income, was aware of this source and refused to disclose it, since the explanations he gave were found not to be credible. In my view, given such circumstances, one must come to the inevitable conclusion that the false tax return was filed knowingly, or under circumstances amounting to gross negligence. This justifies not only a penalty, but also a reassessment beyond the statutory period.
> >
> > ...

> 32 What, then, of the burden of proof on the Minister? How does he discharge this burden? There may be circumstances where the Minister would be able to show direct evidence of the taxpayer's state of mind at the time the tax return was filed. However, in the vast majority of cases, the Minister will be limited to undermining the taxpayer's credibility by either adducing evidence or cross-examining the taxpayer. Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of subparagraph 152(4)(*a*)(i) and subsection 162(3).
>
> 33 As Justice Létourneau so aptly put it in *Molenaar v. Canada*, 2004 FCA 349, 2004 DTC 6688, at paragraph 4:
>
>> 4 Once the Ministère establishes on the basis of reliable information that there is a discrepancy, and a substantial one in the case at bar, between a taxpayer's assets and his expenses, and that discrepancy continues to be unexplained and inexplicable, the Ministère has discharged its burden of proof. It is then for the taxpayer to identify the source of his income and show that it is not taxable.
>
> [Emphasis added.]

[44] In *Sbrollini*, I wrote:

> [21] According to the Federal Court of Appeal, in circumstances where the Crown satisfies the Court on a balance of probabilities that a taxpayer earned unreported income, the taxpayer must then provide a credible explanation for the discrepancy between reported and actual income. It will not be sufficient to come up with a possible or even plausible explanation, as that would very significantly increase the Crown’s burden of proof which is clearly no greater than a balance of probability standard. The Crown’s standard of proof is no greater because it involves a penalty or a degree of culpability. The taxpayer must satisfy the Court that his or her explanation for not reporting the additional income, whatever the reason is, was itself reasonable for the particular taxpayer in the particular circumstances at the time of filing his or her return, on a preponderance of the evidence relevant to his or her explanation.

[45] The comments of Justice Pelletier in *Lacroix* and Justice Létourneau in *Molenaar* are wholly apposite in this case. The Respondent has discharged its burden with respect to penalties and the penalties were validly assessed. Mr. Agostini’s appeal with respect to the assessed penalties will also be dismissed.

III. Conclusion

[46] The taxpayer's appeal with respect to the 2007 and 2008 assessments which added unreported income, disallowed expenses and imposed penalties with respect to the unreported income is dismissed with costs. If the parties cannot agree on the amount of costs within 30 days, written submissions are to be filed with the Court within a further 30 days.

Signed at Toronto, Ontario, this 31st day of August 2015.

"Patrick Boyle"

Boyle J.

CITATION: 2015 TCC 215

COURT FILE NO.: 2013-1257(IT)G

STYLE OF CAUSE: DINO AGOSTINI AND HER MAJESTY THE QUEEN

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: July 17, 2015

REASONS FOR JUDGMENT BY: The Honourable Justice Patrick Boyle

DATE OF JUDGMENT: August 31, 2015

APPEARANCES:

Counsel for the Appellant: Virginie Falardeau
Counsel for the Respondent: Emmanuel Jilwan

COUNSEL OF RECORD:

For the Appellant:

Name: Virginie Falardeau

Firm: Place du Canada
1010 De La Gauchetiиre Street West,
Suite 2250
Montréal, Quebec, H3B 2N2

For the Respondent: William F. Pentney
Deputy Attorney General of Canada
Ottawa, Canada