Docket: 2014-2822(IT)I

BETWEEN:

MARC LEVERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
9109-1165 Québec Inc. (2014-2840(IT)I) on December 9, 2015
and November 24, 2016, at Québec City, Quebec.

The appellant's written observations received on December 14, 2016
and June 15, 2017, and those of the respondent received
on December 29, 2016 and March 30, 2017.

Before: The Honourable Justice Johanne D'Auray

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	M[e] Anne Poirier

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* (the "*Act*") for the 2006 and 2009 taxation years is allowed, in that Mr. Levert was not required to include an amount of $18,660 as benefits conferred on a person for the 2006 taxation year, or an amount of $6,000 for the 2009 taxation year. The penalties imposed under subsection 163(2) of the *Act* shall be recalculated in that regard.

In all other regards, the reassessments made for the 2006, 2007, 2008, and 2009 taxation years remain unchanged.

Without costs.

Signed at Ottawa, Canada, this 10th day of October 2017.

"Johanne D'Auray"

D'Auray J.

Docket: 2014-2840(IT)I

BETWEEN:

9109-1165 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on common evidence with the appeal of
Marc Levert (2014-2822(IT)I) on December 9, 2015
and November 24, 2016, at Québec City, Quebec**.**

The appellant's written observations received on December 14, 2016
and June 15, 2017, and those of the respondent received
on December 29, 2016 and March 30, 2017.

Before: The Honourable Justice Johanne D'Auray

Appearances:

Representative for the Appellant:	Marc Levert
Counsel for the Respondent:	M^{e} Anne Poirier

JUDGMENT

The appeal from the reassessments made under the *Income Tax Act* (the "*Act*") for the 2006 and 2009 taxation years is allowed, in that the appellant corporation could deduct an amount of $18,660 from its revenues for the 2006 taxation year, and an amount of $6,000 for the 2009 taxation year, as business expenses under subsection 9(1) of the *Act*. The penalties imposed under subsection 163(2) of the *Act* shall be recalculated in that regard.

Regarding the 2008 taxation year, this Court does not have the jurisdiction to hear the appeal for that taxation year, as a notice of objection for that taxation year

was not filed with the Minister. The appeal for the 2008 taxation year is therefore quashed.

In all other regards, the reassessments made for the 2006, 2007, 2009, and 2011 taxation years remain unchanged.

Without costs.

Signed at Ottawa, Canada, this 10th day of October 2017.

"Johanne D'Auray"

D'Auray J.

Citation: 2017 TCC 208
Date: 20171010
Docket: 2014-2822(IT)I

BETWEEN:

MARC LEVERT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent

Docket: 2014-2840(IT)I

AND BETWEEN:

9109-1165 QUÉBEC INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

D'Auray J.

I. BACKGROUND

[1] The company 9109-1165 Québec Inc. operates a business under the name Galerie L'Art Ancien ("Galerie L'Art" or "Corporation") in Québec City. Mr. Marc Levert is a shareholder and director of the Corporation, acting as its President.

[2] In 2003, the Corporation became a member of the ITEX network.

[3] ITEX is a trade network in which members can buy and sell goods and services. Under an ITEX membership contract, the currency used by members is the ITEX dollar, equivalent to one Canadian dollar. For example, in the case at

hand, the Galerie L'Art could sell a painting over the ITEX network for 10,000 ITEX dollars and purchase goods or services using those ITEX dollars.

[4] During the years in dispute, namely the 2006, 2007, 2008, 2009, and 2011 taxation years, the Corporation conducted several transactions over the ITEX network.

[5] In calculating its revenues for the taxation years in dispute, the Corporation never reported the sales that it made over the ITEX network or claimed the deduction on purchases that it made over the ITEX network to earn business income.

[6] On November 27, 2012, the Minister of National Revenue (the "Minister") made reassessments against the Corporation for the 2006, 2007, 2008, and 2009 taxation years to include the sales made over the ITEX network in the calculation of its revenues. The Minister also allowed certain expenses as deductions, including purchases made by the Corporation over the ITEX network to earn income. The Minister also imposed a penalty under subsection 163(2) of the *Income Tax Act* (the "*Act*") for each of the years subject to the reassessments.

[7] For the 2006 and 2007 taxation years, the Minister also added amounts to the calculation of Mr. Levert's income as benefits conferred on a shareholder, under subsection 15(1) of the *Act*. However, for the 2008 and 2009 taxation years, the Minister added amounts to the calculation of Mr. Levert's income as benefits conferred on a person under section 246 of the *Act*. A penalty was also imposed by the Minister under subsection 163(2) of the *Act* for each of the years in question in the reassessments.

[8] The reassessments against the Corporation for the 2006 and 2007 taxation years were made by the Minister after the normal reassessment period. The Corporation did not file a notice of objection for its 2008 taxation year as required by the *Act*. It must also be noted that the assessment for the 2011 taxation year does not include the disputed issues because, for that year, it was simply a loss carryover by the Corporation in 2011. The outcome for the 2011 taxation year will therefore be determined based on the judgment in the case at hand.

[9] Finally, the reassessments made against Mr. Levert for the 2006, 2007, and 2008 taxation years were also made by the Minister after the normal reassessment period.

II. FACTS

[10] The Galerie L'Art is a corporation that operates in the arts sector, its primary activity being the buying and selling of paintings.

[11] As mentioned previously, the Galerie L'Art became a member of the ITEX trade network in 2003. As such, it was required to pay monthly fees of $21 under the membership contract. Fees were also payable each time a sale or purchase transaction was conducted by the Corporation through the ITEX network.

[12] The relevant conditions of the ITEX network membership contract are as follows:

> [Translation]
>
> GENERAL CONDITIONS
>
> WHEREAS ITEX QUEBEC (ITEX) manages a network of businesses and professionals who exchange their goods and services through commercial trade in the normal course of business, and provides them with timely record keeping services and administrative follow-up on commercial trade transactions between them;
>
> WHEREAS, by means of this agreement, the parties wish to establish their rights and obligations under membership in the ITEX network;
>
> […]
>
> ITEX DOLLAR (ID): An accounting unit used to facilitate debit and credit transactions between members, and to allow members to make the appropriate entries in their own accounting, commercial and tax systems. For the purposes of all commercial trade transactions, one ID is equivalent to one Canadian dollar ($1); an ID cannot be exchanged for cash.
>
> […]
>
> MEMBER IN GOOD STANDING: A member who complies with the terms hereof and the Rules established by ITEX and is current in the payment of all

amounts owed to ITEX in Canadian cash dollars or ID. Only members in good standing [...] Services of ITEX;

[…]

9. COMMERCIAL TRADE TRANSACTION

[…]

A. The transaction voucher provided by ITEX must be legibly completed and include the parties' account numbers and the amount and date of the transaction. The voucher must be signed by the debit party (the buyer);

9.7 Through its computer services, by fax and through regional agencies, ITEX shall provide the member with access to its personalized account statements, reflecting the activities in its account(s). The monthly account statements shall be deemed accurate as disclosed, unless the member advises ITEX in writing of any inaccuracy within thirty (30) days of the date on which the account statement was issued. ITEX may require reasonable fees for any copies of the member's files.

