

Dockets: 2013-2653(IT)G  
2013-2654(GST)G

BETWEEN:

THANH TRUC TRUONG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on December 7, 8 and 9, 2016, at Toronto, Ontario  
Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Counsel for the Appellant: Sunita D. Doobay  
Counsel for the Respondent: Laurent Bartleman

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**JUDGMENT**

IN ACCORDANCE with the Reasons for Judgment attached, the appeals of the reassessments for the 2005, 2006, 2007 and 2008 taxation years under the *Income Tax Act*, RSC 1985, c.1, as amended (the “*ITA*”) and of the reassessments for the reporting periods ending December 31, 2005, 2006, 2007, and 2008, respectively, under the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the “*ETA*”), are hereby dismissed.

The appeals in respect to the 2009 taxation year under the *ITA* and for the reporting period ending December 31, 2009 under the *ETA* are allowed to the extent that the Appellant’s undeclared income is \$4,800.00 less than that assessed by the Minister. Therefore, with respect to the 2009 taxation year and reporting period ending December 31, 2009, the matter shall be referred back to the Minister of National Revenue for reconsideration and reassessment.

The penalties imposed by the Minister of National Revenue under both the *ITA* and *ETA* are upheld, subject to the reassessment above for the 2009 taxation year and reporting period.

Costs are awarded in favour of the Respondent, subject to either party's right to make further submissions within 30 days of the date of this judgment.

Signed at Ottawa, Canada, this 8th day of February 2017.

“R.S. Boccock”

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Boccock J.

Citation: 2017 TCC 22  
Date: 20170208  
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### **REASONS FOR JUDGMENT**

Bocock J.

#### I. Introduction

##### (a) Net Worth Assessment

[1] The Appellant, Ms. Truong, contests reassessed unreported income under the *Income Tax Act*, RSC 1985, c.1, as amended (the “*ITA*”) and related unremitted goods and service tax under the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the “*ETA*”) (“GST appeal”). The Minister of National Revenue’s (the “Minister’s”) underlying *ITA* reassessment for each of the 2005 through 2009 taxation years was based upon an alternative net worth assessment. The net worth assessment analyzed various sources of information for such determination: Ms. Truong’s bank accounts, acquisitions of real property, acquisition of motor vehicles, her gambling losses less loans from her boyfriend, her gambling winnings, her business expenses/losses and her declared income. This net worth calculation resulted in an assessment of unreported income and GST in the following amounts for the following taxation years and reporting periods (being the lesser amount of undeclared income as between the net worth statement or notice of reassessment all to the Appellant’s benefit):

Appeal Years	Unreported Income	Unreported Taxable Supplies for Reporting Period Ending December 31 <sup>st</sup>	Unreported GST Collectible
2005	\$112,685.00	\$127,529.80	\$8,343.07
2006	\$38,909.00	\$47,935.53	\$2,925.64
2007	\$524,852.00	\$628,874.97	\$31,838.21
2008	\$417,636.00	\$455,912.88	\$20,935.85
2009	\$588,427.00	\$617,849.23	\$29,421.39
Totals	\$1,682,509.00	\$1,878,102.41	\$92,184.99

[2] As well, the Minister also assessed gross negligence penalties under the *ITA* and *ETA* for each of the reassessed years.

(b) Basis of Appeal

[3] The appeal is brought on two broad grounds. Firstly, Ms. Truong's counsel asserts that the net worth assessment is flawed because certain assets or personal expenditures allocated to Ms. Truong were not hers, but others. Secondly, the allegedly taxable income, which increased Ms. Truong net worth assessment, arose from non-taxable sources of funds.

[4] With respect to the errors in the assets and expenditures contained within the net worth assessment, Ms. Truong's counsel asserts that:

- (i) the records of her gambling activities are not reliable and accurate as to the sums she expended and lost at the casinos ("inaccurate gambling records");
- (ii) certain assets allocated to her by the Minister were not beneficially owned by her (the "trust assets"); and
- (iii) the Minister allocated business income and business assets to Ms. Truong personally which were owned by a business, in turn not "controlled" by her but by others (the "misallocated business assets").

[5] With respect to the non-taxable sources of funds erroneously counted as taxable, it is asserted that:

- (i) the gifts from her boyfriend exceeded the amounts otherwise credited by the Minister (“enhanced loans”);
- (ii) Ms. Truong borrowed money from her family and friends (“family loans”); and
- (iii) she had additional gambling winnings which were non-taxable sources of funds (“gambling gains”).

