Docket: 2012-509(IT)G

BETWEEN:

OMAR RAMLAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 16, 2015, at Toronto, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Jan Jensen

JUDGMENT

For the attached reasons for judgment, the appeal from the assessment made under the *Income Tax Act* for the 2009 taxation year is dismissed.

The Respondent is entitled to her costs if she wants them.

Signed at Kingston, Ontario, this 27th day of January 2016.

"Rommel G. Masse"

Masse D.J.

Citation: 2016 TCC 26
Date: 20160127
Docket: 2012-509(IT)G

BETWEEN:

OMAR RAMLAL,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] Omar Ramlal is appealing the penalty for gross negligence that was imposed on him pursuant to subsection 163(2) of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) (the "Act") in relation to his 2009 taxation year and related request for loss carryback to the 2006, 2007 and 2008 taxation years. A tax preparer who was unknown to the Appellant prepared his tax return in such a way as to claim very large fictitious business losses. These business losses, if allowed, would result in the refund to the Appellant of all the taxes paid or deducted at source for the 2006, 2007, 2008 and 2009 taxation years. The fact is that the Appellant never owned or operated any kind of business at all during the taxation period under consideration. The Canada Revenue Agency (the "CRA") disallowed the losses and penalized the Appellant pursuant to subsection 163(2) of the Act. This case pertains only to the penalties that were imposed.

Factual Context

[2] The Appellant comes from Trinidad and Tobago. He went to high school there up until the age of 16, but then he left school in order to help his father support his family. He had gone up to "Form 5" in school which he understands is the equivalent of grade 12 here in Canada. He came to Canada in 1995 with his wife and children. He found a job in 1998 and held various employments until

2003 when he got a job with Unilever Canada. He has worked at Unilever ever since up to the present day. He works as a machine operator and gets paid $30.79 per hour.

[3] He testified that a co-worker referred him to a fellow named Len in Scarborough who apparently was an accountant. He does not remember what Len's last name is. Len prepared his tax returns and filed them with the CRA using electronic filing. The Appellant testified that he never had to sign anything while Len was doing his tax returns. Len's fees ranged anywhere from $300 to $500. Len never wanted to be paid by cheque; he only wanted cash. Len told the Appellant that he kept everything on file; he had copies of everything, but he never showed any copies to the Appellant. Some time in 2008, the Appellant believes that he was audited by the CRA in respect to his tax returns of prior years. Apparently, Len had been claiming fictitious business losses on behalf of the Appellant in prior years. These business losses were disallowed and the Appellant was assessed penalties for gross negligence. When the Appellant received an audit letter from the CRA, Len told him: "If you ever take me to court, I would deny that . . . I ever did taxes for you." This frightened the Appellant and his wife. Two weeks later, Len called him and told him that he was sorry for what happened and he knew somebody who would rectify the situation. The Appellant got this other fellow's number and called him. The Appellant met this fellow, Reyul Magrah (the Appellant is not too sure about the last name). Reyul told him that he knew an accountant who would help clean up the mess that Len had created in the years gone by. At this point in time, the Appellant did not trust Len, but Reyul told him that Len did not know this accountant. Reyul asked him for his T4 slip, his social insurance number and his wife's social insurance number. Reyul told him there would be a fee of $500, but he wanted cash, not a cheque. The two met again and the Appellant gave Reyul the cash. A while later, they met again and Reyul asked the Appellant to sign some papers which he did. Reyul took the papers back and told him that his tax return would be filed within one or two weeks. Reyul only told him that he would get a cheque in the mail but did not tell him how much.

[4] Exhibit R-1, Tab 2, is the Appellant's 2009 tax return dated March 31, 2010. On the signature page, there is the usual certification that the taxpayer certifies that the information contained in the return and the attached documents is complete and accurate and fully discloses all of his income. The Appellant did not read this before signing. He claims that Reyul only presented about three or four pages and he signed them without looking at them. He claims that Reyul was only a go-between or a courier between the Appellant and the so-called accountant. He never did meet this accountant.