[…]

12. TAX ASPECTS

When acting as a credit party (seller), the member must collect the appropriate taxes on ID and/or Canadian currency transactions and remit them as required by law. ITEX cannot be held accountable for payment of any taxes on behalf of any member. Transactions conducted in ID are generally treated as taxable transactions for tax purposes and the member acknowledges having been informed and advised of this.

[…]

I, the undersigned, state that I have read and understood the GENERAL CONDITIONS governing the use of an ITEX account and agree personally, on behalf of my company and on behalf of all authorized signatories to respect and comply with the terms of the GENERAL CONDITIONS and any amendments thereto.

[…] (print) MARC LEVERT signature of broker(s) _____

Authorized signature: (s) Marc Levert Title _____ Date _____

[13] The Corporation never included the transactions that it conducted over the ITEX network in its financial statements. It kept no documentary evidence of such transactions.

[14] The Corporation never reported its transactions over the ITEX network on its income tax returns.

[15] In making the reassessments, the Minister added sales made by the Corporation over the ITEX network to the calculation of its revenues. The Minister also allowed the Corporation the deduction of certain purchases as business expenses. Those adjustments are reproduced below:

Added revenues	2006	2007	2009
Unreported ITEX sales	$108,700	$52,477	$90,540
ITEX fees allowed	$9,038	$4,033	$6,622
Purchases allowed	$63,900	$12,471	$20,325
Meals allowed	$183	$259	$216
Total taxable income	$35,579	$35,714	$63,377

[16] Ms. Couturier, an Appeals Officer with the Canada Revenue Agency (the "CRA") during the period in question, testified at the hearing. She stated that she was responsible for examining the notices of objection from the appellants.

[17] Ms. Couturier stated that, in making the reassessments against the appellants, she relied on the account statements provided by Mr. Arès, the ITEX representative. The account statements show the purchase and sale transactions carried out by Galerie L'Art over the ITEX network since its registration in 2003.

[18] Ms. Couturier stated that she asked Mr. Levert several times to provide documents to prove his allegations. In that regard, her notes in the file show that she gave Mr. Levert several opportunities to provide her with the documents. She extended the set deadlines several times to allow Mr. Levert to provide her with the documents. However, having not received the documents from Mr. Levert concerning the transactions conducted by the Corporation over the ITEX network, she relied on the documents provided by Mr. Arès from ITEX**.**

[19] Ms. Couturier examined the description of each purchase and only allowed as business deductions the purchases that she felt had ben made for the purpose of

earning business income. Thus, the expenses incurred by the Corporation over the ITEX network that were deemed by Ms. Couturier to be personal were all disallowed. According to Ms. Couturier, the personal transactions conducted by the Corporation over the ITEX network accounted for 55% of all of the Corporation's purchase transactions.

[20] The only changes made by Ms. Couturier during the objection stage were as follows: she allowed the Corporation the deduction of all ITEX fees for all of the years in question and the deduction of a $325 expense for the 2009 taxation year.

[21] According to Ms. Couturier, the Corporation was never reimbursed for the personal expenditures that it incurred for the benefit of Mr. Levert. The Minister therefore added amounts to the calculation of Mr. Levert's income as benefits conferred on a shareholder and as benefits conferred on a person:

Income added	2006	2007	2008	2009
Benefit conferred on a shareholder un subsection 15(1) of the *Act*	$70,211	$14,524	N/A	N/A
Benefit conferred on a person under subsection 246(1) of the *Act*	N/A	N/A	$2,868	$5,135

[22] At the hearing, Mr. Levert claimed several times that, if Ms. Couturier had done her work correctly and had obtained not only the transaction account statements indicating the sales and purchases by the Corporation over the ITEX network, but also the ITEX vouchers or cheques justifying each sale or expenditure, she would have realized that the Corporation often sold objects of art at a loss.

[23] Moreover, although Mr. Levert admitted that he benefitted from certain transactions by the Corporation over the ITEX network, he argued that he did not benefit at all from other transactions. Mr. Levert also argued at the hearing that he was not a shareholder of the Corporation during the 2006 and 2007 taxation years.

III. ISSUES

A. The Corporation's appeal

[24] The issues are as follows:

1. Did the Minister have good reason, after the normal reassessment period, to make reassessments against the Corporation for the 2006 and 2007 taxation years under subparagraph 152(4)(*a*)(i) of the *Act*?

2. Did the Minister have good reason to add the amounts of $35,579, $35,714 and $63,377 as unreported income for the 2006, 2007, and 2009 taxation years, respectively?

3. Did the Minister have good reason to impose a penalty on the Corporation under subsection 163(2) of the *Act* for the 2006, 2007, and 2009 taxation years?

B. Mr. Levert's appeal

[25] The issues are as follows:

1. Did the Minister have good reason, after the normal reassessment period, to make reassessments of Mr. Levert for the 2006, 2007, and 2008 taxation years under subparagraph 152(4)(*a*)(i) of the *Act*?

2. Did the Minister have good reason, under subsection 15(1) of the *Act*, to add amounts of $70,211 and $14,524 to Mr. Levert's income as benefits conferred on a shareholder for the 2006 and 2007 taxation years, respectively?

3. Did the Minister have good reason, under section 246 of the *Act*, to add amounts of $2,868 and $5,135 to Mr. Levert's income as benefits conferred on a person for the 2008 and 2009 taxation years, respectively?

4. Did the Minister have good reason to impose a penalty on Mr. Levert under subsection 163(2) of the *Act* for the 2006, 2007, 2008, and 2009 taxation years?

IV. POSITIONS OF THE PARTIES AND ANALYSIS

A. Could the Minister make reassessments against the Corporation and Mr. Levert after the normal reassessment period under subparagraph 152(4)(*a*)(i) of the *Act*?

(1) Against the Corporation

[26] I will first determine whether the Minister had the authority to make reassessments against the Corporation for the 2006 and 2007 taxation years under subparagraph 152(4)(*a*)(i) of the *Act*.