## II. Facts

[6] The following constitutes a summary of the witnesses at the three day trial. The facts are gleaned from their testimony concerning Ms. Truong’s activities, her financial affairs and the net worth assessment from the evidence and documents relevant to the *ITA* appeal and the GST appeal.

### (a) Witnesses at Trial

[7] Appellant’s counsel called six witnesses to provide evidence. Ms. Truong’s boyfriend, George Chiu was queried and testified about the trust assets, the misallocated business assets, the enhanced loans and the gambling gains. Ms. Truong’s sister testified regarding the inaccurate gambling records, trust assets, enhanced loans, family loans and gambling gains. Ms. Truong’s nephew was asked questions and testified to the enhanced loans, inaccurate gambling records misallocated business assets and gambling gains. Two of Ms. Truong’s friends provided testimony primarily concerning the family loans and gambling gains.

[8] The Respondent called one witness. Ms. Davis was the Canada Revenue Agency (“CRA”) auditor who conducted the audit, collected financial and asset information from third parties and prepared the original net worth assessment.

### (b) Evidence Regarding Ms. Truong’s Income, Assets, Losses and Business during the Appeal Years

[9] Through the evidence and related documents, Ms. Truong’s activities for the appeal years were established. A summary of those activities follow.

[10] No books or records of Ms. Truong's business activities were produced by her during the hearing. Therefore, the activities of Ms. Truong during the relevant periods were extracted, imputed and circumscribed from the *viva voce* evidence, the Respondent's documentary evidence and third party official and business records. Specifically, the following source documents were adduced distinctly into evidence and formed the underlying information for the net worth assessment and these reasons:

- (i) T1 General Tax Returns for each taxation year, save 2008 for which an initial assessment from the Minister was produced;
- (ii) various real property parcel registers, utility bills, land registry document, cheques to solicitors trust accounts, and municipal tax assessment query responses concerning the real properties described within Ms. Truong's net worth statement of assets;
- (iii) motor vehicle search reports and valuation reports concerning motor vehicles described within Ms. Truong's net worth assessment;
- (iv) casino win/loss statements, covering letters, cheques payable to Ms. Truong and trip/transaction analyses from casinos frequented by Ms. Truong;
- (v) bank account statements, transaction report print outs, credit cards statements and term deposit certificates, signature cards for all credit cards, personal credit applications, bank accounts and investments allocated to Ms. Truong in the net worth statement of assets.

#### *Gambling activity*

[11] Ms. Truong was a regular attendee at various casinos commencing in 2005. Casinos throughout Ontario and also Quebec and the state of New York were frequently visited. Based upon attendances recorded in the win/loss statements and trip/transaction analyses, Ms. Truong attended several times a week and a dozen or more times a month. Generally for gamblers, in such endeavours, "the odds favour the house". Based upon the win/loss statements produced by the various casinos, Ms. Truong neither beat the odds nor disapprove the saying.

[12] Ms. Truong, her sister, friend and nephew testified that her boyfriend would, at least after he and Ms. Truong became involved in late 2006, fund these expeditions with “Ziploc bags of cash”. Ms. Truong’s sister testified she would use Ms. Truong’s player’s card to obscure the sister’s visit to the casinos “from my husband”. Ms. Truong’s nephew testified he attended the casinos, but did not participate. Ms. Truong’s friend testified the win/loss statements and player’s cards (described below) were not accurate of a person’s gambling because persons other than Ms. Truong could use the player’s card which would cause the usage data recorded on the card to be unreliable. Ms. Truong’s boyfriend indicated he only gave Ms. Truong money by cheque and, at that, only to buy assets such as real properties.

*Business activities of Ms. Truong*

[13] Over the course of the periods under appeal, Ms. Truong owned and operated several businesses. During 2007, Ms. Truong operated a Vietnamese restaurant in Kitchener called Saigon by Night. She was assisted in this endeavour by her nephew. Her boyfriend provided advice concerning advertising, promotion, supplies and pricing. Ultimately, this business closed. In 2008, a new similar business, Angel’s Kitchen, was started in Milton, Ontario. Unlike the first business, this business was more successful, but it too ultimately closed in or around 2011. Although not relevant to the years under appeal, a nail salon business was subsequently opened by Ms. Truong.

*Assets grew during appeal years*

[14] Ms. Truong confirmed she was a bankrupt in 2002. She further testified she had no material savings, assets or sources of income between 2002 and 2005. After that period, Ms. Truong assets, cash and investments grew and multiplied. The details are described under various headings below. Although Ms. Truong was unable, in examination-in-chief or cross-examination, to specifically address dates, purchase prices or value of assets contained in the net worth assessment, she did confirm that the net worth assessment’s statement of assets was an accurate representation of her assets during each period relevant to the *ITA* appeal and the GST appeal. Although Ms. Truong suggested in cross-examination that the liabilities were generically incorrect, during that cross-examination and in reply, no details or amounts of additional liabilities were furnished.

