

Docket: 2005-889(IT)I

BETWEEN:

HENRI LOUIS LESSARD,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on February 27, 2006, at Québec, Quebec.

Before: The Honourable Justice Alain Tardif

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Claude Lamoureux

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* for the 2000 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of May 2006.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 14th day of February 2008.

Brian McCordick, Translator

Citation: 2006TCC259  
Date: 20060504  
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**REASONS FOR JUDGMENT**

**Tardif J.**

[1] This appeal pertains to the 2000 taxation year. The Appellant has chosen to proceed under the informal procedure of the *Income Tax Act* ("the Act") even though the tax and penalties associated with the reassessment of October 3, 2002, concerning the 2000 taxation year, exceed the \$12,000 limit.

[2] The subjects in the case at bar are as follows:

(a) The Minister of National Revenue ("the Minister") made the following corrections to the Appellant's income upon reassessing him:

<u>Description</u>	<u>Amount</u>
T-4 earnings	\$15,000
Other income	\$50,698

(b) The Minister also imposed a late-filing penalty under subsection 162(1) of the Act and a penalty under subsection 163(2) of the Act.

[3] In order to make and justify the reassessment under appeal, the Minister relied on the following facts:

[TRANSLATION]

- (a) During the taxation years in issue, the Appellant was the sole shareholder of H. LS Lessard Électrique Inc. (hereinafter "the corporation").
- (b) The corporation operated an electrical contracting and maintenance business.
- (c) According to the Registraire des entreprises (CIDREQ),
  - (i) the corporation was incorporated on April 6, 1981; and
  - (ii) the Appellant was also the president and director of the corporation.
- (d) The corporation's financial year ended on March 31 of each year.
- (e) As sole shareholder, the Appellant prepared the sales invoices, made the deposits and paid the purchase invoices.
- (f) Several purchases were paid for using cash from sales revenues.
- (g) Other purchases were paid for by cheque.
- (h) The documents were then submitted to Viviane Pépin, who did the bookkeeping and prepared the GST and QST (Goods and Services Tax and Québec Sales Tax) reports.
- (i) Once a year, all the documents were submitted to an accountant for the preparation of the corporation's unaudited financial statements and the corporation's income tax return.

**UNREPORTED INCOME**

- (j) The corporation issued the Appellant a T5 Statement of Investment Income (hereinafter "the T5") in respect of the 1999 taxation year. The taxable amount stated on the T5 was \$21,562.50 (\$17,250 x 125%).
- (k) The Appellant reported this taxable amount of \$21,562.50 as his only income in his 1999 tax return.

- (l) For his 2000 taxation year, the Appellant reported the following income from his investments in the Industrial Alliance Company on his tax return:

<u>Description</u>	<u>Amount</u>
Taxable amount of dividends from taxable Canadian corporation	\$709

- (m) The Minister audited the corporation's records and books as well as the supporting documents, and the deposit method was used to audit the income for the period from April 1, 1999, to March 31, 2000.
- (n) An adjusting entry was made on March 31, 2000, crediting \$45,000 to the "Advance to Director" account and debiting the same amount from the "Construction Revenue" account.
- (o) The adjusting entry bore the annotation "non-taxable deposit".
- (p) The adjusting entry was not supported by any vouchers and was not explained to the Minister.
- (q) The Minister proceeded to analyse the deposit slips from the corporation's bank accounts for the period from April 1, 1999, to March 31, 2000, and found no non-taxable deposits of \$45,000 or any non-taxable deposits that might total \$45,000.
- (r) The Minister's auditor proceeded to analyse the "Advances receivable from shareholder" and "Advances payable to shareholder" accounts in the general ledger for the period from April 1, 1999, to March 31, 2000, and the period from April 1, 2000, to March 31, 2001.
- (s) The Appellant had a balance receivable at March 31, 1999, and received various amounts between April 1, 1999, and March 31, 2001, including the amount of \$45,000, ending up with a \$33,072 balance payable at March 31, 2001.
- (t) Consequently, the Minister's auditor concluded that the Appellant was paid the sum of \$45,000 during the 2000 taxation year.
- (u) At no point did the Appellant report this amount in his 2000 tax return.
- (v) At no time was the Appellant able to validly explain the aforementioned amount of \$45,000.

- (w) The Minister added the \$45,000 to the Appellant's income for his 2000 taxation year as unreported income.