[27] Subparagraph 152(4)(*a*)(i) of the *Act* states the following**:**

> (4) The Minister may at any time make an assessment, reassessment or additional assessment of tax for a taxation year, interest or penalties, if any, payable under this Part by a taxpayer or notify in writing any person by whom a return of income for a taxation year has been filed that no tax is payable for the year, except that an assessment, reassessment or additional assessment may be made after the taxpayer's normal reassessment period in respect of the year only if
>
> a) the taxpayer or person filing the return
>
> (i) has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in filing the return or in supplying any information under this Act,
>
> [Emphasis added.]

[28] In *College Park Motor Products Ltd.*,[1] at paragraph 20 of his reasons, Bowie J. indicated the scope of subparagraph 152(4)(*a*)(i) of the *Act*:

> [20] At the risk of redundancy, I wish to reemphasize that the purpose of subparagraph 152(4)(*a*)(i) is not penal but remedial. It balances the need for taxpayers to have some finality in respect of their taxes for the year with the requirement of a self-reporting system that the taxing authority not be foreclosed from reassessing in those instances where a taxpayer's conduct, whether through lack of care or attention at one end of the scale, or willful fraud at the other end, has resulted in an assessment more favourable to the taxpayer than it should have been. [...]

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[1] *College Park Motor Products Ltd. v. The Queen*, 2009 TCC 409.

[Emphasis added.]

[29] At the hearing, Mr. Levert provided contradictory versions. He first stated that the Corporation had made a mistake in not reporting its sales and that he was responsible for that. Mr. Levert was under the impression that the sales and purchases were of equal value. Thus, as the sales were of the same value as the purchases, he decided that the Corporation did not need to report any transactions over the ITEX network. However, it seems that the evidence of that allegation by Mr. Levert is not exact. The sales and purchases were not automatically equivalent.

[30] Mr. Levert also stated that the Corporation did report the ITEX transactions because it had incurred losses on sales conducted over the ITEX network and because the Corporation preferred to not report those losses to avoid [translation] "undergoing an audit".

[31] In light of those contradictory versions, Mr. Levert's credibility as President of the Corporation is seriously in doubt. That said, apart from the contradictory versions to explain why the Corporation did not report its sales over the ITEX network, other indicators show that the Corporation was not diligent and that it made a voluntary omission in its income tax returns for the 2006 and 2007 taxation years.

[32] For example, Mr. Levert signed the ITEX membership contract for the Corporation. Clause 12 of that contract mentions the taxable nature of sales conducted over the ITEX network.[2] His testimony that he had not read the contract before signing it and that he did not know that transactions over the ITEX network were taxable does not hold water.

[33] Mr. Levert has been in business for more than 20 years. If he in fact signed a contract for the Corporation without reading it, that shows negligent behaviour as President of the Corporation.

[34] Mr. Levert also acknowledged that the Corporation made false statements by not reporting the ITEX transactions in its income tax returns. The Corporation apparently did so to avoid a CRA audit. What is clear from his testimony is that the Corporation made a voluntary omission from its income tax returns to avoid such an audit.

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[2] See Exhibit I-1.

[35] In light of those facts, the conditions set out in subparagraph 152(4)(*a*)(i) of the *Act* are met. The Minister therefore had the authority to make reassessments for the 2006 and 2007 taxation years after the normal reassessment period.

(2) Against Mr. Levert

[36] Mr. Levert argued that it is normal for him to not have included in the calculation of his income the value of certain benefits that he received in the statute-barred years, as he believed that the transactions conducted over the ITEX network simply did not need to be reported.

[37] In my opinion, that explanation is not credible, for several reasons, such as:

- At the hearing, Mr. Levert acknowledged that he had personally benefitted from several purchases by the Corporation over the ITEX network and that their treatment by the Minister was therefore legitimate. He also acknowledged not having reimbursed the Corporation.

- That is also acknowledged in a letter to the CRA on July 25, 2012, from Mr. Boileau, the accountant representing the Corporation during the objection stage. In her draft assessment, the Minister had made an assessment against Mr. Levert's spouse under subsection 15(1) (benefit conferred on a shareholder). In response to the letter from the CRA, the accountant, Mr. Boileau, indicated the following:

  [Translation]

  We disagree with your draft assessment.

  […]

  It was Mr. Marc Levant who received those benefits.

  [Emphasis added.]

[38] Of the expenditures incurred by the Corporation, we note those for dental care, glasses and travel for family vacations. Those types of expenditures were clearly not incurred by the Corporation to earn business income in this case.

[39] In light of the facts, I am of the opinion that, by not reporting the benefits conferred on him by the Corporation in his income tax returns, Mr. Levert misrepresented the facts, by negligence or by voluntary omission in not including the benefits conferred on him by the Corporation in his income tax returns for the 2006, 2007, and 2008 taxation years. The Minister therefore had good reason to make reassessments, after the normal reassessment period, against Mr. Levert for the 2006, 2007, and 2008 taxation years.

B. Addition of transactions over the ITEX network to the calculation of the Corporation's revenues and addition of benefits conferred on Mr. Levert by the Corporation to the calculation of his income

[40] I must now determine whether the Minister had good reason to add amounts for unreported sales to the Corporation's revenues and analyze whether certain expenditures by the Corporation over the ITEX network were personal in nature or whether they were incurred to earn business income.

[41] I must also analyze whether the Minister was right in adding amounts for benefits conferred by the Corporation on a shareholder to Mr. Levert's income under subsection 15(1) of the *Act* for the 2006 and 2007 taxation years, and amounts as benefits conferred on a person under subsection 246(1) of the *Act* for the 2008 and 2009 taxation years.

[42] In that regard, Mr. Levert argued that he did not benefit from several purchases by the Corporation over the ITEX network. He claimed that the Minister should not have included certain purchases in the calculation of his income. He also claimed that those purchases were correctly deducted as expenses in the calculation of the Corporation's revenue, as they were incurred to earn business income.

[43] Mr. Levert also raised a new argument for the first time at the hearing, that the Minister could not make a reassessment under subsection 15(1) of the *Act*, which refers to benefits conferred by a corporation on a shareholder, as he was not a shareholder in the Corporation during the 2006 and 2007 taxation years.