[15] In summary, the continuity schedule of asset and net worth growth from 2005 through 2009 may be summarized as follows:

<b>Year</b>	<b>Cumulative Total Personal Assets</b>	<b>Total Business Assets</b>	<b>Total Liabilities</b>	<b>Annual Increase in Net Worth</b>	<b>Increased Cumulative Net Worth (rounded)</b>
2005	\$21,926.00	-----	-----	\$20,459.59	\$22,000.00
2006	\$44,707.21	-----	\$437.17	\$22,343.14	\$44,000.00
2007	\$685,829.08	\$16,415.89	\$367,111.00	\$290,863.93	\$367,000.00
2008	\$1,604,551.09	\$152,180.52	\$365,271.85	\$1,056,325.79	\$1,391,000.00
2009	\$2,015,488.53	-----	\$299,801.42	\$324,227.35	\$1,715,000.00

*In late 2006, a developing relationship*

[16] In November of 2006, Ms. Truong met and became intimate with Mr. Chiu, her new boyfriend. From evidence, it was clear Mr. Chiu was and is a very successful businessman. Commencing in early 2007, Ms. Truong would travel frequently with her boyfriend to casinos. It is undisputed that he gave Ms. Truong the sum of \$1,722,000.00 by way of various cheques, automatic fund transfers and bank drafts in 2007, 2008 and 2009. These gifts were deducted by CRA from the net worth assessment. These sums represented a sizeable proportion of the Mr. Chiu's income during those years, with three-quarters of his income, \$1,200,000.00, alone being given to Ms. Truong in 2008. The common testimony was that these gifts were used to acquire property and personal and business assets.

*Real property acquisitions*

[17] Ms. Truong acquired real property commencing in 2007. She acquired a house in Kitchener in July of 2007 for \$490,000.00. There was a mortgage of \$367,000.00 on the property. In October of 2008, Ms. Truong bought a farm property near Dundalk, Ontario for \$540,000.00, granted no mortgage and carried no debt for it. In 2008, she sold her Kitchener property and acquired two properties in Milton and made a deposit on a third for a total of \$173,000.00 in down payments for these 3 properties.

*Bank account and activity*

[18] Ms. Truong had a number of bank accounts with a high volume of activity. Over the 5 years of the net worth continuity assessment, she withdrew cash of almost \$655,000.00 in increments in excess of \$1,000.00. She also accumulated personally almost \$200,000.00 in term deposits and by the end of December, 2009



cash of \$58,000.00. Her business accounts at the end of 2007 and 2008, respectively, had cash balances of \$16,400.00 and \$152,000.00.

### *Automobiles*

[19] Ms. Truong also acquired several automobiles during the appeal years. Ms. Truong began 2005 with one automobile. In 2007, she acquired a 2002 BMW sport utility worth \$23,250.00. In 2008, she acquired another vehicle worth \$28,000.00 and in 2009, a 2009 Acura MDX was purchased worth \$52,451.00. There were no liens or debt against the vehicles.

### (c) The Need and Methodology of the Net Worth Assessment

#### *Unreported Income*

[20] The CRA auditor pointed to the absence of books and records as the fundamental necessity for completing the alternative assessment of Ms. Truong. In its net worth assessment, the CRA calculated the increase in the net worth of Ms. Truong's assets over her liabilities utilizing 2004 as the baseline year and continuing the analysis through to the final *ITA* appeal year, 2009.

[21] To fill this alleged information vacuum, the CRA issued requirements for information ("RFIs") to Ms. Truong's banks, mortgagees, favoured casinos and sellers of various personal property. The CRA also searched public registries, Government of Canada and provincial government data bases, using RFIs where needed.

[22] As a result, a statement of assets for the *ITA* appeal years was constructed. It included relevant sources of asset increases: bank account deposits, purchased investment certificates, personal property acquisitions, cash withdrawals in increments of \$1,000.00 or more, motor vehicles acquired and sold, real properties (both acquisitions and down payments) and transfers to solicitors' trust accounts for property purchases. Similarly, offsetting liabilities were subtracted: credit card debt, other debt and mortgages payable.

[23] Further adjustments were required specific to this appeal. In terms of additions, personal expenditures of approximately \$124,000.00, \$126,000.00, \$359,000.00, \$551,500.00 and \$607,700.00 tracked through credit cards expenditures and gambling losses etc. were added to net worth for each of the appeal years 2005 through 2009, respectively.