[5] On the return, the refund for 2009 is indicated as being $20,696.99. The Appellant says he did not see this when he signed his return. He does not even remember if there were figures on these documents or not. Line 490 reserved for the identification of the professional tax preparer that prepared the return is left blank. The Appellant apparently did not notice this. He does not remember seeing the statement of business or professional activities or the request for loss carryback, also dated March 31, 2010, even though his signature appears on these documents. He cannot say if the word "per" was on the signature line when he signed the documents. Clearly it was and this should have been obvious to him. It is manifestly clear that he simply never paid any attention whatsoever to the documents that were presented to him for his signature.

[6] Had the Appellant bothered to even glance at his tax return, he would have discovered some obviously false statements. In his return, the Appellant reported gross business income, described as "receipts as agent", in the amount of $97,599.82. He also claimed business expenses, described as "amt to principal fr agent", in the amount of $362,350.72, resulting in a net business loss of $264,750.90. The Appellant acknowledges that his only source of income during those years is income from employment. At no time during the period under consideration did he own or operate a business. The reported business income and claimed business expenses are obviously false and blatantly so. The Appellant claimed $80,963.90 of these business losses against his 2009 taxation year and he requested that the unused balance of these business losses be carried back and applied to his 2006, 2007 and 2008 taxation years as non-capital losses. The result of all of this is that the Appellant would get refunds of all the taxes paid or deducted at source for 2006, 2007, 2008 and 2009 — an astounding result.

[7] After the return was filed, the CRA sent a letter dated June 30, 2010 (Exhibit R-1, Tab 4) to the Appellant requesting information regarding his claimed business expenses and business income. The CRA required the completion of a business questionnaire as well as the production of all source documents in support of all the business expenses claimed. The Appellant was confused and he perceived that the same thing was happening to him all over again as what had happened with Len. The Appellant did not respond directly to this letter from the CRA. Someone else, most likely Reyul or the unknown tax accountant, drafted a response for his signature. This response dated July 27, 2010 (Exhibit R-1, Tab 5) does not in any way address the concerns raised by the CRA. It is highly confrontational and makes no sense at all. The Appellant did sign this response and he admits that he did not read it before signing. He claims that he does not know how he came to sign the letter at Tab 5, saying: "[H]ow can I sign something like this without

knowing what this is?" Indeed, why would anyone sign an important document that he does not understand without seeking some explanation? However, he did.

[8] After that, he got another letter from the CRA dated November 25, 2010 (Exhibit R-1, Tab 6). He tried to contact the unknown, anonymous and faceless accountant using a 1-800 number provided to him by Reyul. He left messages countless times, but the accountant never returned his calls. He also tried to contact Reyul, but without success.

[9] The CRA disallowed the business income and business expenses and denied the request to carry back the non-capital losses to the 2006, 2007 and 2008 taxation years. The CRA also assessed penalties under subsection 163(2) of the Act.

[10] It is to be noted that the Appellant had been reassessed on March 4, 2010, for earlier taxation years from 2002 to 2008 so as to disallow claimed business losses. He was also assessed gross negligence penalties for those years. Consequently, he signed his 2009 tax return on March 31, 2010 knowing full well that the CRA was questioning his prior tax returns.

[11] A friend of the Appellant introduced him to Vijay Kapur, his present tax accountant. Mr. Kapur is an honourable man and a true professional. Mr. Kapur obtained all of the Appellant's prior tax returns from the CRA back to 2003. That is when he found out that the Appellant's previous tax preparers had prepared fraudulent returns claiming non-existent business losses. Mr. Kapur filed amended tax returns for the 2002 to 2009 taxation years. Mr. Kapur also instituted the present appeal on behalf of the Appellant in order to try and get him out of this mess caused by his unscrupulous tax preparers. Mr. Kapur rendered assistance to the Appellant throughout this appeal. His assistance is appreciated.