[44] In that regard, Mr. Levert claimed that he filed bankruptcy on July 5, 2005, and that all of his shares in the Corporation were transferred to the bankruptcy trustee, LeBlond & Associés.[3]

[45] A letter from the trustee, LeBlond & Associés, dated November 4, 2005,[4] indicates that Mr. Levert's spouse, Ms. Lise Girard, purchased the undivided half of a building and all of the shares held by Mr. Levert in the Corporation on November 4, 2015, for $20,000. The appellant claimed that, as such, he could not hold shares in the Corporation, as they had all been transferred to his spouse by the trustee.[5]

[46] According to the judgment by the Superior Court of Quebec in Mr. Levert's bankruptcy, he was discharged from his bankruptcy on February 28, 2007, after the years in dispute for which the Minister made reassessments under subsection 15(1) of the *Act* (benefit conferred on a shareholder).[6]

[47] In a conference call after the hearing to discuss the points to be addressed in the written arguments and to discuss an extension of the deadline for filing written arguments following Mr. Levert's hospitalization, the respondent acknowledged that Mr. Levert was not a shareholder in the Corporation in 2006 and 2007. However, as she did at the hearing, the respondent argued in her written observations that, regardless, under section 246 of the *Act*, a benefit was conferred on Mr. Levert by the Corporation as a taxpayer in 2006 and 2007.

[48] The respondent submitted that, under subsection 152(9) of the *Act*, the Minister may raise a new argument in support of the reassessments for the 2006 and 2007 taxation years. Subsection 152(9) reads as follows:

> 152(9) Alternative basis for assessment
>
> At any time after the normal reassessment period, the Minister may advance an alternative basis or argument — including that all or any portion of the income to which an amount relates was from a different source — in support of all or any portion of the total amount determined on assessment to be payable or remittable by a taxpayer under this Act unless, on an appeal under this Act

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3 See Exhibit A-3.
4 See Exhibit I-7.
5 See Exhibits A-3 and I-7.
6 See Exhibits A-3 and A-9.

> (a) there is relevant evidence that the taxpayer is no longer able to adduce without the leave of the court; and
>
> (b) it is not appropriate in the circumstances for the court to order that the evidence be adduced.

[49] In this regard, the Federal Court of Appeal found, in *Walsh*,[7] that the Minister may invoke subsection 152(9) of the *Act* if she is satisfied that the following three conditions are met:

> [18] The following conditions apply when the Minister seeks to rely on subsection 152(9) of the Act:
>
> > 1) the Minister cannot include transactions which did not form the basis of the taxpayer's reassessment;
> >
> > 2) the right of the Minister to present an alternative argument in support of an assessment is subject to paragraphs 152(9)(*a*) and (*b*), which speak to the prejudice to the taxpayer; and
> >
> > 3) the Minister cannot use subsection 152(9) to reassess outside the time limitations in subsection 152(4) of the Act, or to collect tax exceeding the amount in the assessment under appeal.

[50] It goes without saying that the Minister cannot use subsection 152(9) of the *Act* to increase the tax payable compared to the amount payable as set out in the assessment. This well-established principle is confirmed by the Federal Court of Appeal in *Anchor Pointe Energy Ltd.*:[8]

> 39 In my opinion, he was not. This case is unlike cases such as *Pedwell v. The Queen*, 2000 D.T.C. 6050 (F.C.A.), where the Minister sought to take into account <u>different transactions than the ones that formed the basis of the reassessments that were made</u> within the normal reassessment period. I do not say that taking into account other transactions is the only thing the Minister cannot do after expiry of the normal reassessment period. <u>Anything that increases tax payable from what would have been the case prior to expiry of the normal reassessment period would be objectionable</u>.
>
> [Emphasis added.]

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7 *Walsh v. The Queen*, 2007 FCA 222.

8 *The Queen v. Anchor Pointe Energy Ltd.*, 2003 FCA 294, 2004 CarswellNat 3104.

[51] Moreover, in this case, it must be remembered that M. Levert raised this means of defence for the first time at the hearing. Mr. Levert did not feel the need to mention during the audit stage or during the objection stage that he was not a shareholder during the 2006 and 2007 taxation years. As well, a large number of documents signed by Mr. Levert indicate that he was a shareholder of the Corporation in 2006 and 2007. For example, the Corporation's 2006 income tax return and the annual returns filed with the Registraire des entreprises du Québec indicate that Mr. Levert was a shareholder. In light of those documents, it is easy to understand why the Minister, in making the reassessments against Mr. Levert, cited subsection 15(1) of the *Act*.

[52] As indicated by Bonner J. in *Chan*,[9] if the conditions in subsection 152(9) are met, the Minister can raise new grounds to support the assessment if they are grounds that she was unaware of in making the reassessments:

> […] Allowing the Minister to plead and to establish that the assessment of tax which he has made is supportable having regard to the law and to facts of which the Minister was unaware when he made the assessment does not, as counsel suggests, constitute allowing the Minister to appeal from his own assessment. Clearly, the Act does not permit the Minister to appeal from his own assessment, but that is not an accurate description of what the Minister now seeks to do. He does not suggest that his assessment was wrong. Rather, he suggests that the assessment is right but for reasons of which he was previously unaware. The Appellant's argument confuses the reasons for making an assessment with the assessment itself. What is assessed is not a reason but rather is "the tax for the year". I refer to subsection 152(1) of the Act. The amendment to section 152 emphasizes the existence of the distinction between the assessment and the arguments which may support it and thus makes it clear that it can be said that the Minister is attempting to appeal his assessment only where the Minister is seeking to increase the amount of tax assessed. […]
>
> [Emphasis added.]

[53] I am of the opinion that the respondent can invoke subsection 246(1) of the *Act* in support of the reassessments against Mr. Levert for the 2006 and 2007 taxation years. The factual background of the assessments is the same. Consequently, Mr. Levert has not suffered any harm. The tax payable did not

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[9] 1999 CarswellNat 4042, [1999] T.C.J. No 661 (QL), confirmed in *Chan v. the Queen*, 2001 FCA 302.

increase. In this case, as in *Chan*,[10] the respondent, on behalf of the Minister, is not claiming that the assessments were incorrect; she is simply raising new grounds, as is allowed under subsection 152(9) of the *Act*.

C. Can certain purchases deemed to be personal by the Minister be deducted in the calculation of the Corporation's revenues and not considered as benefits conferred by the Corporation on Mr. Levert?

[54] Mr. Levert claimed that he did not benefit from some of the purchases by the Corporation, as those purchases were made to earn business income and should therefore not be included in his income as benefits conferred on a taxpayer by a person, namely the Corporation.

[55] Mr. Levert argued throughout the audit, during the first stage of the hearing, and even during the continuation of the hearing, that it is up to the CRA to obtain documents to justify the reassessment.