[24] On the other hand, the gifts from Ms. Truong's boyfriend (to the extent evidence of the amounts existed or were credibly acknowledged by the boyfriend) and Ms. Truong's casino winnings were deducted from net worth increases since they represented non-taxable sources of funds. These gifts from her boyfriend amounted to \$1,722,000.00, undisputedly given during the final 3 appeal years. The casino winnings were approximately \$16,800.00, \$100,500.00 and \$14,500.00 in each of 2005, 2006 and 2007. These winnings were lifted from the casino win/loss statements received from the four casino corporations acting for the six casinos visited by Ms. Truong in Ontario, Quebec and New York State. There were only net losses at the casinos in 2008 and 2009.

#### *Imputed Unreported GST Collectible*

[25] By applying the unreported income figure, comprised of a normalized increase over the appeal years, a calculation was utilized to derive gross revenues and extrapolate this figure to achieve a value for supplies and related tax exigible under the *ETA*. These unreported taxable supplies related to the businesses carried on by Ms. Truong. A concordant adjustment to taxable supplies was made for sums relating to personal expenditures and for deductions relating to non-taxable sources of funds. This yielded total consideration received for taxable supplies for each appeal year (translated into a GST reporting period) and a percentage of tax otherwise exigible for unreported GST collectable. This comprised the GST assessment for the related reporting periods corresponding to the *ITA* appeal years.

#### (d) Net Worth Assessment "Flawed"

[26] As described, the Appellant marshalled no suggestion that the net worth assessment was unnecessary. However, counsel for the Appellant pleaded in the Notice of Appeal or submitted in argument that certain evidence was provided to question the validity and methodology of the net worth assessment. These errors included: the inaccurate gambling records, the trust assets and the misallocated business assets. Moreover, non-taxable sources of funds were received by Ms. Truong which were not reflected in the net worth assessment: the enhanced loans, family loans and gambling gains.

#### *Inaccurate gambling records and gambling gains*

[27] Ms. Truong, her sister, nephew and two friends testified that casino player cards which tracked casino chip purchases, redemptions and "cash outs" were susceptible to inaccuracy. Firstly, not all transactions of a specific person were

tracked. Purchases or redemptions of casino chips could also be conducted with cash without using the card. Secondly, transactions not involving the specific card holder would be tracked when made by another person. For instance, others could use the card when buying or redeeming their own chips. Thirdly, the casino player cards could be manipulated without any transactions. Casino dealers and supervisors frequently enhanced the value of purchases and sales to heighten complimentary favours; drinks, food and hotel rooms.

[28] Moreover, casinos could not warrant the accuracy of the cards. On the face of the win/loss statements, Ms. Truong's counsel submitted that each casino gave no warranty as to the accuracy of the win/loss statements. In this specific case, Ms. Truong's sister testified that she frequently used Ms. Truong's player card to avoid her own husband's detection of frequent trips made by her to the casino. If Ms. Truong's sister won, she may have taken cash and may not have credited the winnings to the player card. However, the placed bets would nonetheless be reflected on the card. This would artificially reflect a loss.

#### *Misallocated business assets and trust assets*

[29] Ms. Truong testified that her boyfriend controlled the businesses (proprietorships and corporations) for which, although she was the owner or shareholder, she was allocated the increased net asset value in the net worth assessment. As to undisclosed business income, the unexpressed suggestion was that the boyfriend had received these funds and the value of the assets, not Ms. Truong. No evidence at the hearing was adduced concerning trust assets otherwise identified in the Amended Notice of Appeal as trust assets legally registered to Ms. Truong, but otherwise beneficially owned by others.

#### *Enhanced Loans*

[30] Ms. Truong's boyfriend testified that he gave her no more gifts than the amounts reflected in bank transfers and cheques, save perhaps, the occasional birthday gift card containing cash in more customary amounts. In contradiction of that testimony, Ms. Truong, her sister and nephew testified that "ziploc bags" of cash would be given to Ms. Truong by her boyfriend. These sums were in addition to and exceeded the \$1,722,000.00 already reflected as non-taxable sources of funds by the Minister. Although no precise value of cash was provided, Ms. Truong's nephew estimated that he had become "quite good" at guessing the value within the bags based upon the thickness of the 50 and 100 dollar bank notes within them. He claimed he often transferred the "ziploc bags" from boyfriend to

girlfriend in order to keep the businesses operating. During the audit, Ms. Truong's nephew also prepared and had the boyfriend sign two general acknowledgments of additional gifts to Ms. Truong. One letter was undated and specified no amounts or years. The other reflected gifts in 2007 of \$109,000.00, \$73,000.00 of which was reflected by cheques or bank drafts. At trial, the boyfriend, Mr. Chiu, denied any material gifts were made in cash and that the letters were not, to that extent, accurate.