**LOANS NOT REPAID**

- (x) The Minister's auditor analysed the records and books of the corporation in order to trace the advances that the corporation received from and paid to the Appellant during the 1999 and 2000 taxation years.
- (y) The amount of \$4,285 from the 2000 taxation year was not reimbursed by the Appellant within one year after the end of the corporation's taxation year in which the loan was granted (see Appendix I for details).
- (z) The Minister considered this total of \$4,285 for the 2000 taxation year to be a taxable benefit received from the corporation by the Appellant.
- (aa) In addition, the interest on this loan was computed as \$1,413 and added to the Appellant's income for his 2000 taxation year (see Appendix I for details.)

**UNREPORTED SALARY**

- (bb) The corporation claimed a \$15,000 expense on account of services rendered by the Appellant for the fiscal year ending March 31, 2001.
- (cc) This amount was entered in the corporation's books as a salary expense for the fiscal year ending March 31, 2001.
- (dd) This amount of \$15,000 was posted to the "Advances payable to shareholder" account.
- (ee) This amount was not included in the Appellant's 2000 tax return.
- (ff) The Minister considered this amount to be salary received by the Appellant for his 2000 taxation year and therefore added it to his income, considering that the amount of \$15,000 was paid to the Appellant (see Appendix I, page 16 of this Reply).

**LATE FILING PENALTY**

- (gg) For the 2000 taxation year, the Appellant had \$10,094.65 tax payable after the Quebec abatement was figured in.
- (hh) The Appellant filed his return for the 2000 taxation year on May 10, 2001.

- (ii) Since the Appellant filed his return on that date instead of filing it by the April 30, 2001, deadline, the Minister assessed a late filing penalty of \$504.73.

[4] The Appellant, who had the burden of proving that the assessment, with the exception of the penalty component, was erroneous, testified in support of his appeal.

[5] He submitted very succinct evidence, which essentially consisted of an explanation that the accountant made a mistake in taking the initiative to make an unsubstantiated entry that stated that he had advanced \$45,000 to H. LS Lessard Électrique Inc. ("the corporation") using funds from a non-taxable deposit.

[6] The Appellant initially asserted that this was a grave error, and one that he sought to correct very quickly; but since the Caisse populaire denied him the loan that would have enabled him to do that, he was unable to correct the situation upon noticing what he described as an error made by the accountant.

[7] A bit later, on October 6, 2001, the Caisse populaire agreed to lend him a large amount — more than \$76,000 — which he injected into the corporation that he managed.

[8] Following this injection of funds, he filed an amended income tax return in order to cancel the tax consequences of the \$45,000 accounting entry.

[9] The explanations provided were vague, confusing and imprecise. He asserted several times that the corporation he controlled generally paid him a salary of approximately \$30,000.

[10] However, his income tax return for the year in issue reports \$708.75 in income for the year 2000. That year, in box 130 of his income tax return, he stated that he drew \$15,000 from the corporation. He did not report the \$15,000 as income, and the reason he provided for this was that the corporation had already paid the tax on this amount.

[11] He also stated that the renewal of his electrical contractor's licence was subject to the filing of financial statements that demonstrated the viability of the business that he controlled. If he did not submit financial statements that met

certain requirements, most likely to establish that the business was financially sound, he might not have been able to renew a permit that was completely essential to the operation and very existence of the business.

[12] The Appellant also insisted that the accountant responsible for the entry offered little cooperation; he claimed that the bookkeeper quickly noticed that the \$45,000 entry was abnormal and inappropriate, whereupon he tried several times, unsuccessfully, to have the accountant make the corrections. This is a rather outlandish explanation, and thus, it lacks credibility. In fact, the Court did not understand why the Appellant did not call the accountant as a witness given how important he considered this factor.

[13] Lastly, the Appellant asserted that his knowledge of accounting was very limited, and therefore asked for the Court's sympathy given his financial problems, which are having a serious effect on the financial health of his business.

[14] The Respondent, for her part, called the auditor to testify. He explained the process followed in this matter and the basis of the assessment (primarily deposits).

[15] The auditor also explained the reasons for imposing the penalties; essentially, they were imposed because the amount of income concealed was quite high in relation to the amount reported.

[16] First, after obtaining a copy of the work sheets of the accountant whose services the Appellant retained, he investigated the nature of the deposits.