[56] However, during the first part of the hearing on December 9, 2015, I informed Mr. Levert that he would be best to find evidence to support his allegations. I also mentioned that he was responsible for contacting the people involved in the disputed transactions to establish, as he claimed, that some of the purchases by the Corporation were made to earn business income or that he did not receive a benefit, as he had sold ITEX dollars to non-members. I also told him that he would be best to have his accountant, Mr. Boileau, testify, as well as Mr. Arès, the ITEX representative.

[57] When the hearing resumed on November 24, 2016, just under a year after the first day of hearing, Mr. Levert had not summoned any witnesses and still had no relevant evidence to allow him to claim that certain purchases by the Corporation over the ITEX network were made to earn business income and not for personal reasons. At the end of the hearing, Mr. Levert asked me for additional time to provide documentary evidence. I granted that request. Following Mr. Levert's hospitalization, I extended the deadlines a few times so he could provide documents in support of his arguments.

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10 *Supra*, note 9.

[58] The Court received the following documents on December 14, 2016, from the Corporation:

1. In a bundle, copies of ITEX gift certificates, filed as Exhibit A-10.

2. Bank statement showing a deposit of $29,525 to the Corporation's bank account, filed as Exhibit A-11.

3. Handwritten invoice, dated June 13, 2008, indicating the sale of a batch of jewellery to Mr. Claude Belley, filed as Exhibit A-12.

4. Notarized contract dated June 13, 2008, regarding the sale of land by Mr. Claude Belley to the Corporation for $25,000, filed as Exhibit A-13.

[59] On December 29, 2016, the respondent also filed the following documents:

1. A copy of the Corporation's detailed general ledger for the period from February 28, 2008 to November 30, 2008, filed as Exhibit I-25.

2. A copy of printouts from the Galerie d'Art le Belley website and the Registraire des entreprises website, filed as Exhibit I-26.

3. A copy of an email exchange with Mr. Claude Belley, filed as Exhibit I-27.

[60] As I have already indicated, Mr. Levert is not challenging the fact that he benefited from certain purchases by the Corporation over the ITEX network. However, he argued that certain purchases should not have been added to his income as benefits conferred on a person, as he did not benefit from them. According to Mr. Levert, the following purchases were made by the Corporation over the ITEX network to earn business income.

[61] The purchases challenged by Mr. Levert are as follows:

1. D. N. Autos and Groupe TC
2. Mazda MPV
3. Jewellery
4. Fenestration Rénov Concept
4. Déry Capital Inc.

(1) D. N. Autos and Groupe TC

[62] Regarding the D.N. Autos and Groupe TC transactions, the respondent claimed that they involved the purchase of an automobile and motorcycle valued at $5,000 and $6,000 respectively, both made by the Corporation over the ITEX network. In her testimony, Ms. Couturier from the CRA indicated that they were personal purchases, as the entries in the Corporation's financial statements under rolling stock (motor vehicles) were not changed, namely that no assets were added to that item in the Corporation's financial statements during the 2005 and 2006 taxation years.

[63] Mr. Levert argued that he had indicated several times that no transactions over the ITEX network were entered in the Corporation's financial statements. Thus, the grounds cited by Ms. Couturier for including those transactions in his income as benefits conferred on him does not make sense.

[64] However, during his testimony, Mr. Levert gave two factual versions regarding those transactions.

[65] Mr. Levert first claimed that the Corporation sold ITEX dollars to non-ITEX members in 2006 for an amount 10% to 20% below their value. According to Mr. Levert, after having sold the ITEX dollars to Mr. Vachon, a non-ITEX member, in exchange for cash, the Corporation allegedly obtained ITEX gift certificates for him so he could buy the car and motorcycle over the ITEX network. To support that version of the facts, Mr. Levert had examples of gift certificates sent to the Court after the hearing. Those gift certificates, however, are not related to the transactions conducted with D.N. Autos and Groupe TC.

[66] Mr. Levert then stated that the Corporation had purchased the motorcycle and the car for resale, thus to earn business income. Mr. Levert claimed, however, that the vehicles were never registered in the Corporation's name, which is why he had no supporting documents for the transactions in question. He claimed that the vehicles were purchased from D.N. Autos and Groupe TC over the ITEX network and sold by means of a power of attorney signed by D.N. Autos and Groupe TC. No evidence was filed to support that claim by Mr. Levert.

[67] Mr. Levert stated that, although the ITEX membership contract prohibits ITEX members from selling ITEX dollars for cash, many members were selling them, including him.

[68] At the hearing, the respondent reiterated that she had asked Mr. Levert several times to show that the amount allegedly paid by Mr. Vachon for the purchase of the car and motorcycle had been deposited to the Corporation's account. The respondent argued that, as Mr. Levert did not feel the need to have Mr. Vachon testify and/or to prove that the amount received for that sale had been deposited to the Corporation's account, Mr. Levert did not reverse the burden of proof and the assessments should be upheld in that regard.

[69] I agree with the respondent. Mr. Levert was not able to show that his first version of the facts was true. If, in fact, the Corporation sold ITEX dollars for an amount 10% to 20% below their value, the Corporation did not show that that amount had been deposited to its bank account. I am therefore of the opinion that neither the Corporation (Regarding the deduction) nor Mr. Levert (regarding the benefit conferred) reversed the burden of proof.

[70] As for Mr. Levert's second version of the facts, it does not hold water. For example, if the vehicles were never registered in the Corporation's name, how can Mr. Levert claim that the Corporation sold the vehicles to earn business income? The Société de l'assurance automobile du Québec could not transfer to a third party vehicles that the Corporation never owned, as it had never registered them in its name. Moreover, if that version from Mr. Levert were true, which I strongly doubt, no evidence was submitted to establish that the amounts received for the car and the motorcycle were deposited to the Corporation's bank account.

[71] Consequently, I am of the opinion that the Minister correctly made the reassessments regarding the transactions with D.N. Autos and Groupe TC, both for the Corporation and Mr. Levert.

(2) Mazda MPV

[72] According to Mr. Levert, the Corporation purchased a Mazda MPV from the Auberge Manoir Ville Marie over the ITEX network for 6,000 ITEX dollars. In support of his claim, Mr. Levert filed as evidence a notarized contract dated

August 29, 2009, representing the deed of sale of the Corporation's assets.[11] We see that, according to the terms of the document, one of the assets excluded from the sale was a Mazda vehicle. According to Mr. Levert, that shows that the Corporation owned the vehicle and that the vehicle was used for business purposes.

[73] The respondent did not present any convincing arguments regarding this claim by Mr. Levert. According to the assets sales contract, the Corporation remained the owner of the Mazda MPV. The balance of probabilities is in the Corporation's favour. To carry out its activities, it had to own a vehicle.