### *Family loans*

[31] Ms. Truong's friend testified that she would frequently loan Ms. Truong individual tranches of \$5,000.00, \$7,000.00 or \$10,000.00 to support Ms. Truong's "problem with going to the casino." These loans were short term and were normally extended for a period between 2 to 3 weeks. Ms. Truong always repaid them. In December of 2005 (near the end of the first *ITA* tax year), a specific loan for \$10,000.00 was made. Ms. Truong's friend could not recall when exactly that particular loan was repaid. Documentation for the loans was not kept. The friend was asked to justify on cross-examination the reason for no records having been kept. The friend testified that keeping such documentation would have complicated Ms. Truong's friend's ability to transfer money to her own parents overseas.

### (e) Ms. Truong's knowledge of her affairs

[32] Ms. Truong testified she knew little or nothing of the income or expenditures flowing in or out of her bank accounts. While she confirmed, either directly or deductively, the accuracy of the statement of assets and liabilities in the net worth statement, she remained resolute that she was uninvolved in the transactions giving rise to the reflected amounts or beneficially entitled to the related assets. Her boyfriend controlled the businesses and told her how to operate them. Her accountant, also chosen by her boyfriend, prepared all income tax and GST returns. Her nephew assisted with the cash count and bank deposits for at least one and possibly both of the businesses.

[33] Ms. Truong's boyfriend indicated Ms. Truong ran her businesses and he ran his own nationally based restaurant chain. The accountant did not testify. Ms. Truong's nephew helped out with first restaurant business "in his spare time", but was a full time student at the relevant time. With the second restaurant, her nephew was present occasionally as well.

[34] The CRA auditor testified she received no meaningful documents or records from Ms. Truong, save the late filed tax returns and information received through RFIs from third party entities.

[35] Ms. Truong's completion of a CRA questionnaire left a great deal of information blank and failed to provide plausible explanations contributing to any sense of reality to the financial information. Ms. Truong testified she did not complete that document. Ms. Truong had reported net business income (losses in parentheses) of \$6,500.00, \$6,100.00, (\$29,896.00), (\$34,329.00) and nil in each of the appeal years 2005 through 2009. The net worth statement allocates income to Ms. Truong in each of these years of more than \$112,000.00, \$38,000.00, \$524,000.00, \$417,000.00 and \$588,000.00. Ms. Truong contested her signature on one tax return relevant to the *ITA* appeal. However, Ms. Truong testified that otherwise she did execute the initial tax returns and GST returns, although she did not read them before signing.

### III. The Law

#### A. Net Worth Assessments

[36] The Minister has the right to alternatively assess a taxpayer under subsection 152(7) of the *ITA* and similar provisions under subsection 299(1) of the *ETA*. Where such an assessment is raised a challenge to the assessment may be mounted by the taxpayer in three ways:

- (i) challenge its necessity or method chosen in the first instance;
- (ii) challenge specific aspects of the quantum, methodology or inclusions, and/or
- (iii) submit evidence concerning non-taxable sources of income received by the taxpayer.

[37] This is enunciated in a number of cases, and recently in *Golden v. The Queen*, 2009 TCC 396, 2009 DTC 1273, at paragraphs 11 and 12 where Justice Boyle of this Court states:

[11] In the case of a net worth assessment, it is open to the taxpayer to attack whether the net worth assessment is needed or the most appropriate method of computing the taxpayer's income from any source. In this case the taxpayer is not

doing that. If the taxpayer does attack whether a net worth assessment is needed or the most appropriate, a taxpayer would need to prove to the satisfaction of the Court with what evidence there is, what records there are and other credible evidence, what the income of the taxpayer is from the source or sources in question. The taxpayer has not done that nor laid the groundwork in the evidence for that.

[12] The alternative is for the taxpayer to challenge specific aspects of the net worth assessment calculations.

## B. Penalties

[38] Section 163(2) of the *ITA* provides as follows:

**(2) False statements or omissions** - 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...

[39] Subsection 298(4) of the *ETA* provides for similar penalties for such knowledge or in circumstances amounting to gross negligence.

[40] With respect the application of penalties to a knowing failure to disclose, the Court must determine, on balance, that Ms. Truong was knowledgeable of her receipt of unreported income or her collection of GST and failed to report either.