[12] The Appellant takes the position that he simply has no knowledge or understanding of income taxation and he was totally unaware that his 2009 tax return contained false information. In the past, he never looked at, nor signed, his tax returns. He submits that he is the innocent and unwitting victim of an unscrupulous tax preparer who took advantage of his naivety and lack of knowledge and understanding. He had no idea what his tax preparer was doing and he never received any explanation from his tax preparer of what was going on. He simply signed his 2009 tax return and request for loss carryback as these documents were presented to him and as he was instructed to do. He was not aware of what was being filed on his behalf and he never received any copies of his returns from his tax preparers. It took much effort for Mr. Kapur to fix the

problems caused by the unscrupulous "Len". To now be required to pay the very onerous penalties imposed upon him as a result of what Reyul and the unknown tax preparer did to him would work a tremendous hardship on him and his family. He prays that his appeal be allowed and that this Court waive the penalties and interest that are the subject of the present appeal.

[13] The Respondent is of the view that the Appellant never owned or operated any kind of business during the 2009 taxation year and so his claimed business losses as reported in his 2009 tax return and related request for loss carryback are obviously false. These false statements are of such a magnitude that, if allowed, they would result in the refund of all taxes withheld or paid from 2005 through to 2009. The Respondent submits that the Appellant knowingly made these false statements. In the alternative, the Appellant made or acquiesced in the making of these false statements in circumstances amounting to gross negligence. At the very least, the Appellant was wilfully blind regarding the falseness of the statements contained in his return and the related request for loss carryback. The Respondent urges this Court to dismiss the appeal with costs.

Legislative Dispositions

[14] Subsection 163(2) of the Act reads in part as follows:

> 163(2) Every person who, knowingly, or under circumstances amounting to gross negligence, has made or has participated in, assented to or acquiesced in the making of, a false statement or omission in a return, form, certificate, statement or answer (in this section referred to as a "return") filed or made in respect of a taxation year for the purposes of this Act, is liable to a penalty . . .

[15] According to subsection 163(3), the burden of establishing the facts justifying the assessment of the penalty is on the Minister of National Revenue.

Analysis

[16] Our system of taxation is both self-reporting and self-assessing. It relies on the honesty and integrity of the individual taxpayer. It is the taxpayer's duty to report his taxable income completely, correctly and accurately no matter who prepares the return. Therefore, the taxpayer must be vigilant in ensuring the completeness and accuracy of the information contained in his return. Justice Martineau stated in *Northview Apartments Ltd. v. Canada (Attorney General)*, 2009 FC 74, at paragraph 11: "It is the essence of our tax collection system that taxpayers are sole responsible for self-assessment and self-reporting to the CRA."

[17] In the matter of *R. v. Jarvis*, 2002 SCC 73, Justices Iacobucci and Major of the Supreme Court of Canada explained the responsibilities and duties of taxpayers as well as some of the measures in the Act designed to encourage compliance:

> 49 Every person resident in Canada during a given taxation year is obligated to pay tax on his or her taxable income, as computed under rules prescribed by the Act (ITA, s. 2 . . .). The process of tax collection relies primarily upon taxpayer self-assessment and self-reporting: taxpayers are obliged to estimate their annual income tax payable (s. 151), and to disclose this estimate to the CCRA in the income return that they are required to file (s. 150(1)). . . . Upon receipt of a taxpayer's return, the Minister is directed, "with all due dispatch", to conduct an examination and original assessment of the amount of tax to be paid or refunded, and to remit a notice of assessment to this effect (ss. 152(1) and 152(2)). Subject to certain time limitations, the Minister may subsequently reassess or make an additional assessment of a taxpayer's yearly tax liability (s. 152(4)).
>
> 50 While voluntary compliance and self-assessment comprise the essence of the ITA's regulatory structure, the tax system is equipped with "persuasive inducements to encourage taxpayers to disclose their income" . . . . For example, in promotion of the scheme's self-reporting aspect, s. 162 of the ITA creates monetary penalties for persons who fail to file their income returns. Likewise, to encourage care and accuracy in the self-assessment task, s. 163 of the Act sets up penalties of the same sort for persons who repeatedly fail to report required amounts, or who are complicit or grossly negligent in the making of false statements or omissions.
>
> 51 It follows from the tax scheme's basic self-assessment and self-reporting characteristics that the success of its administration depends primarily upon taxpayer forthrightness. As Cory J. stated in *Knox Contracting*, *supra*, at p. 350: "The entire system of levying and collecting income tax is dependent upon the integrity of the taxpayer in reporting and assessing income. If the system is to work, the returns must be honestly completed." It is therefore not surprising that the Act exhibits a concern to limit the possibility that a taxpayer may attempt "to