[17] This work established beyond a doubt that the explanations for the \$45,000 were baseless and unjustified. The analysis of the deposits did not validate the explanations to the effect that the amounts were non-taxable.

[18] In *H. LS Lessard Électrique Inc. v. Canada*, No. 2004-3839(IT)I, June 1, 2005, [2005] T.C.J. No. 303 (QL), another matter involving the Appellant in his capacity as sole shareholder, the Honourable Justice Lamarre Proulx of this Court had to determine the nature of the \$45,000 of the corporation whose shares were held entirely by the Appellant. She determined as follows at paragraphs 3 and 18:

[TRANSLATION]

3. The reassessment was based on the inclusion of an amount of \$45,000 in computing the Appellant's income for 2000. The events surrounding the addition of the \$45,000 amount in computing the Appellant's income are described in subparagraphs 4(d) to (h) of the Reply to the Notice of Appeal (the "Reply") as follows:

...

(d) the Minister audited the books and records of "H.L.S Lessard Électrique Inc.", and the deposit method was used to audit revenues for the fiscal year ending March 31, 2000;

(e) an adjusting entry was made on March 31, 2000, crediting the sum of \$45,000 to the "Advances to Director" account and debiting the same amount from the "Construction Revenue" account;

(f) the said adjusting entry was supported by a terse notation: "Non-taxable deposit";

(g) the said adjusting entry was not supported by any documentation, and no explanation was provided to the Minister concerning the "Non-taxable deposit" notation;

(h) the Minister analysed the deposit slips of the corporation's bank account for the period from April 1, 1999, to March 31, 2000, and found no non-taxable deposits of \$45,000 or any non-taxable deposits that might total the said amount;

...

18. In view of the lack of valid evidence to the contrary and of the Appellant's divergent explanations concerning the non-inclusion of the amount of \$45,000, I can only conclude that the incorrect entry was made at the request of the sole director of the Appellant.



[19] In the instant case, the accountant's work sheet (Exhibit I-2) refers to a non-taxable deposit of \$45,000 which is described as an advance to the director. However, despite the auditor's analysis and the various efforts to be told the basis of such a claim, he was unable to validate the explanation of the accountant, who, according to the judgment cited above, actually made the entry upon the Appellant's request.

[20] Why was this done? First of all, the Appellant admitted that he was late in filing his application to renew the licence that enabled him to operate his business; since the renewal application had to be submitted with financial statements showing that the business was viable, it is reasonable to believe that he instructed the accountant accordingly, especially since he knew that he would have the opportunity to recover the amount in question tax-free.

[21] After realizing that his questionable planning would not yield the results that he had hoped for, he sought to change his predicament by means of a loan, and invested most of the proceeds of that loan in his business, after which he claimed this change by amending his tax return, believing that this would cancel the aspect of the assessment related to the \$45,000 entry.

[22] The Court cannot accept this approach because the assessment under appeal is in keeping with the provisions of the Act and with the facts reported in the tax returns.

[23] The Appellant cannot modify the nature of a transaction after the fact in order to avoid retroactively the tax consequences of the initial transaction. A taxpayer is free to organize his affairs in order to reduce his tax liability to a minimum. Such liability will be determined based on the facts that the taxpayer has supplied and the facts that are available, not based on hypothetical theories or uncertain intentions. In other words, assessments are based on actual facts, not on what a taxpayer wanted or hoped to do.

[24] The amounts that were added to the Appellant's income for the 2000 taxation year are considerable. Moreover, the Appellant was clearly negligent and reckless when he reported only \$708.75 in income, knowing full well that this was utterly implausible.

[25] This alone amply supports a finding of recklessness and disregard that constitutes a solid foundation for this Court's finding that the Appellant was grossly negligent and that the penalties under the Act were properly imposed.

[26] There were no representations concerning the late filing penalty, but the appropriate proof could be inferred from the filing date itself — specifically, May 10, 2001.

[27] For all these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 4th day of May 2006.

"Alain Tardif"

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Tardif J.

Translation certified true  
on this 14th day of February 2008.

Brian McCordick, Translator

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REASONS FOR JUDGMENT BY: The Honourable Justice Alain Tardif

DATE OF JUDGMENT: May 4, 2006

APPEARANCES:

For the Appellant: The Appellant himself

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