[41] With respect to gross negligence, the test is slightly more nuanced. In *Venne v. R.*, [1984] 84 DTC 6247 (FCTD) CTC 223, “gross negligence” was determined by Justice Strayer, as he then was, to mean:

“Gross negligence” must be taken to involve greater neglect than simply a failure to use reasonable care. It must involve a high degree of negligence tantamount to intentional acting, an indifference as to whether the law is complied with or not.

[42] Any determination to apply such penalties is directly linked to the evidence before the Court in any case, entirely based upon the circumstances, facts and issues in each case. The onus of proof to show knowledge or gross negligence remains the Minister’s to the standard or threshold of a balance of probabilities. Gross negligence as stated above, includes wilful blindness to legal compliance.

## IV. Submissions, Analysis and Findings

(a) Submissions

Ms. Truong

[43] To reiterate, Ms. Truong's counsel submits that the net worth assessment is flawed because evidence was adduced to show that: (i) it failed to reflect non-taxable sources of funds comprised of the trust assets, enhanced loans, family loans and gambling gains; and (ii) it failed to account for inaccurate gambling records; and (iii) it included misallocated business assets to Ms. Truong which really were under the control of Ms. Truong's boyfriend.

[44] No submissions were made separately by Ms. Truong's counsel on the issue of penalties, presumably on the basis that the appeals would be granted and there would be no unreported income or unreported GST collectible.

Respondent

[45] Respondent's counsel submitted that, while the facts were dense covering five taxation years, the appeal was not legally complex. In short, Respondent's counsel submitted that the net worth assessment was necessary and appropriate because there were no business or other records or information furnished by Ms. Truong. Secondly, aside from a \$2,400.00 adjustment which became apparent during the CRA auditor's testimony, no factual evidence was adduced by Ms. Truong to constitute evidence of the enhanced loan amounts, gambling gain amounts, amounts or description of trust assets, amounts of misallocated business assets or family loan amounts. In short, to challenge the alternative assessment of the Minister, Ms. Truong bears the obligation to provide specific rebuttal evidence. In the Respondent's view, there simply was none.

(b) Analysis

Alternative assessment

[46] Alternative assessments, whether by deposit analysis, net worth assessments or other means are not scientific experiments and, as such, are inherently inaccurate<sup>1</sup>. They are necessitated where a taxpayer has failed to file income tax returns, filed patently deficient ones and/or fails to provide books and records which substantiate requests to file or substantiate filed returns. Ms. Truong in certain cases filed returns late or filed clearly deficient ones. She maintained no

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<sup>1</sup> *Golden v. HMQ*, 2009 TCC 396 at paragraph 17.

books or records, produced none during audit and adduced none at trial. She operated several businesses, owned five properties and maintained various bank accounts over the relevant period. An alternative assessment was both necessary and appropriate. The dearth of records, information and books created the vacuum which yearned for an alternative assessment by the Minister. The Appellant has not challenged the necessity or suggested an alternative method<sup>2</sup>.

[47] Having authored the void which demanded the alternative assessment, Ms. Truong had her next opportunity to answer the *ITA* and GST reassessments at the hearing; to marshal an attack rendering unreliable or inaccurate the Minister's allocated alternative income earned and corresponding GST collectible. To do so, explanatory evidence was required. It was required to explain the clear increases in wealth and alternatively assessed income by the Minister which was disproportionate by a wide margin with reported income and collected GST<sup>3</sup>. Ms. Truong admitted the asset values were correct. Moreover, such an attributed increase already excluded approximately \$1.7 million in loans and other gambling gains of some \$131,000.00. For 2005 and 2006, Ms. Truong did not receive those amounts because she had yet to seriously engage with her boyfriend or undertake heavy gambling. Still, no evidence was adduced to challenge the alternative assessment during these first two appeal years.

[48] Aside from the patent mathematical error of \$2,400.00, in 2009 Ms. Truong failed to show that the Minister's assessment, in any specific way, was flawed or suspect. The Minister's evidence of the alternative assessment in the form of a net worth assessment was the only evidence before the Court concerning the income of Ms. Truong for the material periods. Vague assertions, inconsistent challenges of actual evidence from interested and related parties and no documentary evidence cannot defeat the cogent third party documentation, disinterested testimony and logical conclusions embedded within the Minister's alternative assessment, based upon third party records and buttressed by clear testimony at trial. There was no evidence adduced by Ms. Truong of trust assets, offsetting family loans or misallocated business assets.

### Enhanced Gifts

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<sup>2</sup> *Golden* at paragraph 11.