> take advantage of the self-reporting system in order to avoid paying his or her full share of the tax burden by violating the rules set forth in the Act" . . . .
>
> [Emphasis added. Citations omitted.]

[18] The penalties provided for in section 163 of the Act have been conceived in order to ensure the integrity of our self-assessing and self-reporting system and to encourage a taxpayer to exercise care and accuracy in the preparation of his return, no matter who prepares the return. In *Sbrollini v. The Queen*, 2015 TCC 178, Justice Boyle of this Court opined that the penalty provisions set out in subsection 163(2) of the Act reflect:

> 15 . . . the significance and importance of the requirements of honesty and accuracy in the Canadian self-reporting income tax system. . . .
>
> 16 Such penalties are properly payable . . . if [a taxpayer] knowingly, or under circumstances amounting to gross negligence, made or participated in, assented to or acquiesced in, the making of false statements or omissions in his returns.

[19] Therefore, the decision of whether or not a taxpayer should be subjected to the penalties under subsection 163(2) of the Act should be determined in light of the responsibilities and duties of the taxpayer to accurately and completely report his income in a self-reporting and self-assessing system.

[20] There are two necessary elements that must be established in order to find liability for subsection 163(2) penalties:

(a) a false statement in a return, and
(b) knowledge or gross negligence in the making of, assenting to or acquiescing in the making of, that false statement.

[21] There can be no question that the Appellant's 2009 tax return and his request for loss carryback contained false statements. The Appellant never owned or operated any kind of business during that year and therefore could not have had any business income or business expenses. His claim for business losses has no foundation in fact and is patently false.

[22] I am satisfied, however, that the Appellant did not knowingly make a false statement since he was not aware of what was contained in his return and request for loss carryback. He never looked at these documents before signing them. The issue becomes whether the Appellant made a false statement in circumstances amounting to gross negligence. The burden of proof is on the Crown. In

discharging its burden of proof, the Crown must prove more than mere negligence; it must prove that the Appellant's conduct went beyond simple negligence and that the Appellant was grossly negligent.

[23] Negligence is defined as the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Gross negligence involves greater neglect than simply a failure to use reasonable care. It involves a high degree of negligence tantamount to intentional acting or indifference as to whether the law is complied with or not; see *Venne v. Canada*, [1984] F.C.J. No. 314 (QL). In *Farm Business Consultants Inc. v. Canada*, [1994] T.C.J. No. 760 (QL), Justice Bowman (as he then was) of the Tax Court of Canada stated at paragraph 23 that the words "gross negligence" in subsection 163(2) imply conduct characterized by so high a degree of negligence that it borders on recklessness. In such a case a court must, even in applying a civil standard of proof, scrutinize the evidence with great care and look for a higher degree of probability than would be expected where allegations of a less serious nature are sought to be established (paragraph 28).

[24] It is also well-settled law that gross negligence can include "wilful blindness", a concept well known to the criminal law. The concept of "wilful blindness" in the context of the criminal law was fully explained by Justice Cory of the Supreme Court of Canada in the decision in *R. v. Hinchey*, [1996] 3 S.C.R. 1128. The rule is that if a party has his suspicion aroused but then deliberately omits to make further inquiries, because he wishes to remain in ignorance, he is deemed to have knowledge. "Wilful blindness" occurs where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth, preferring instead to remain ignorant. There is a suspicion which the defendant deliberately omits to turn into certain knowledge. The defendant "shut his eyes" or was "wilfully blind".