[74] I am therefore of the opinion that, for the 2009 taxation year, the Corporation could deduct $6,000 for the purchase of the Mazda MPV and that that amount should not have been included as a benefit conferred on a person in the calculation of Mr. Levert's income for the 2009 taxation year.

(3) Jewellery

[75] Regarding the transaction related to the purchase of jewellery, Mr. Levert argued during the audit stage that the Corporation had purchased the jewellery over the ITEX network for $18,860 in 2006 and that it had sold the jewellery on July 11, 2008, for $29,525.03. Consequently, that purchase was made to earn business income.

[76] During the objection stage and at the hearing, Mr. Levert changed his version of the facts regarding that transaction. Mr. Levert argued that the Corporation had exchanged the jewellery for land held by Mr. Claude Belley in the parish of Saint-Didace. In support of that claim, following the hearing, Mr. Levert filed a transaction receipt made out to Mr. Claude Belley, dated June 13, 2008, indicating an amount of $25,000. The receipt indicates the following: [translation] "batch of jewellery valued at $25,000.00 in payment (consideration) for land located in Saint-Didace in Maskinongé".

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11 See Exhibit A-5.

[77] Mr. Levert also filed as evidence the deed of sale for the land, also dated June 13, 2008, by which Mr. Claude Belley sold the land in Maskinongé to the Corporation. However, there is no mention of the exchange of jewellery in the deed of sale. The clause regarding the price reads as follows:

> [Translation]
>
> Price
>
> This sale is conducted for the price of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), paid by the buyer before this date, thus final discharge by the seller.

[78] Mr. Levert stated that the Corporation then sold that land for $28,000 to 9161-4032 Québec Inc. represented by its President, Mr. Alain Gravel. The notarized deed of sale is dated July 7, 2008.[12]

[79] According to Mr. Levert, he did not benefit in any way from that transaction, as the proceeds of the sale of the land to Alain Gravel's company, namely $28 000, was deposited to the Corporation's account on July 11, 2008, as shown in the bank statement submitted by the appellant.

[80] For her part, the respondent submitted that the purchase of the jewellery was a personal transaction carried out by the Corporation over the ITEX network. Consequently, the respondent argued that the Corporation cannot deduct the purchase of the jewellery in the calculation of its revenues for the 2006 taxation year and that the amount of the purchase must be added to the calculation of Mr. Levert's income for the 2006 taxation year.

[81] According to the respondent, the sale of the land for $28,000 on July 7, 2008, was not reported by the Corporation. Moreover, the entries in the Corporation's general ledger indicate a deposit of $29,525.03, but that deposit was cancelled by the withdrawal of the same amount, with the note [translation] "sale of personal land". According to the respondent, the Corporation's general ledger shows that the transaction related to the land was personal.[13]

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12 See Exhibit A-6.

13 See Exhibit I-25.

[82] Moreover, the respondent argued that the bank statement[14] shows that the deposit of $29,525.03 is immediately followed by a withdrawal of $30,000 by Mr. Levert from the Corporation's bank account. According to Ms. Couturier's worksheet, the accounting entry submitted by the Corporation during the objection shows that the [translation] "owed to directors" item was credited the same amount, which shows the personal nature of the transaction.[15]

[83] Finally, the respondent argued that Mr. Levert's version of the facts is not very credible because, during the objection stage, his accountant, Mr. Boileau, apparently withdrew from the case, indicating that Mr. Levert had too many conflicting versions regarding that transaction and [translation] "that there was apparently never any land involved."[16]

[84] That said, the accountant was also an ITEX member and, as he did not testify, his statements as reported by Ms. Couturier from the CRA are hearsay.

[85] As well, in response to an email from the respondent, the seller of the land, Mr. Belley, said: [translation] "although I preferred art works, I may have received a batch of jewellery in exchange for that land, probably for part of it and the rest in paintings".

[86] Mr. Levert is not a credible person. He also did not help his case by choosing to not have the seller of the land, Mr. Bailey, or the accountant, Mr. Boileau, testify at the hearing. However, I doubt that the jewellery was purchased for personal reasons. The Corporation's activities are not limited to the sale of paintings, but also include the sale of antiques. Moreover, the bank statement shows that the amount from the sale of the land was deposited into the Corporation's bank account. The evidence is far from perfect for the Corporation, but I have decided to give it the benefit of the doubt. Consequently, the Corporation can deduct the $18,660 in the calculation of its revenues for the 2006 taxation year, and that amount must not be included in the calculation of Mr. Levert's income, also for the 2006 taxation year.

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14 See Exhibit A-10.
15 See Exhibit I-12.
16 See Exhibit I-12, page 4000/5.

(4) Fenestration Rénov Concept

[87] As for the Rénov Concept transaction, it appears from the documents from ITEX that the Corporation purchased windows and window installation services over the ITEX network.

[88] Mr. Levert claimed that it was a transaction conducted with a non-member following the Corporation's sale of ITEX dollars. During the objection, Mr. Levert argued that the windows were sold to a non-member, Mr. Martin Pouliot.[17] At the hearing, however, Mr. Levert argued that it was instead a certain Mr. Duchesné who had purchased the ITEX dollars. In that regard, it would have been easy to have Mr. Pouliot or Mr. Duchesné testify to prove that they had purchased the windows following the Corporation's sale of ITEX dollars. Mr. Levert could also have had a representative of Rénov Concept testify to prove that the windows were not purchased by Mr. Levert or installed at his residence. Necessarily, the Corporation must also demonstrate the use and accounting of the amounts received to prove that the amounts received in exchange for the ITEX dollars benefited the Corporation, not Mr. Levert personally.

[89] Ms. Couturier concluded that this transaction was personal in nature because the Corporation rented premises for its operations. As the Corporation owned no real property, the transaction was necessarily personal and conferred a benefit on Mr. Levert. Ms. Couturier assumed that the purchase of the windows over the ITEX network was for the personal residence of Mr. Levert and his spouse, Ms. Girard.

[90] Mr. Levert kept no accounting of the ITEX dollars sold by the Corporation in exchange for cash. Mr. Levert also chose to not have Mr. Duchesné and/or Mr. Pouliot testify, or a representative of Rénov Concept. An invoice was surely prepared following the installation of the windows by Rénov Concept. I advised Mr. Levert several times to have individuals testify who could confirm his statements or at last try to obtain the invoice from Rénov Concept to prove that he did not receive a benefit in relation to those windows and to prove that the amounts received were deposited in the Corporation's bank account. Mr. Levert chose to not have the individuals who were allegedly involved in the transaction testify. It is therefore hard for me to not draw a negative inference from Mr. Levert's inaction.

