Docket: 2012-5179(IT)G

BETWEEN:

TERRANCE SLEDGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on December 2, 2015, at Toronto, Ontario.

Before: The Honourable Rommel G. Masse, Deputy Judge

Appearances:

Counsel for the Appellant: Jeffrey Radnoff

Counsel for the Respondent: Laurent Bartleman

JUDGMENT

For the attached reasons for judgment, the appeal from the assessment made under the *Income Tax Act* for the 2008 taxation year is dismissed.

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

Signed at Kingston, Ontario, this 18th day of April 2016.

"Rommel G. Masse"

Masse D.J.

Citation: 2016 TCC 100
Date: 20160418
Docket: 2012-5179(IT)G

BETWEEN:

TERRANCE SLEDGE,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Masse D.J.

Overview

[1] The Appellant is appealing the penalty for gross negligence 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 2008 taxation year. In his return, the Appellant claimed very large business losses which, if allowed, would result in the refund to the Appellant of all taxes paid or deducted at source for 2008 and prior taxation years. The fact is that the Appellant never owned or operated any kind of business at all during 2008, or at any time, and the claimed business losses are fictitious. 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 is 45 years old and was born in Texas. He completed his high school education but did not go on to university. He has not taken any accounting or tax courses. He is a former member of the U.S. Navy and held the rank of Communications Petty Officer. He held a top secret clearance level. When he came to Canada in 1995, he began working in sales for a family company. In 1997, he obtained employment with FedEx as a cargo handler. At the present time he holds the position of Operations Manager for FedEx.

[3] In 1998, the Appellant met an individual named Lloyd at the local barbershop. He does not know Lloyd's last name. The two men would see each other at the barbershop, about twice a week. They got to know each other and eventually they struck up a friendship. They would discuss a variety of topics at the barbershop. Eventually, they began to talk about income taxes.

[4] Prior to 2008, the Appellant used the services of H&R Block to prepare his income tax returns. Some time around 2008 or 2009, he was looking for a change.

[5] Around March 2009, Lloyd told the Appellant about a company called Fiscal Arbitrators ("FA"). FA were professional tax preparers. They were fast and easy. FA would recalculate his taxes over the last 10 years and obtain a refund of overpaid taxes. Lloyd explained that, if the Appellant wanted to use the services of FA, the fee was $500 and a percentage of any refund obtained. Lloyd had a briefcase with him that contained a lot of documentation and files of other people who had used the services of FA. Some time later, the Appellant again met with Lloyd and Lloyd's sister at a restaurant called "Dave and Buster's". She was a client of FA. Lloyd's sister told the Appellant that FA provided a good service and it took no time for her to get her refund. The Appellant was of course concerned about the legality of all this and Lloyd told him that it was perfectly legal and that FA were just like H&R Block. The Appellant liked the idea that he would not have to wait in line like he did with H&R Block. He decided to retain the services of FA.

[6] At the end of April 2009, Lloyd came to the Appellant's house. The Appellant gave Lloyd his T4 slips for the last 10 years together with a cheque in the amount of $500 to cover the initial fee (compared to H&R Block's fee of about $100). Later on, the Appellant met Lloyd at a very nice home that had been set up just like an office. Lloyd presented to the Appellant documentation, his 2008 return, that had already been prepared. The Appellant testified that he did not review his return before signing. Lloyd simply flipped to the bottom of the pages requiring a signature and told him where to sign. The documents had yellow sticky notes reading "sign here", wherever he was required to sign. The Appellant agrees that he signed where he was told and simply did not take a look at his return.

[7] A copy of the Appellant's 2008 tax return is found at Exhibit R-1, Tab 3. Had the Appellant bothered to take a look at his tax return, he would have discovered some blatantly false information. In his return, the Appellant claimed gross business income in the amount of $87,864.91. He also claimed total business expenses of $369,416.47 resulting in business losses of $281,551.56. All this is

completely, utterly and obviously false. The Appellant's only significant income during the 2008 taxation year was employment income in the amount of $74,461.79. He never owned or operated any business whatsoever during 2008 and he never incurred the business expenses that were claimed. He admits that he signed his return. Just above his signature, we see the usual certification stating "I certify that the information given on this return and in any documents attached is correct, complete, and fully discloses all my income". The truth is that the Appellant made no effort at all to verify the accuracy and completeness of his return — he simply trusted Lloyd. The Appellant also signed a request for loss carryback relating to the years 2005, 2006 and 2007. He states that he did not know that he signed this document — he never looked at it before signing. The word "per" appears in front of his signature on both the return and the request for loss carryback. He does not know who wrote "per" in front of his signature and he does not know what that means. He claims that the word "per" was not there when he signed these documents. He testified that he did not see that box 490, reserved for the identification of professional tax preparers, was left blank.