[25] It has been held that the concept of "wilful blindness" is applicable to tax cases; see *Canada v. Villeneuve*, 2004 FCA 20, and *Panini v. Canada*, 2006 FCA 224. In *Panini*, Justice Nadon made it clear that the concept of "wilful blindness" is included in "gross negligence" as that term is used in subsection 163(2) of the Act. He stated:

> 43 . . . the law will impute knowledge to a taxpayer who, in circumstances that dictate or strongly suggest that an inquiry should be made with respect to his or her tax situation, refuses or fails to commence such an inquiry without proper justification.

[26] It has been held that in drawing the line between "ordinary" negligence or neglect and "gross" negligence, a number of factors have to be considered:

(a) the magnitude of the omission in relation to the income declared,
(b) the opportunity the taxpayer had to detect the error,
(c) the taxpayer's education and apparent intelligence,
(d) genuine effort to comply.

No single factor predominates. Each must be assigned its proper weight in the context of the overall picture that emerges from the evidence (see *DeCosta v. The Queen*, 2005 TCC 545, at paragraph 11; *Bhatti v. The Queen*, 2013 TCC 143, at paragraph 24; and *McLeod v. The Queen*, 2013 TCC 228, at paragraph 14).

[27] In *Torres v. The Queen*, 2013 TCC 380, Justice C. Miller conducted a very thorough review of the jurisprudence regarding gross negligence penalties under subsection 163(2) of the Act. He summarized the governing principles to be applied at paragraph 65:

a) Knowledge of a false statement can be imputed by wilful blindness.

b) The concept of wilful blindness can be applied to gross negligence penalties pursuant to subsection 163(2) of the Act . . . .

c) In determining wilful blindness, consideration must be given to the education and experience of the taxpayer.

d) To find wilful blindness there must be a need or a suspicion for an inquiry.

e) Circumstances that . . . indicate a need for an inquiry prior to filing . . . include the following:

   i) the magnitude of the advantage or omission;

   ii) the blatantness of the false statement and how readily detectable it is;

   iii) the lack of acknowledgment by the tax preparer who prepared the return in the return itself;

   iv) unusual requests made by the tax preparer;

   v) the tax preparer being previously unknown to the taxpayer;

   vi) incomprehensible explanations by the tax preparer;

   vii) whether others engaged the tax preparer or warned against doing so, or the taxpayer himself or herself expresses concern about telling others.

> f) The final requirement for wilful blindness is that the taxpayer makes no inquiry of the tax preparer to understand the return, nor makes any inquiry of a third party, nor the CRA itself.

[28] This is certainly not an exhaustive list and there may be other factors that may need to be considered depending on the circumstances of any particular case.

[29] In the case at bar, I am satisfied that the Appellant did not knowingly make a false statement. It is his own testimony that he simply did not know what was in his 2009 tax return since he never even looked at it. However, I am satisfied that he acquiesced in the making of the false statements in circumstances amounting to gross negligence. At the very least, he was wilfully blind as to the false contents of his 2009 tax return. I come to this conclusion for the reasons that follow.

[30] The Appellant has the equivalent of a high school education here in Canada. He has been in Canada since 1995. He has been steadily employed and earns a good living. Although he may not be the most sophisticated of individuals, he has an understanding of the basic concept of taxation and he understands the concept of business profit and loss. He is not so lacking in education or life experience as to claim ignorance. Education, experience and intelligence are not factors that could relieve the Appellant of a finding that he made false statements under circumstances amounting to gross negligence.