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17 See Exhibit I-17.

[91] I am of the opinion that the reassessment related to this transaction must be upheld, namely that the Corporation could not deduct $5,000 in 2006 and that amount was correctly added as a benefit conferred by the Corporation in the calculation of Mr. Levert's income.

(5) Déry Capital Inc.

[92] According to the Corporation's account statements obtained from ITEX, the transaction involving Déry Capital Inc. involved the purchase by the Corporation of life insurance for $15,000.

[93] According to the Appeals Officer, Ms. Couturier, the only way to obtain a deduction for a life insurance policy in the calculation of the Corporation's revenues is to prove that the life insurance policy is required by a financial institution to secure a loan. During the objection, the Appeals Officer concluded that that purchase was necessarily personal, as no loan appears in the company's financial statements. Thus, according to her, that expenditure cannot constitute a business expense.

[94] For his part, Mr. Levert submitted that it was again a transaction conducted following the Corporation's sale of ITEX dollars to non-members and that he did not benefit from that transaction.

[95] Mr. Levert submitted that it was Mr. Duchesné who purchased the insurance from Déry Capital Inc. using ITEX gift certificates. Once again, although he was advised several times, Mr. Levert did not feel the need to have Mr. Duchesné or Mr. Déry from Déry Capital Inc. testify—which would have been easy—to establish that the insurance was purchased by Mr. Duchesné. Mr. Levert also did not file any evidence in support of his claim regarding that transaction.

[96] The reassessment related to that transaction must therefore be upheld, both for the Corporation and Mr. Levert.

[97] I must also note that it is not easy to draw a line between matters in the appeals in this case. In addition to him presenting different versions of the facts, Mr. Levert's testimony was so confused at times that it was not easy to circumscribe. The Appeals Officer, Ms. Couturier, relied on statements by Mr. Arès from ITEX to understand how ITEX works. He told Ms. Couturier that

ITEX does not issue gift certificates, which is inaccurate. Mr. Arès also indicated that members cannot sell ITEX dollars to non-members, which is true according to the membership contract, but according to Mr. Levert, that is also a false statement by Mr. Arès, as he knew that members were selling ITEX dollars. It is clear that, in providing information to the CRA, all of the actors in these transactions, namely Mr. Arès from ITEX, Mr. Boileau (the accountant) and Mr. Levert, protected their own interests.

V. Did the Minister have good reason to impose a penalty on the Corporation and/or on Mr. Levert under subsection 163(2) of the *Act* for the 2006, 2007, 2008, and 2009 taxation years?

[98] Subsection 163(2) of the *Act* states the following:

> **163(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 of the greater of $100 and 50% of the total of
>
> (a) the amount, if any, by which
>
> (i) the amount, if any, by which
>
> (A) the tax for the year that would be payable by the person under this Act
>
> exceeds
>
> (B) the amounts that would be deemed by subsections 120(2) and (2.2) to have been paid on account of the person's tax for the year
>
> if the person's taxable income for the year were computed by adding to the taxable income reported by the person in the person's return for the year that portion of the person's understatement of income for the year that is reasonably attributable to the false statement or omission and if the person's tax payable for the year were computed by subtracting from the deductions from the tax otherwise payable by the person for the year such portion of any such deduction as may reasonably be attributable to the false statement or omission
>
> exceeds

> (ii) the amount, if any, by which
>
> > (A) the tax for the year that would have been payable by the person under this Act
>
> exceeds
>
> > (B) the amounts that would be deemed by subsections 120(2) and (2.2) to have been paid on account of the person's tax for the year
>
> had the person's tax payable for the year been assessed on the basis of the information provided in the person's return for the year,
>
> […]

[99] In *De Gennaro*,[18] Owen J. of this Court explained the burden of proof on the Minister when a penalty is assessed under subsection 163(2) of the *Act*. In this regard, he wrote the following at paragraphs 33 and 34 of his reasons:

> [33] Under subsection 163(3) of the ITA, the Minister has the burden of establishing the facts that justify the assessment of a penalty under subsection 163(2) of the ITA. This burden is described by the Federal Court of Appeal in *Lacroix v. The Queen*, 2008 FCA 241, at paragraph 26 as follows:
>
> > Although the Minister has the benefit of the assumptions of fact underlying the reassessment, he does not enjoy any similar advantage with regard to proving the facts justifying a reassessment beyond the statutory period, or those facts justifying the assessment of a penalty for the taxpayer's misconduct in filing his tax return. The Minister is undeniably required to adduce facts justifying these exceptional measures.
>
> [34] The manner in which this burden may be satisfied is described by the Court at paragraph 32:
>
> > What, then, of the burden of proof on the Minister? How does he discharge this burden? There may be circumstances where the Minister would be able to show direct evidence of the taxpayer's state of mind at the time the tax return was filed. However, in the vast majority of cases, the Minister will be limited to undermining

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18 *De Gennaro v. The Queen*, 2016 TCC 108.

> the taxpayer's credibility by either adducing evidence or cross-examining the taxpayer. Insofar as the Tax Court of Canada is satisfied that the taxpayer earned unreported income and did not provide a credible explanation for the discrepancy between his or her reported income and his or her net worth, the Minister has discharged the burden of proof on him within the meaning of subparagraph 152(4)(*a*)(i) and subsection 162(3) [*sic*].

[100] The Minister must therefore prove in the appeals in this case that the Corporation and Mr. Levert:

1) knowingly made a false statement or omission in their income tax returns;

2) under circumstances amounting to gross negligence, made a false statement or omission in their income tax returns.

A. The Corporation

[101] The respondent must therefore prove that the Corporation, under the first part of the criteria set out in subsection 163(2) of the *Act*, knew when filing its income tax returns that the disputed statements were false, or that it failed to report revenue. If that condition is not met by the respondent, under the second part of the criteria in subsection 163(2), she must establish that, under circumstances amounting to gross negligence, the Corporation made a false statement or failed to report revenue in filing its income tax returns.

[102] The Corporation was incorporated on October 17, 2011. Mr. Levert, for his part, has 20 years of experience in business. The Corporation has been a member of the ITEX network since 2001 through another corporation.

[103] Mr. Levert was also an auditor on the Parity committee of the automotive services industry for about 30 years. As an auditor, Mr. Levert ensured that companies carrying on activities in the automotive services industry correctly reported the hours worked by their employers to the Parity Committee. Mr. Levert stated that it is important for employee hours to be correctly accounted in order to eliminate the black market and foster healthy competition in the automotive services industry. He also stated that, in his opinion, ITEX offered a market that was equivalent to a black market. Though not a tax expert, Mr. Levert therefore

knows what constitutes a black market and understands that a corporation that only reports a portion of its sales is involved in the black market.