[8] The Appellant testified that he did not take a look at the numbers on his return. However, he did see the figure of $281,000 at the bottom of one page. He stated that he thought that this represented the total amount of taxes that he had paid over the last 10 years. Had he taken a closer look, he would have clearly seen that this amount was a net business loss. Just to the right and up from his signature, it is indicated that the Appellant was claiming a refund of just over $16,000. This is a significant amount. He testified that he did not see this at the time of signing his return. I find his assertion to this effect to be unconvincing. The reason why he wanted FA to prepare his tax return was so he could get a refund of taxes he had overpaid in the last 10 years. It is only human nature for persons to want to know the amount of the refund they could expect. He himself states "[t]hat's what the focus was, it was never about anything else but about overpayment of taxes for the past ten years" (transcript, page 22). The Appellant and Lloyd had no discussion at all about the contents of the return other than about overpayment of taxes for the last 10 years. The Appellant asked no questions. Lloyd gave no explanations.

[9] The CRA began to send the Appellant letters questioning his business losses (for example, letter of December 4, 2009, Exhibit R-1, Tab 6). The Appellant stated that he did not know what was going on. He was confused and quite upset so he contacted Lloyd who told him to send him the letters. More letters followed. Lloyd gave him the name of Larry Watts from FA who could help him out with the letters. However, any responses drafted by FA for the Appellant simply made no sense at all. Still, the Appellant signed these responses and sent them in to the

CRA. He had nowhere to go and no one to turn to other than FA. All this correspondence did not help to resolve the situation since the letters drafted for the Appellant by FA were simply not responsive to the questions raised by the CRA. Eventually, the Appellant came to the realization that using FA was a huge mistake. He began to reach out to the CRA asking for help and some guidance on what he could do. He telephoned the CRA and spoke to a person named Debbie. He told Debbie that there had been a mistake and that he was in a panic mode because the numbers were so astronomically large. He was told that he had to appeal the assessment.

[10] After this fiasco with FA, the Appellant went back to H&R Block.

[11] The Appellant never did get a refund. The Minister of National Revenue (the "Minister") disallowed the claimed business losses, denied the request for loss carryback and imposed a penalty pursuant to subsection 163(2) of the Act. The Appellant objected to this assessment, but the Minister confirmed the assessment, hence the appeal to this Court.

[12] It is argued that the Appellant ought not to be liable for gross negligence penalties as he relied on a tax preparer and a friend that he trusted and believed that all they did was completely above board. He reposed his complete trust and confidence in Lloyd and FA and he had no reason to question them. He was completely unaware that his 2008 tax return contained any false information. It is submitted that he was not wilfully blind or otherwise grossly negligent. Lloyd and FA may be fraudsters, but the Appellant is an innocent victim of their fraudulent conduct. It is unjust to punish the Appellant for the wrongdoings of Lloyd and FA. The Appellant therefore prays that his appeal be allowed with costs 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 2008 taxation year and so his claimed business losses as reported in his tax return are obviously false. These false statements are of such a magnitude that, if allowed, would result in the refund of all taxes withheld or paid from 2005 through to 2008. The Respondent submits that the Appellant was wilfully blind or otherwise grossly negligent regarding the falseness of the statements contained in his return. The penalties for gross negligence imposed pursuant to subsection 163(2) of the Act are therefore justified. 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.

Analysis

[16] In the case at hand, I will engage in the same analysis as was done in the recent cases of *Daszkiewicz v. The Queen*, 2016 TCC 44, and *Lauzon v. The Queen*, 2016 TCC 71.

[17] Our system of taxation is both self-reporting and self-assessing. It is based on the "honour system" and relies on the honesty and integrity of the individual taxpayer. The taxpayer has a positive 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 succinctly stated it 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."

[18] The responsibilities and duties of taxpayers as well as some of the measures in the Act designed to encourage compliance were explained by the Supreme Court of Canada in the matter of *R. v. Jarvis*, 2002 SCC 73:

> 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.]

[19] The penalties provided for in section 163 of the Act have as their purpose 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.

[20] I have often stated that I am of the view that 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 positive responsibilities and duties of the taxpayer to accurately and completely report his income in a self-reporting and self-assessing system.

[21] 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, participating in, assenting to or acquiescing in the making of, that false statement.

[22] There can be no question that the Appellant's 2008 tax return contained false statements. The Appellant never owned or operated any kind of business during that year and therefore could not have had any net business losses amounting to

more than $281,000. His claim for business losses has no foundation in fact and is patently false.

[23] I am satisfied that the Appellant had no knowledge that his return contained any false information since he simply never bothered to look at his return before signing it.