[31] There were ample warning signs that should have aroused the Appellant's suspicions and awakened in him the need to make further inquiries. Len, the accountant, was referred to him by a co-worker. Len did not belong to any well-known accounting firms. The Appellant did not check out any references regarding Len and, in fact, it would appear that he did not even know Len's last name. Len did not want to be paid by cheque; he only wanted to be paid by cash. Cash is legal tender and payment by cash is certainly legal, but one has to wonder why a professional tax preparer or accountant would insist on cash instead of a cheque, credit card or debit card, as would most professional people in today's business world. Len never explained anything to the Appellant and he never provided the Appellant with any copies of his returns. When the Appellant was audited in respect to his 2002 to 2008 tax returns for having claimed false business losses, Len threatened him. The Appellant then knew that Len was dishonest, deceitful and unscrupulous. However, the Appellant still accepted Len's advice and decided to contact Reyul on Len's recommendation. One would think that a reasonably prudent taxpayer would be very wary of accepting the

recommendations of someone such as Len. I find it astounding that the Appellant would even consider retaining someone recommended by Len.

[32] Reyul, just like Len, did not want to accept a cheque, only cash. This was an obvious warning sign that Reyul, like Len, was probably not running an upfront operation. As it turns out, Reyul was not a tax preparer or accountant; he was only a go-between between the Appellant and the accountant. The tax preparer or accountant used by Reyul was previously unknown to the Appellant and is still unknown to the Appellant since the two have never met. The Appellant never asked for, nor checked out, any references regarding this unknown accountant. The Appellant did not look at his return and simply signed it without verifying the accuracy of the information contained therein even though he is the one ultimately responsible for the accuracy of this information. He was not offered any explanations and he did not ask any questions about his return. The Appellant was never given a copy of his return. He claims he did not even see if there were any numbers on the documents that he signed and he did not even see if he was going to obtain a refund or how much. I find it implausible that he would not see how much of a refund he was getting since the refund is clearly indicated on the signature page. In addition, the first thing a taxpayer wants to know is the good news of how much he is getting back or the bad news of how much he has to pay. That is simply human nature. When the Appellant filed his 2009 tax return, he knew that the CRA was questioning his returns from prior years in relation to questionable business expenses that were claimed on his behalf by Len. This should have given him reason to exercise more diligence before signing and filing his 2009 tax return, especially since Reyul was recommended to him by Len who simply could not be trusted at all. All of the foregoing should have aroused the Appellant's suspicions concerning the unknown accountant who prepared his tax return and should have incited the Appellant to question what was going on. However, he did not. In fact, he did nothing. He chose to remain blissfully ignorant in the face of truly questionable practices by his tax preparer. He simply relied on and trusted someone he had never even met. Such conduct in refusing to inform himself is not only evidence of wilful blindness, but amounts to gross negligence in my opinion.

[33] Even setting aside any consideration of wilful blindness, I am of the view that the Appellant has demonstrated conduct amounting to gross negligence. As has often been stated by our courts, our tax system is one of self-assessment and self-reporting. Each individual taxpayer has the obligation to ensure that all the information contained in his return is complete and accurate regardless of who prepares the return. That is not an onerous responsibility. The Appellant made no

effort whatsoever to verify the accuracy and completeness of his return. He simply signed it and filed it without even looking at it. Had he made even the most minimal effort, he would have quickly and easily discovered the blatantly false information contained therein. The Appellant cannot be heard to say, in an effort to deflect blame away from himself, that he was the victim of a dishonest tax preparer when he made no effort at all to verify the accuracy of his return.

[34] In *Laplante v. The Queen*, 2008 TCC 335, Justice Bédard wrote:

> 15 . . . The Appellant cannot avoid liability in this case by pointing the finger at his accountant. By attempting to shield himself in this way from any liability for his income tax returns, the Appellant is recklessly abandoning his responsibilities, duties and obligations under the Act. . . .

[35] In *Brochu v. The Queen*, 2011 TCC 75, gross negligence penalties were upheld in a case where the taxpayer simply trusted her accountant's statements that everything was fine. She had quickly leafed through the return and claimed that she did not understand the words "business income" and "credit", but yet had not asked her accountant or anyone else any questions in order to ensure that her income and expenses were properly accounted for. Justice Favreau of this Court was of the view that the fact that the taxpayer did not think it necessary to get informed amounted to carelessness, which constituted gross negligence.