<sup>3</sup> *Molenoar v. HMQ*, 2004 FCA 349 at paragraph 4 (as to taxpayer's onus); *Mathur v. R.*, [2004] 4 CTC 2779 at paragraph 20, itself citing *SDC v. R.*, [1997] G STC 103 (TCC) at page 103 (as to taxpayer's onus in GST net worth assessments).



[49] Certain examples of this contrast stand starkly before the Court. As to the enhanced gifts, Ms. Truong or her nephew never indicated how much money she additionally received from her boyfriend, aside from indeterminable “ziploc bags” of cash. Ms. Truong’s boyfriend, already having admitted to gifts or loans of \$1.7 million, confirmed repeatedly that money was transferred by automatic funds transfers or cheques and not by cash. Given his previous admissions of the large gifts, his testimony concerning the extent of the gifts struck the Court as unmotivated by self-interest.

#### Inaccurate Gambling Records and Gambling Gains

[50] Similarly, Ms. Truong’s counsel challenged the source documents obtained from the casinos on the basis they would both understate and overstate the amount played, won and/or lost. With respect to this inaccurate gambling records argument, no alternative evidence was provided. No alternative amounts won were suggested (which would increase non-taxable sources of funds), lost (which would tend to indicate higher levels of funds at play) or played (tending to reflect a possible variance in net worth). However, Ms. Truong’s counsel suggested contrarily that, on one hand, Ms. Truong had greater winnings than revealed by the records, but, on the other, also played less than revealed by the records. And again, aside from no evidence to suggest either, the standard of proof is the balance of probabilities. On balance, while perhaps not perfect<sup>4</sup>, the present evidence just as easily understates the magnitude of net asset growth as that of asset reduction. The CRA audit in this area of gambling, like the others, met the standard of probability. That reliability was not challenged by countervailing evidence.

[51] Lastly, there is little consistency between the version of Ms. Truong as an uneducated, unemployed, bankrupt and the financial picture revealed by her admitted financial affairs. Ms. Truong admitted that she owned, at all material times, a portfolio of real estate, automobiles, investment certificates, businesses and undertook gambling trips worth hundreds of thousands of dollars each year. There was no explanation offered as to the non-taxable sources of funds she received or gained beyond the almost \$2,000,000.00 of non-taxable funds credited to her by the Minister.

[52] For these reasons the appeals are dismissed. The sole, reliable evidence before the Court of Ms. Truong’s income and GST liability for the appealed years

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<sup>4</sup> *Guibord v. HMQ*, 2010 TCC 420 at paragraph 17 itself citing *Bigayan v. HMQ*, [2000] 1 CTC 2229.

is that of the Minister's alternative assessment. As stated, that picture emerged from the hearing, unassailed and unmaligned.

### Penalties

[53] No direct submissions were made by Ms. Truong's counsel regarding penalties. Notwithstanding, the Minister bears the onus to show that Ms. Truong knowingly or in circumstances amounting to gross negligence made a false statement or omission in her relevant tax and GST returns.

[54] Ms. Truong testified that she has no formal education beyond elementary school in Vietnam. She immigrated to Canada in 2000. During the hearing, she testified and monitored the trial through an interpreter. These factors have frequently been taken into account in penalty appeals where a prevalent and oversized consideration is the lack of sophistication and insularity of the taxpayer from the Canadian business and legal milieu<sup>5</sup>.

[55] From the evidence, Ms. Truong is not a confused newcomer, unaware of how the "system" works. Ms. Truong received over \$1.7 million dollars in gifts from a boyfriend. She gambled large sums several times weekly at various casinos throughout Ontario, Quebec and New York State. In terms of assets, she acquired several houses and an agricultural property. In business, she commenced, owned and/or operated several businesses, acquired several luxury automobiles, operated multiple and variable purpose bank accounts and invested excess savings into guaranteed investment certificates. Based upon this admitted evidence, unsophisticated or insular she was not.

[56] With respect to her knowledge of such activities, she suggested alternatively that her boyfriend, her nephew or the provided accountant were alternatively and/or interchangeably responsible, as the case may be, for the concepts, operation, preparation and completion of the businesses, assets, activities and documentation giving rise to the reassessments and penalties. Her boyfriend, and her nephew, denied such degree of involvement, at least to the extent of diverting, determining or managing the bulk of Ms. Truong's undertakings, assets, activities, and filings. Further, the accountant did not testify. Ms. Truong indicated she did not review her tax returns or GST returns before signing.

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<sup>5</sup> *Altamimi v. HMQ*, 2007 TCC 553 at paragraph 45; *Bandula v. HMQ*, 2013 TCC 282 at paragraphs 44 and 45.