[24] However, I come to the conclusion that the Crown has established on the balance of probabilities that the Appellant made, participated in, assented to or acquiesced in the making of, the false statements in his return in circumstances amounting to gross negligence. I come to this conclusion for the reasons that follow.

[25] There is a difference between ordinary negligence and gross negligence. Negligence is 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). The penalties pursuant to subsection 163(2) ought to be imposed only where there is a high degree of blameworthiness involving knowing or reckless misconduct.

[26] It is also well-settled law that gross negligence can include "wilful blindness". The concept of "wilful blindness", well known to the criminal law, was explained by Justice Cory of the Supreme Court of Canada 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.

[27] It has been long recognized that the concept of "wilful blindness" is applicable to tax cases and is included in the term "gross negligence" as that term is used in subsection 163(2) of the Act; see *Canada v. Villeneuve*, 2004 FCA 20, and *Panini v. Canada*, 2006 FCA 224, at paragraph 43.

[28] 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).

[29] In *Torres v. The Queen*, 2013 TCC 380, Justice C. Miller of this Court 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 would 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.

This is certainly not an exhaustive list.

[30] The Appellant is an intelligent man with a secondary school education who enjoyed a position of responsibility in the U.S. Navy and who now occupies a position of responsibility with his employer, FedEx. The basic concepts of business organization such as profit and loss are not so complex as to elude him. The Appellant is not so lacking in education, intelligence 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] In the case at bar, the Appellant certified by his signature that the information contained in his return was complete and accurate. Yet he made no effort at all to verify the accuracy of the contents of his tax return, as it was his duty to do. All he did was sign his return without even looking at it. Had the Appellant bothered to take even a cursory look at his return, he would have immediately discovered the blatantly false information contained therein. The only thing he was interested in was receiving a refund of taxes that he had supposedly overpaid over the last 10 years. He did not even question how it was that H&R Block, his prior tax preparers who are well-known professionals, could possibly have missed something that was so obvious that his barbershop friend, Lloyd, whose last name he does not know, and some hitherto unknown tax preparer from FA, whom he has never met, had serendipitously discovered. Such conduct in refusing to inform himself, even in general terms of what was contained in his return, is not only evidence of wilful blindness but is conduct otherwise amounting to gross negligence in my opinion.

[32] The Appellant takes the position that he placed his complete trust and confidence in Lloyd and FA. He argues that he is an innocent victim who was betrayed by Lloyd. In some cases a taxpayer can shed blame by pointing to negligent or dishonest professionals in whom the taxpayer reposed his trust and confidence. For example, see *Lavoie c. La Reine*, 2015 CCI 228, a case where the taxpayers relied on their lawyer whom they had known and trusted for more than 30 years and who was a friend. Other examples can be found and counsel for the Appellant has referred the Court to these cases in his casebook of authorities. It is to be noted that all these cases depend on their own peculiar facts.

[33] However, there is a significant body of jurisprudence to the effect that taxpayers cannot avoid penalties for gross negligence by placing blind faith and trust in their tax preparers without at least taking some steps to verify the correctness of the information supplied in their tax returns. Quite apart from wilful blindness, taxpayers who take no steps whatsoever to verify the completeness and

accuracy of the information contained in their returns may thereby face penalties for gross negligence.

[34] In *Gingras v. Canada*, [2000] T.C.J. No. 541 (QL), the appellants contended that they had always acted in good faith and that they believed that their tax preparer was conducting a responsible and reliable business, adding that they had little or no knowledge of tax matters. Justice Tardif wrote:

> 19 Relying on an expert or on someone who presents himself as such in no way absolves from responsibility those who certify by their signature that their returns are truthful.
>
> 20 The appellants signed returns of income containing false and untruthful information and cannot claim that this was done without their knowledge. They had an obligation to ensure that all the information contained in their returns was truthful. If, as the theory put forward by Ratelle [the tax preparer] goes, every taxpayer is entitled to a total exemption from tax once in his life, which is not the case, this did not allow the appellants to submit false statements in order to exercise the alleged privilege, or justify them in so doing.

Justice Tardif further wrote:

> 30 It is the person signing a return of income who is accountable for false information provided in that return, not the agent who completed it, regardless of the agent's skills or qualifications.
>
> 31 With respect to penalties, the burden of proof is on the respondent. It was clearly shown on a preponderance of the evidence adduced that the appellants submitted in their respective returns major false statements which had significant impact on their tax burden. They could not have been unaware that these statements were false. The Court can understand that the taxpayers might have been incapable, inexperienced and incompetent when it came to preparing their income tax returns. However, 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.
>
> [Emphasis added.]

[35] In *DeCosta*, above, Chief Justice Bowman stated:

> 12 . . . While of course his accountant must bear some responsibility I do not think it can be said that the appellant can nonchalantly sign his return and turn a blind eye to the omission of an amount that is almost twice as much as that which he declared. So cavalier an attitude goes beyond simple carelessness.