[36] Another recent example can be found in the matter of *Atutornu v. The Queen*, 2014 TCC 174, where the taxpayers simply blindly relied on the advice of their tax preparer without reading or reviewing their returns and without making any effort whatsoever to verify the accuracy of their returns.

[37] It has been held that the failure to review one's return before signing and filing it may, in and of itself, be sufficient to amount to gross negligence. As stated by Justice Tardif in *Gingras v. Canada*, [2000] T.C.J. No. 541 (QL):

> 31 . . . it is utterly reprehensible to certify by one's signature that the information provided is correct when one knows or ought to know that it contains false statements. Such conduct is a sufficient basis for a finding of gross negligence justifying the assessment of the applicable penalties.

[38] In *Laplante*, above, Justice Bédard wrote:

> 15 In any event, the Court finds that the Appellant's negligence (in not looking at his income tax returns <u>at all</u> prior to signing them) was serious enough to justify the use of the somewhat pejorative epithet "gross". The Appellant's attitude was

> cavalier enough in this case to be tantamount to total indifference as to whether the law was complied with or not. Did the Appellant not admit that, had he looked at his income tax returns prior to signing them, he would have been bound to notice the many false statements they contained, statements allegedly made by Mr. Cloutier? . . . In this case, the Appellant had an obligation under the Act to at least quickly look at his income tax returns before signing them, especially since he himself admitted that, had he done so, he would have seen the false statements made by his accountant.
>
> [Emphasis in original.]

[39] Even more recently, Justice Bowie stated in *Brown v. The Queen*, 2009 TCC 28:

> 20 Quite apart from all of that, in respect of the gross negligence penalties under the *Income Tax Act*, the Appellant in his own evidence early on made it clear that he signed his returns for each of the four years under appeal without having paid the least attention to what income was included in them and what expenses were claimed in them. He said that he kept the records that he kept, prepared spreadsheets from them and gave them to a tax preparer who, in each year, prepared the returns for him based on the material that he gave her. We did not hear from her on that, but taking that statement at its face value, it still leaves the Appellant with an onus to look at the completed return before signing it and filing it with the Minister. The declaration that the taxpayer makes when he signs that form is,
>
> > I certify that the information given on this return and in any documents attached is correct, complete and fully discloses all my income.
>
> To sign an income tax return and make that certification without having even glanced at the contents of the return, because that is what I understood his evidence to be is of itself, in my view, gross negligence that justifies the penalties.

[40] In *Bhatti*, above, Justice C. Miller pointed out:

> 30 . . . It is simply insufficient to say I did not review my returns. Blindly entrusting your affairs to another without even a minimal amount of verifying the correctness of the return goes beyond carelessness. So, even if she did not knowingly make a false omission, she certainly displayed the cavalier attitude of not caring one way or the other . . . .

[41] I am of the view that, in the circumstances of the present case, the Appellant has been completely remiss in discharging his duties under the Act. He made no effort at all to comply with the requirements of the Act at the time of filing. His actions throughout are not only negligent, but are grossly negligent.

Conclusion

[42] There is no doubt that the Appellant's 2009 tax return and his request for loss carryback contained false statements — the Appellant did not carry on a business and he did not incur any business losses whatsoever. In the circumstances of this case, I can come to no other conclusion than that the Appellant was wilfully blind and grossly negligent as to the falsity of these statements. This is especially so since he signed his return and thus certified the accuracy of the information contained therein without bothering to even look at the return or make any efforts at all to verify the return's accuracy. As such, he is properly subject to the penalties imposed on him pursuant to subsection 163(2) of the Act.

[43] For all the foregoing reasons, this appeal is dismissed. The Respondent is entitled to her costs if she wants them.

Signed at Kingston, Ontario, this 27th day of January 2016.

"Rommel G. Masse"

Masse D.J.

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REASONS FOR JUDGMENT BY:	The Honourable Rommel G. Masse, Deputy Judge
DATE OF JUDGMENT:	January 27, 2016

APPEARANCES:

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