[104] The Corporation chose to not report any ITEX transactions, as it wanted to avoid an audit, due to the sales that it claimed to be conducting at a loss. According to a second version of the facts, the Corporation allegedly did not report its transactions over the ITEX network because it was under the impression that its sales and purchases over the ITEX network balanced.

[105] First, why remain in the ITEX network if the Corporation was only losing on transactions conducted over the network? Moreover, if there were in fact losses, those losses should have been deducted in the calculation of its revenues. The evidence also established that the statement by Mr. Levert was false, as the sales were not always equivalent to the purchases. In any event, as an experienced business man and President of the Corporation, Mr. Levert knew that, regardless of the nature of a business's transactions, they must be included in a corporation's financial statements and entered in that corporation's income tax returns. As well, Mr. Levert never stated at the hearing that he did not know that ITEX transactions should be included in the calculation of the Corporation's revenues.

[106] In my opinion, Mr. Levert knew that the Corporation had failed to include the ITEX transactions in its 2006, 2007, and 2009 income tax returns. That is surely why he did not keep any documents regarding the Corporation's transactions over the ITEX network. It is also clear that, under the membership contract, transactions conducted over the network are taxable. In this regard, clause 12 of the contract states that:

> [Translation]
>
> When acting as a credit party (seller), the member must collect the appropriate taxes on ID and/or Canadian currency transactions and remit them as required by law. ITEX cannot be held accountable for payment of any taxes on behalf of any member. Transactions conducted in IT are generally treated as taxable transactions for tax purposes and the member acknowledges having been informed and advised of this.

[107] In light of these facts, the respondent has established that the Corporation knowingly made false statements and omissions in its income tax returns for the 2006, 2007, and 2009 taxation years.

[108] In any event, if I have erred regarding the first part of the criteria set out in subsection 163(2) of the *Act*, I am of the opinion that the facts that I have mentioned *supra*, particularly the fact that the Corporation did not report its revenues to avoid an audit, shows that the Corporation, under circumstances amounting to gross negligence, made false statements and failed to include in its returns revenue from transactions conducted over the ITEX network. Strayer J. of the Federal Court stated the following in *Venne*:[19]

> [...] '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. […]

[109] In my opinion, in light of its actions, the Corporation acted intentionally and showed indifference to compliance with the *Act*.

B. Mr. Levert

[110] Applying the same reasoning to Mr. Levert, I am also of the opinion that, in his income tax returns for the 2006, 2007, 2008, and 2009 taxation years, Mr. Levert knowingly made a false statement and knowingly failed to include in his income benefits conferred by the Corporation.

[111] For example, Mr. Levert knew that, because he was not reimbursing the Corporation for personal expenditures paid by the Corporation for his benefit, the value of the benefits thus conferred had to be included in the calculation of his income on his income tax returns. In the case at hand, 55% of the Corporation's expenditures were personal in nature. Mr. Levert knew that the dental care, glasses, or family trips purchased by the Corporation over the ITEX network constituted personal expenditures for the Corporation and a benefit for him. Mr. Levert is also not a novice regarding the application of subsection 163(2) of the *Act*. He was previously assessed a penalty under subsection 163(2) of the *Act* for the 1999 to 2001 taxation years in relation to unreported income established using the net worth method. Mr. Levert also did not object to the assessments for those years.

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19 *Venne v Canada (Minister of National Revenue – MNR)*, 84 DTC 6247, [1984] ACF no 314 (QL) (French).

[112] Moreover, for the 2006, 2007, 2008, and 2009 taxation years, the benefits received by Mr. Levert are significant. Indeed, the Minister added amounts of $70,211, $14,524, $2,868, and $5,135, respectively, to the calculation of his income, while Mr. Levert initially reported total income of $18,630, $11,769, $9,671, and $16,305, respectively.

[113] Thus, in light of these facts, I am of the opinion that the Minister established that Mr. Levert knowingly failed to report income in his returns for the 2006, 2007, 2008, and 2009 taxation years, income received as benefits conferred by the Corporation.

[114] If I have erred in this conclusion, I am of the opinion that the facts established that Mr. Levert, under circumstances amounting to gross negligence, failed to report some of his income in his income tax returns. The amount of the personal expenditures by the Corporation over the ITEX network represents 55% of all purchases. Moreover, Mr. Levert showed indifference to compliance with the *Act*. His actions showed indifference to the *Act*; expenditures such as family trips, dental care, and glasses are clearly personal in nature.

VI. Disposition

A. The Corporation

[115] The appeal is allowed in that the appealing corporation could deduct an amount of $18,660 from the calculation of its revenues for the 2006 taxation year, and $6,000 for the 2009 taxation year as business expenses under subsection 9(1) of the *Act*. The penalties imposed under subsection 163(2) of the *Act* shall be recalculated in that regard.

[116] In all other regards, the reassessments for the 2006, 2007, 2009, and 2011 taxation years previously made by the Minister remain unchanged.

[117] Regarding the 2008 taxation year, this Court does not have the jurisdiction to hear the appeal for that taxation year, as a notice of objection for that taxation year was not filed with the Minister. The appeal is therefore quashed.

[118] Without costs.

B. Mr. Levert

[119] Mr. Levert's appeal is allowed in that Mr. Levert was not required to include as benefits conferred on a person an amount of $18,660 for the 2006 taxation year and $6,000 for the 2009 taxation year. The penalties imposed under subsection 163(2) shall be recalculated in that regard.

[120] In all other regards, the reassessments for the 2006, 2007, 2008, and 2009 taxation years previously made by the Minister remain unchanged.

[121] Without costs.

Signed at Ottawa, Canada, this 10th day of October 2017.

"Johanne D'Auray"

D'Auray J.

CITATION:	2017 TCC 208
COURT FILE NO.:	2014-2822(IT)I 2014-2840(IT)I
STYLE OF CAUSE:	MARC LEVERT v. HER MAJESTY THE QUEEN 9109-1165 QUÉBEC INC. v. HER MAJESTY THE QUEEN
PLACE OF HEARING:	Québec City, Quebec
DATE OF HEARING:	December 9, 2015 and November 24, 2016
REASONS FOR JUDGMENT BY:	The Honourable Justice Johanne D'Auray
DATE OF JUDGMENT:	October 10, 2017

APPEARANCES:

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