[57] In testimony, Ms. Truong confirmed that her increase in net worth, as described in the CRA prepared net-worth statement, was accurate. She indicated further that each year was accurate. She merely disputed the statement of liabilities generally. She provided no documentary or specific *vive voce* evidence to substantiate a variance from underlying documentary evidence reflecting her assets, investments and businesses. She owned the assets and businesses. She testified she wanted to be wealthy. To vacate the assessments and challenge this presented demonstrable evidence of her false returns and/or indifference, her rebuttal explanations must be presented and credible. They were neither<sup>6</sup>.

[58] Demonstrating further Ms. Truong's business knowledge was Ms. Truong's evidence in re-direct on the issue of the gambling records. It was also instructive and informative for the Court on the issue of her comprehension level in commercial matters which is relevant to the penalties. She was able to explain, with relative ease, concepts which the Court, the interpreter and likely others, heard for the first time: "Player Card", "Rated Play" and "win/loss statements", among other terms. This testimony stood in contrast to denials of comprehension surrounding answers given at examinations for discovery and their variance with testimony given at trial. These discrepancies involved accuracy of win/loss records, contents within various tax returns and inconsistent statements regarding enhanced loans. Ms. Truong's credibility evaporated with such contradictions.

[59] These overarching credibility gaps are at the heart of knowledge or, at least, of wilful blindness and its sub-category: indifference regarding compliance with the law<sup>7</sup>.

[60] Quite apart from Ms. Truong's inconsistency on her lack of knowledge or appreciation of her affairs, the Minister's evidence concerning knowledge or gross negligence was detailed, source-based and informed. That documentary consistency was established through third party records and underlying title documents. In *vive voce* evidence, it was established through the CRA auditor. This jointly source evidence of the Respondent established that Ms. Truong was insouciant to compliance with her legal obligations, grossly negligent in the keeping of books and records and in filing her returns. Ms. Truong admitted and she failed to review or read her income tax and GST returns before same were filed.

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<sup>6</sup> *HSU v. R.*, 2001 FCA 240 at paragraph 31 (taxpayer is in the best position to correct the record); *Morreau v. R.*, 2003 FCA 475 (*viva voce* and documentary evidence when credible and present may discharge the burden)

<sup>7</sup> *Venne v. The Queen*, *supra*, at paragraph 7.

[61] Once this record was established by the Minister, Ms. Truong's testimony did not refute the facts surrounding actual knowledge or wilful blindness. Rather, she buttressed the foundations of both initially established by the Minister. The admission of the factual accuracy of the statement of net worth, statement of assets and the underlying source documents reflecting same provides the Court with the initial basis to find, given the magnitude of the difference between reported income, on one hand, and the admitted net worth and business activity, on the other, that Ms. Truong knowingly failed to declare income and GST collected. Once established, in reply, Ms. Truong provided no plausible or credible explanation for the degree, consistency and duration of this disparity. This leaves the finding of filing false tax returns, or filing under circumstances amounting to gross negligence unavoidable<sup>8</sup>. As such, the penalties are justified and shall remain.

## V. Summary and Costs

### (a) Limited basis of granting the appeal

[62] With respect to the *ITA* appeals, as admitted and identified by Respondent's counsel at the hearing, the assessment in respect of taxation year 2009 shall be reduced by \$4,800.00. This represents the double entry effect of a \$2,400.00 win at a casino having been recorded as a loss. This loss was added to income, increasing it by \$2,400.00. In a consistent methodological approach otherwise followed by the CRA, it should have been deducted from income for the year 2009. This may also have a correlative effect on the GST appeal for the period ending December 31, 2009.

[63] Aside from this adjustment, in accordance with the preceding reasons, the appeals are dismissed and the penalties are upheld.

### (b) Costs

[64] Costs are awarded in favour of the Respondent in accordance with the tariff subject to either party's right to make further submissions in writing within 30 days of the date of this judgment.

Signed at Ottawa, Canada, this 8th day of February 2017.

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<sup>8</sup> *Lacroix v. HMQ*, 2004 FCA at paragraph 30.

“R.S. Boccock”

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Boccock J.

CITATION: 2017 TCC 22

COURT FILE NOs.: 2013-2653(IT)G  
2013-2654(GST)G

STYLE OF CAUSE: THANH TRUC TRUONG AND HER  
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATES OF HEARING: December 7, 8 and 9, 2016

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall  
S. Boccock

DATE OF JUDGMENT: February 8, 2017

APPEARANCES:

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