[36] In *Laplante v. The Queen*, 2008 TCC 335, the appellant, just as in the case at bar, did not look at his tax return at all before signing. This was held to be gross negligence. Justice Bédard wrote:

> 15 In any event, the Court finds that the Appellant's negligence (in not looking at his income tax returns at all 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? 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. 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 added.]

[37] In *Brown v. The Queen*, 2009 TCC 28, Justice Bowie stated:

> 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.
>
> [Emphasis added.]

[38] Of particular relevance is the decision of Justice Bédard in *Gélinas v. The Queen*, 2009 TCC 136, where he stated:

> 11 In my opinion, the Appellant also committed gross negligence in 2004. I am of the opinion that the Appellant's negligence (based on the fact that he did not check his entire return before his accountant sent it to the Canada Customs and Revenue Agency) was serious enough to justify using the somewhat pejorative epithet "gross". The Appellant's attitude was so cavalier that it translates to a complete indifference in terms of respecting the Act. If the Appellant had examined his income tax return for the 2004 taxation year, he would likely have discovered the false statement contained within (a statement which apparently was made by his accountant) in terms of the size of the amounts of unreported income and other factors analyzed above. The Appellant cannot absolve himself of his responsibility by pointing the finger at his accountant. By attempting to absolve himself of all responsibility with respect to his income tax returns, the Appellant is being negligent by ignoring the responsibilities, duties and obligations imposed by the Act. Also, the Act imposes a minimum obligation to the Appellant to check his income tax return for the 2004 taxation year before his accountant sends it in; in addition, a more than cursory glance would have permitted him, in my opinion to find the false statement that his accountant had made.
>
> [Emphasis added.]

[39] 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. This is not much different from the case at hand.

[40] In *Janovsky v. The Queen*, 2013 TCC 140, Justice V.A. Miller stated:

> 22 The Appellant said he reviewed his return before he signed it and he did not ask any questions. He stated that he placed his trust in FA as they were tax experts. I find this statement to be implausible. He attended one meeting with the FA in 2009. He had never heard of them before and yet between his meeting with them and his filing his return in June 2010, he made no enquiries about the FA. He did not question their credentials or their claims. In his desire to receive a large refund, the Appellant did not try to educate himself about the FA.
>
> 23 Considering the Appellant's education and the magnitude of the false statement he reported in his 2009 return, it is my view that the Appellant knew that the amounts reported in his return were fake.

> 24 If I am incorrect and the Appellant did not knowingly make the false statement, then I find that he was wilfully blind. If he indeed did not understand the terminology used by FA in his return and if he did not understand how FA calculated his expenses, then he had a duty to ask others aside from FA. In a self-assessing system such as ours, the Appellant had a duty to ensure that his income and expenses were correctly reported. Our system of taxation is both self-reporting and self-assessing and it depends on the honesty and integrity of the taxpayers for its success: *R. v. McKinlay Transport Ltd.*, [1990] 1 SCR 627. The Appellant's cavalier attitude demonstrated such a high degree of negligence of wilful blindness that it qualified as gross negligence: *Chénard v. The Queen*, 2012 TCC 211.
>
> [Emphasis added.]

[41] 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. . . .

[42] Another recent example can be found in the matter of *Atutornu v. The Queen*, 2014 TCC 174, where the taxpayers simply signed their returns where they were told to sign and 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. Justice Jorré held that gross negligence penalties pursuant to subsection 163(2) were appropriate in the circumstances.

Conclusion

[43] It cannot be disputed that the Appellant's 2008 tax return contained false statements — the Appellant did not carry on a business and he did not incur any business losses whatsoever, let alone losses amounting to more than $281,000. On considering the entirety of the evidence and recent jurisprudence, I come to the conclusion that the Appellant made, participated in, assented to or acquiesced in the making of, a false statement in his return in circumstances of gross negligence. He was content to let Lloyd and FA take care of everything and he did nothing to verify the accuracy of the information contained in his tax return. He simply signed his return where he was instructed to sign without looking at it. In so doing, he certified that the return was complete and accurate — it was not. He had a duty to exercise care and accuracy in the completion of his return and he failed in this duty, making no effort at all to verify the accuracy and completeness of his return.

Had he made even the most minimal effort, he would have quickly and easily discovered the blatantly false information contained in the return. His actions are not only negligent but are grossly negligent. As such, he is properly subject to the penalties imposed on him pursuant to subsection 163(2) of the Act.

[44] 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 18th day of April 2016.

"Rommel G. Masse"

Masse D.J.

CITATION:	2016 TCC 100
COURT FILE NO.:	2012-5179(IT)G
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